

CONTRACT CLAUSES

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1. ADDENDUM HEADING

This addendum is to be made a part of that certain contract dated (date), between the undersigned Buyer(s) (names) and Seller(s) (names) on property located at (address and legal description).

2. ASSIGNMENT

A. Assignment of Rights & Obligations

Assignor (name(s) of parties) hereby assign to Assignee all interests, rights, duties, obligations, benefits, burdens, and all other responsibilities contained and embodied in a certain real estate sales contract executed on (same date as on contract), between the Assignor and Seller(s) name(s).

For \$10.00 (ten dollars) and other good and valuable consideration, Assignee agrees to assume all obligations, burdens, and other responsibilities as identified in the real estate sales contract executed on (same date as on contract), between Assignor and Seller(s). Assignee will also receive the concomitant benefits, rights and other privileges of Assignor as identified in same contract.

Seller(s) specifically agree(s) and consents to this assignment of interest and obligations and will perform the contract as though no assignment had taken place. Seller(s) agree(s) to accept performance of all obligations and duties by Assignee, and Seller(s) agree(s) to perform Seller(s)'s obligations and duties as required by the contract to the benefit of the Assignee.

Assignor, Assignee, and Seller(s) intend that this assignment of rights and obligations be a legally binding agreement pursuant to the laws of the State of Alabama.

(Signature of Assignor)

B. Non-Assignment of Rights

This contract and any interest, which the Buyer(s) may have herein, are non-assignable and non-transferable without the prior written consent of the Builder.

3. ATTORNEY FEE

NOTE: RealtySouth does not set fees for other professional services. To enable you to prepare your required estimated net sheet confirm the fees for services, or your customer/client may request a limit on the fee they are willing to pay.

Seller(s) and Buyer(s) agree to divide equally the sales and loan closing attorney's fee not to exceed \$_____.

4. ATTORNEY SELECTION

Note: Optional wording:

Seller(s) and Buyer(s) agree that the closing attorney for the sale and loan, if any, in this transaction shall be (name and address of attorney).

*** Or ***

(Seller(s) or Buyer(s) name) shall have the right to select the closing attorney subject to the approval of the (Buyer(s) or Seller(s) name), in which case the fee of the closing attorney shall be divided equally between Seller(s) and Buyer(s). In the event the agreement regarding selection of attorney cannot be reached, then each party shall have the right to be represented by his or her own attorney and will be responsible for the fee charged by that attorney.

NOTE: This may be added:

In the event that the Buyer's lender requires approval of the loan closing attorney, then the loan shall be closed by an attorney so approved.

5. BACK-UP CONTRACT CLAUSE

NOTE: Upon acceptance of all terms on this back-up contract by all parties, earnest money will be deposited in company escrow account. (Backup contract remains in effect for period of time specified in this clause)

All parties acknowledge that this contract is in a secondary position to a primary contract dated (date) between Seller(s) and another party, (other party's name) and that this contract becomes the primary contract only upon the expiration or cancellation of the primary contract. In the event this contract does not become the primary contract on or before (a.m./p.m.) on (date), this contract shall be null and void and all earnest money shall be refunded to Buyer(s) immediately upon the execution of a mutual release form by all parties to the contract.

Further, it is acknowledged and agreed that Buyer(s) may cancel this contract by written notice to Seller(s) or Seller(s)' agent at any time prior to Buyer(s) or Buyer(s) agent's receipt of written notice that this contract has become the primary contract.

6. CLOSING AND/OR POSSESSION DATE CHANGE

NOTE: Closing and/or possession date can be adjusted to an earlier or later date by adding an addendum:

Seller(s) and Buyer(s) agree to change the closing date to on or before (date). Possession is to be given on delivery of the deed, if the property is then vacant; otherwise, possession is to be delivered (number of days and time, including a.m. or p.m.).

7A. CONTINGENT SALE OF PURCHASER'S HOME

NOTE: This clause might be followed by a break clause, depending upon your agency relationship and clients' instructions.

This sale is contingent upon Buyer(s) selling and closing their present home located at (street, address, city and state) on or before (date).

This may be added:

Buyer(s) agree to list (address of property on which this sale is contingent) no later than (date) with the most geographically appropriate area Multiple Listing Service (MLS) and make every effort to effect a sale of the property.

7B. CONTINGENCY BREAK CLAUSE

Seller(s) shall have the right to continue to offer Seller(s)' property for sale. If Seller(s) receive(s) another acceptable written offer, Buyer(s) shall be granted _____ hours after notice to Buyer(s) or Buyer(s)' agent to remove the sale of property contingency. In the event Buyer(s) fail to remove this contingency by written notice to Seller(s) or Seller(s)' agent before the end of said period, this contract shall be terminated and all earnest money refunded to Buyer(s) immediately upon the execution of a mutual release form.

If Buyer(s) elect(s) to remove the sale of property contingency, in no event shall this contract be contingent upon the sale of Buyer(s)' property, even if this is a requirement of the lender. Accordingly, Buyer(s)' removal of the sale of property contingency shall also be deemed as removal of any financing contingency in this contract.

ADDITIONALLY, this may be added:

In the event Buyer(s) elect(s) to remove the sale of property contingency, Buyer(s) agree to immediately pay additional earnest money of \$_____ at the time of removal.

NOTE: This Sale of Property Contingency Break Clause may be modified for other types of contingencies.

7C. CONTINGENT ON RELEASE FROM PRIOR OFFER

For the SELLER(S) to be released from an outstanding offer being negotiated with other Buyer(s):

This Agreement of Sale is hereby made contingent on the Seller(s) withdrawing and being released from an outstanding counteroffer made to other Buyer(s).

For the BUYER(S) to be released from an outstanding offer made on another property:

This Agreement of Sale is hereby made contingent on the Buyer(s)' withdrawing and being released from an outstanding offer made on another property.

This may be added to either clause:

If (Seller(s) or Buyer(s)) do not remove this contingency, then this contract shall become null and void and all earnest money shall be returned to the Buyer(s).

8. CONTINGENCY REMOVAL

NOTE: The contingency should be removed by using a separate Addendum to the Executed Contract.

A. General Contingency Removal

The contingency on (insert the appropriate wording) is removed as of (time and date).

- the sale of the property located at (property address)
- the sale of Buyer(s)'s home located at (property address)
- mortgage financing approval of Buyer(s)
- spouse's approval
- other _____

B. Property Inspection Contingency Removal

NOTE: If Buyer(s) use(s) another Contract form besides current RealtySouth Contract form, delete the reference to "par. 11c."

- a. Based on property inspection contingency in paragraph 11 (c) Buyer(s) terminate this contract.
- b. Based on property inspection contingency in paragraph 11 (c) Buyer(s) agree to accept the house in its present condition
- c. Based on property inspection contingency in paragraph 11 (c) Buyer(s) request Seller(s) make the following repairs (list below or attach)
- d. Based on property inspection contingency in paragraph 11 (c) Seller(s) agree to give Buyer(s) a total of \$_____ as the Seller(s) sole remedy for any repairs necessary to the property arising out of this inspection report.
- e. Based on property inspection contingency in paragraph 11 (c) Buyer(s) and Seller(s) agree to adjust the purchase price of the house to \$_____ in lieu of repairs as the Seller(s) sole remedy for any repairs necessary to the property arising out of this inspection report.

9. MULTIPLE COUNTER OFFERS

NOTE: RealtySouth discourages multiple counter offers. Before proceeding, contact your Manager. The following language is provided for you in the event that Seller(s) receive more than one offer and choose to make more than one counter offer at the same time. In no event should Seller(s) sign or initial more than one offer:

All parties are aware that more than one offer or counter offer is being made on subject property and all parties further understand that the Seller(s) reserve the right to accept, reject or withdraw any offer or counter offer at any time until a contract is finalized. Seller(s) reserve the right to accept the offer of Seller(s)' choice in the event multiple offers are returned.

10. CONDOMINIUMS

- a. Seller(s) agree to furnish prior closing verification from the Homeowners' Association that payment of maintenance fees is current and not in arrears.
- b. Seller(s) have no notice or knowledge of pending special assessments.

Buyer(s) acknowledge:

- a. Receipt of the condominium documents, budget, and Rules and Regulations, and further agree to abide by same on becoming an owner, and
- b. That the monthly maintenance fee is \$_____ and is due on the ____ of each month.

Buyer(s) and Seller(s) agree that the monthly maintenance fee is to be prorated as of the date of closing.

11. DELAYED DEPOSIT OF EARNEST MONEY

Note: The Alabama Real Estate Commission requires deposit of earnest money when the offer becomes a contract unless the parties have agreed on a different time. If the Buyer(s) request that Buyer(s)' check be held for a period of time, Seller(s)' written consent must be obtained. Refer to RealtySouth Operations Manual for more information regarding procedures.

The Seller(s) and Buyer(s) acknowledge and agree that the earnest money check will be held by Broker until _____ at which time it will be deposited by Broker.

12A. DISCLOSURE WHEN BUYING/SELLING FOR SELF

The (*indicate: Buyer(s) or Seller(s)*) recognize that (*your name*) is a licensed real estate agent in Alabama with RealtySouth and is acting as a principal owner and/or investor for his/her own account and further agree that RealtySouth, having no ownership interest, shall not be held accountable or liable for any damages or claims regarding the development, construction, or sale of this property.

12B. DISCLOSURE WHEN LEASING YOUR OWN PROPERTY

NOTE: This is required by the Alabama Real Estate Commission.

I, (*tenant's name*), hereinafter "the undersigned", acknowledge that I am a lessee of the property owned and leased by (*your name*), hereinafter "lessor", located at (*property address*), hereinafter "the property".

I understand that lessor works as a real estate agent for RealtySouth and is involved in the selling and marketing of real estate. I also understand, however, that the lessor is not an agent, employee or servant of RealtySouth with regards to the leasing or renting of the property. I acknowledge that the lessor is not acting for, at the request of, or on behalf of RealtySouth with respect to the leasing of this property.

The undersigned further acknowledges that RealtySouth is not a party, either directly or by agent, to the agreement between the undersigned and the lessor to lease or rent the property. The undersigned acknowledges that RealtySouth does not own the property, that RealtySouth does not collect proceeds (rental or otherwise) on the property and that RealtySouth does not hold any interest in the property or the proceeds generated by said property.

The undersigned acknowledges and agrees to hold RealtySouth harmless of and from any and all claims, demands, causes of action, and suits of every kind and nature, at law or in equity, arising, from or resulting from, or in any manner incidental to any leasing or attempted leasing of the property described above.

12C. DISCLOSURE WHEN ASSISTING A RELATIVE OR BUSINESS ASSOCIATE

NOTE: You must have a signed Buyer Agency Agreement.

The (*name of Buyer(s) or Seller(s)*) recognize that (*your name*) is a licensed real estate agent in Alabama with RealtySouth and is assisting (*name of Buyer(s) or Seller(s)*) who is a (*indicate: relative or business associate*) .

13. EXPIRATION OF OFFER OR COUNTER OFFER

This (*offer or counter offer*) shall expire unless (*Seller(s) or Buyer(s)*) written acceptance of this offer is delivered to (*Buyer(s) or Seller(s)*) or (*Buyer(s)' or Seller(s)'*) agent by (*time a.m. or p.m. and full date*). Time being of the essence.

14. EXTERIOR INSULATION FINISH SYSTEM – Synthetic Stucco (EIFS)

The residence on the Property may have an exterior finish of “synthetic” or “manufactured” stucco, generally known as an “exterior insulation finish system” or EIFS. Such systems may experience water, moisture and other problems under certain circumstances. Buyer(s) are advised to have the system inspected by a professional with expertise in exterior insulation finish systems.

15. FINANCING CONTINGENCIES

A. Limiting interest rates and discount points:

NOTE: If the contract does not say “interest rate shall not exceed market and there is no provision for who will pay discount points if they exceed the limits set in the contract, you might consider using this clause. Be sure to include this on any contract that is not on RealtySouth Contract forms.

If the Buyer(s) choose to limit the interest rate and/or the discount points under which they will close, the Buyer(s) hereby agree to deliver to the Seller(s), within _____ days, a statement from the Buyer(s)' lender stating that application has been made and interest rates and discount points have been tied down that satisfy the terms of this agreement. In the event that the Buyer(s) fail to do so, they agree to accept the loan and discount rate at the market rate at the time of closing.

B. Qualifying Buyer(s) within Specified Time Limit:

Buyer(s) agree to furnish to Seller(s) on or before (*date*) a written statement from a recognized mortgage lender reasonably acceptable to Seller(s) confirming Buyer(s)' credit pre-approval and Buyer(s)' application for the loan specified in the loan contingency. Should Buyer(s) fail to timely provide said statement, Seller(s) may terminate the contract and the earnest money shall be returned to Buyer(s) upon the execution of a mutual release form. Such statement shall also include any reference to discount points which may be required and the specific statement from the lender that the rate is “tied down” for a designated time so stated in this written statement from lender.

C. Change of Lender:

In the event the Buyer(s) should change mortgage lender and/or type of loan (from that type stated on the body of the original contract) after the initial loan application is made without the written consent of the Seller(s), Buyer(s) and Seller(s) agree and acknowledge that the terms of the contract are in violation and that the Buyer(s) shall forfeit the earnest money to the Seller(s), at Seller(s)' option.

D. Bridge Loan Requirement - Due to Buyer(s)' inability to sell present home

In the event funds necessary to close this transaction by the closing date specified herein are not forthcoming from the sale of Buyer(s)' present home located at (address), Buyer(s) agree to secure interim financing in order to close according to the terms of this contract. It is further agreed that if both the Owner and Mortgagee's title policies are obtained at the time of closing, the total expense of procuring the two title policies will be divided equally between the Seller(s) and Buyer(s).

In no event shall this contract be contingent on the sale of Buyer(s)' existing home and if said sale is a requirement of the lender, the Buyer(s) agree to forfeit all earnest money unless they are able to close as stated in this Agreement of Sale.

This may be added:

This contract is contingent on Buyer(s) providing to Seller(s) by (specific date) a letter from Buyer(s)' lender indicating lender's preliminary approval of the Buyer(s) for any interim financing that may be required.

16. LEASE/PURCHASE CLAUSE

NOTE: It is recommended that a lease and contract be prepared and executed simultaneously. The Birmingham Associations of Realtors has a Lease Purchase contract form which may be used.

It is further agreed and acknowledged that Seller(s) understand RealtySouth, its officer(s), director(s), employee(s), broker(s), and agent(s) shall not be held liable for any and all credit worthiness of the purchaser in these transactions; nor be responsible should lessee/purchaser default for any or all payments due this lease/purchase agreement.

17. LOTS - PURCHASE INSPECTION CONTINGENCY

This sale is contingent upon the Buyer(s)' verification that the property is suitable for Buyer(s)' intended purposes and that financing is available to Buyer(s). If the Buyer(s) are unable to verify said matters *by (specific date and time, am/pm)*, Buyer(s) may terminate this Contract by written notice to Seller(s) on or before the end of said date, in which event Seller(s) agree to refund earnest money immediately upon the execution of a mutual release form and this Contract shall become null and void. If Buyer(s) do not terminate this Contract by such date, this contingency shall be deemed satisfied or waived.

18. NEW CONSTRUCTION

NOTE: In many cases a standard new construction contract may be available and may be used; if necessary, attach RealtySouth's addendum containing the appropriate agency language (Buyer(s)' and Seller(s)' acknowledgment). In the event a standard builder's contract is not available, then the following clauses should be considered:

A. CHANGES

All changes in plans and/or specifications are to be made in writing and approved by both the Buyer(s) and the Builder, with any increase or reduction in price for such changes to be agreed to in writing prior to approval.

B. SELECTIONS

Buyer(s) may select *(specify each item which may be selected, such as carpets, bathroom tile, wallpaper, lighting fixtures, color of appliances, etc.)* within Builder's allowance and from Builder's suppliers, provided that such items have not already been purchased, ordered, and/or provided for. If Buyer(s) exceed Builder's allowance, they shall be liable for all amounts due over such allowance, and these overages shall be paid for at the time of selection.

C. OVERAGES

All overages are to be paid for at the time change orders are executed.

D. PUNCH LIST

Builder and Buyer(s) agree to conduct a walk-through inspection of the property prior to closing and to agree on, if applicable, a punch list of items to be completed or corrected.

E. NEW HOUSES - Rock Clause:

The price above does not include any costs or contingencies for rock or other abnormal subsurface conditions, and Buyer(s) shall be responsible for the abnormal costs of correcting any such conditions. Should such abnormal conditions be encountered on the building site in connection with foundations and footing excavation, or installation of sewer lines, on-site sewage disposal systems, water lines, or other utility services, Builder shall promptly inform Buyer(s) of same and estimated costs of the additional work.

Such costs may include, but are not necessarily limited to, blasting expenses, jackhammer and drill operations. Additional costs shall be billed at cost plus a _____% management and overhead fee and, at the time that rock or subsurface conditions are encountered, Builder shall provide a maximum cost for written approval by Buyer(s) prior to proceeding with construction.

F. SEWER/IMPACT FEE CLAUSE

Seller(s) affirm(s) said property is connected to sewer and all impact and connection fees have been paid.

G. START OF CONSTRUCTION

Builder agrees to commence construction or completion of improvements within ___days after this agreement has been accepted and/or mortgage, if required, has been executed or escrow established, and after all contingencies are cleared.

H. WARRANTY

Builder agrees to provide to Buyer(s) a standard form (Greater Birmingham Association of Home Builders if applicable) one-year warranty which is attached to this contract as Addendum ____.

NOTE: Some forms of financing (FHA, VA, and others) may require additional home builder warranties!

I. COVENANTS & RESTRICTIONS

Buyer(s) acknowledge receipt of a copy of the covenants and restrictions of record.

J. COMPLETION

Improvements shall be completed in a good and workmanlike manner in quality equal to the standard of the industry within _____ work days after date of commencement and, if not so completed, Builder agrees to pay to Buyer(s) a penalty of \$_____ per day after that date except when Builder shall have been prevented from completing said improvements by reason of change required by Buyer(s) in plans or specifications, or by war, fire, acts of God, governmental regulations or decrees, strikes, act of Buyer(s), or other causes beyond the control of the Builder.

K. CONDITION OF PROPERTY

NOTE: Use Paragraph 11, IN ITS ENTIRETY (RealtySouth General/Financed Contract) if a Property Condition clause is required:

NOTE: Regarding New Construction Contract Forms

The following Birmingham Association of REALTORS approved new construction forms are available. If used, be sure to attach the RealtySouth addendum containing the Buyer(s)' and Seller's acknowledgment:

- A. Real Estate Sales Contract for Proposed or Incomplete Construction on Builder's Lot
- B. Real Estate Sales Contract for Completed New Construction

19. NOTICES

Any notices to be given under this contract should be given in writing.

- A. Notice shall be deemed to have been given to Buyer(s) if given to Buyer(s) or to Licensee working with Buyer(s) (*licensee's name*).
- B. Notice shall be deemed to have been given to Seller if given to Seller or Licensee working with Seller (*licensee's name*).

20. PERSONAL PROPERTY TO REMAIN

NOTE: See sales contract paragraph 19.

Seller(s) agree to the following items that were physically on premises when viewed by Buyer(s) shall remain with the property. Seller(s) and Buyer(s) agree that these non-realty items have no additional value.

This list is to offer suggestions and in not all-inclusive.: Air-conditioners, andirons, area rugs, attic fans, basketball goals, birdbaths, blinds, bookcases, carpeting that is not

installed wall to wall, ceiling fans, central vacuum system and attachments, chandeliers, clotheslines, cornices, electric garage door openers, fireplace enclosure and screen, firewood, fountains, freezers, fixed mirrors, grills, gas lights, gas logs, ice maker, keys, mail box, pool equipment, portable dishwasher, range, refrigerators, satellite TV system, sconces, sheers, shutters, stereo speakers, swing sets and other playground equipment, TV antenna, window air cooling or heating units, window treatments (including curtains, draperies, valences, rods and hardware), etc.

21. PURCHASE MONEY MORTGAGE / OWNER HELD MORTGAGE

NOTE: The following clauses should be considered on all contracts calling for a purchase money mortgage.

Buyer(s) agree to execute and deliver to Seller(s), and Seller(s) agree to hold, a Purchase Money (*first or second*) Mortgage and Note in the principal sum of \$_____ payable in (*monthly, quarterly, semiannual, annual*) payments of \$_____ amortized over a period of _____ years at _____ % simple interest, with payments beginning on the first day of the month following closing, (*OPTIONAL*) and one final balloon payment of the entire unpaid principal balance due at the end of _____ months.) Buyer(s) shall have the privilege of prepayment at any time without penalty (*OR: specify a certain date after which pre-payment may be made without penalty*). This mortgage may not be assumed without the written permission of the mortgagee.

Buyer(s) agree to obtain at their expense a homeowner's insurance policy in an amount sufficient to cover all mortgages, to name the mortgagee as loss payee, and to furnish to the mortgagee no later than December 31st each year a receipt showing payment of ad valorem taxes.

This sale is contingent on Buyer(s) furnishing to Seller(s) evidence (acceptable to Seller(s)) of good credit.

22. REDEMPTION, OUTSTANDING RIGHTS

The Buyer(s) understand there are outstanding rights of redemption on said property and:
do not require legal counsel.
do require legal counsel. Buyer(s) failure to terminate contract within _____ days (TIME IS OF THE ESSENCE) is Buyer(s)' election to proceed with closing.

23. SINKHOLE CLAUSE

NOTE: This could be necessary whenever the subject property is located in an area where sinkholes may exist.

Buyer(s) hereby acknowledges notice from Seller(s) that the property is located in an area where sinkholes may exist or where subsurface conditions, which may result in sinkholes, exist. Neither Seller(s), Broker, nor any sales associate make(s) any representations or warranties, expressed or implied, with respect to the surface or subsurface conditions of the Property.

24. TAXES ON PROPERTY NOT HOMESTEADED

Buyer(s) are aware that the Homestead Exemption is not currently claimed for this property and that current taxes are not assessed at the residential tax rate. Seller(s) will or will not reimburse the Buyer(s) at closing the difference between the Homestead Exemption rate and the current tax rate.

25. TIME IS OF THE ESSENCE

NOTE: Use this clause with caution! Without stating “Time is of the essence”, a contract is still enforceable for a “reasonable” period of time. This clause is to be used sparingly, as in most cases it may not be in the parties’ interest to use it.

*Simply write the words “**Time is of the essence**” after the condition desired.*