

## 2/1 Buydown clause

Please contact Jennifer or Robin with SLS before using the clause below.  
(Teamdenver@selectlendingservices.com)

1. If the agent wants to put the seller concession in section 4.2, that is fine. We would also recommend that they highlight in additional provisions, “ Seller concession noted in section 4.2 may also be applied to a temporary interest rate buydown on behalf of the buyer(s).” The section 4.2 doesn’t specifically outline that a temporary interest rate buydown is included in the potential fees that the seller concession would cover, so this helps clarify.
2. If an agent wants to highlight the temporary interest rate buydown outside of the seller concession in the contract, here’s what we recommend: “Seller agrees to pay XX.XXX at closing to fund a temporary interest rate buydown on behalf of the buyer. The seller funds may also be used for closing costs, prepaid expenses and any other fees as allowed by buyers lender.”

## Listing Contract Section 7

A) Re: Section 7.1.1., Listing compensation will be X%. If [Agent Name] secures the Buyer, total Compensation paid by the seller will be X%.

B) Sections 7.1.1.1 and 7.1.1.2 are hereby deleted from this contract

C) Seller will consider any offer for Buyer Broker representation compensation, subject to the terms of the offer. The Listing Broker is authorized to advertise that the Seller is willing to consider offering compensation, based on the terms of the offer, to both licensed real estate brokers and the public. Seller understands this information will not be advertised on the MLS.

D) Upon successful closing, Seller will pay a \$395 administrative fee payable to Madison & Company Properties. This fee is not a commission, it is for central office administration costs and closing document archives.

OR - If your seller wants you to advertise a specific compensation amount, replace C with the language below.

Regarding Section 7 and Section 9: Seller authorizes the Listing Broker to advertise to both licensed real estate brokers and the public that Seller is willing to pay a Buyer’s Broker (insert %) of the gross purchase price. Seller understands this information will not be advertised in the MLS.

## Passwords & Access to Electronic Platforms Clause

Anything that is controlled or monitored via an electronic or wi-fi platform will be transferred to the Buyer at closing. All websites, usernames and passwords will be provided on the day of closing and Seller agrees to help Buyer at or before closing with any resetting of included devices and passwords

## Due Diligence Verbiage (For a Seller)

Regarding Section 10.6.2.4 (Due Diligence): (Consider countering this specific section out completely)

Or add this in additional provisions

Regarding Section 10.6.2.4 (Due Diligence): Any documents Seller agrees to provide to Buyer shall only include documents in Seller's possession as of the date of this Contract and shall not extend beyond the date of this Contract.

## 1031 verbiage

Please add this verbiage to section 30 - additional provisions as well as listing " EX 32-5-04 Exchange addendum to the Contract to buy and Sell Real Estate" to section 31 - Additional Documents and attach this [CREC form](#) which is in CTM to your contract to be signed by all parties.

30.a. SECTION 1031 EXCHANGE COOPERATION - Seller and Buyer may seek to subject the sale/purchase of the Property to a tax deferred exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended. CREC EX 32-5-04 Exchange Addendum to the Contract to buy and sell Real Estate is attached and to be signed by all parties.

Also make contact with the 1031 company directly to see if they have an addendum to sign as well. Contact a managing broker if you have questions.

## Additional back up offer clause

This is to be placed in additional provisions

Seller is currently under contract to sell the Property to another Buyer ("First Contract"). This Contract is contingent upon the termination of the First Contract, in writing. Upon termination of the First Contract, Seller shall notify Buyer in writing within 24 hours of such written termination and this contingency shall be deemed removed and this back up Contract shall be in full force and effect. If, however, the Buyer has a contract accepted on another property, this Contract shall terminate immediately and Seller will be notified in writing of termination of this back up Contract. If Buyer has made an offer on another property that has not yet been accepted at the time of termination of the First Contract, Buyer shall have the election whether to terminate this backup Contract. Seller has the right to extend and/or amend the terms and conditions of the First Contract without first obtaining permission from Buyer.

## Oliver Frasca's Back-up Offer Clause

**The Back-up Offer.** In times when the market is really hot and inventory is moving rapidly, it is possible to have multiple offers on one property. The seller may also decide to take back up offers when the initial accepted contract has some "shaky" contingencies, either planned or just developing.

Offering, presenting, and negotiating on a backup offer follows all the same rules as if it were being considered for the first position. Most of the time the buyer will want to have the option to continue to search for other available homes and reserve the option to purchase another instead. You will need to provide an avenue to extract that buyer from the backup position. The key elements are the triggering method that allows the backup contract to assume first position. Use caution so as not to put the seller in jeopardy.

### Clause.

1. Buyer is aware that Seller has an accepted previous offer on the Property ("Senior Contract"). This contract shall be junior to the Senior Contract
2. In the event the Senior Contract does not close on or before \_\_\_\_\_ this contract shall become the Senior Contract. OR:
  - a. In the event the Senior Contract shall terminate for any reason this shall become the Senior Contract. OR:
  - b. This contract shall become the Senior Contract only in the event that the existing Senior Contract is terminated. In no event shall the Seller or Buyer be obligated to close or otherwise perform under this contract so long as the Senior Contract is in existence. OR:
  - c. In the event the previous Senior Contract is the subject of litigation or threatened litigation, Seller shall not be obligated to perform hereunder.
3. Seller reserves the right to extend, renegotiate or modify the Senior Contract.
4. Buyer Reserves the right to terminate this contract at Buyers election at any time prior to this contract becoming the Senior Contract. Such termination shall be effective upon receipt of written notification of the same given to the Seller or listing broker.
5. All performance dates shall be extended once by a number of days equal to the difference between the date of acceptance of the contract and the date this contract becomes the Senior Contract.

## Appraisal Guarantee by Buyer

If the appraisal comes in lower than the agreed upon purchase price of \$285,000 then the Buyer agrees to pay the difference between the appraisal and the purchase price in CASH up to a difference of \$10,000.00. If the appraisal comes in below \$275,000, the Buyer agrees to pay the maximum of \$10,000 over the appraisal amount

## Contingency Language

This is to be placed in additional provisions

### Version 1

Buyers shall have their current property located ( Property Address) on the market no later than (date). If buyers fail to list their home by this date the seller will have the option to terminate or extend the deadline. Seller agrees to give buyers until ( Date ) to get their current home located at ( Property Address) under contract and remain under contract with a qualified, bona fide, non-contingent buyer. If the property is not under contract by ( Date ) seller shall have the right to terminate this contract and all earnest money returned to buyers or proceed with the current contract adding a new amended deadline for under contract date. If the contract on the buyers property is terminated or cancelled, buyer must notify seller in writing within 24 hours and seller has the right to terminate this contract or extend the contingency dates.

or

§ 10.7. CONDITIONAL UPON SALE OF PROPERTY. Notwithstanding § 10.7 or anything in this Contract to the contrary, Seller has the Right to Terminate under this paragraph and § 25.1 upon the occurrence of any of the following events or circumstances:

- (a) if within \_\_\_\_\_ days following MEC (the "Sale Contract Deadline") a copy of a fully signed and effective contract for the sale of the property described in §10.7 ("Buyer's Existing Property") has not been delivered to and received by Seller, or is not acceptable to Seller, by giving a Notice to Terminate within seven (7) days following the Sale Contract Deadline;
- (b) if any contract for the sale of Buyer's Existing Property that was pending at the Sale Contract Deadline is subsequently terminated or cancelled without closing, by giving a Notice to Terminate at any time after Seller learns of such termination or cancellation;
- (c) or if Buyer has not closed the sale of Buyer's Existing Property by the Conditional Sale Deadline, by giving a Notice to Terminate at any time following the Conditional Sale Deadline.
- (d) or if Buyer's home is not in the MLS and available for showings by \_\_\_\_\_.

## Escalation Clause

If Seller receives another offer with a higher price than Buyer's offer, then Buyer shall escalate/increase the offering price by \$2,000 above the other buyer's offer up to a sales price of \$750,000. Proof of offer causing escalation shall be provided to buyer.

## First Right of Refusal Clause

Seller shall have the right to market the property "pending accepting backup offers" in the MLS. In the event another acceptable, bona fide, non-contingent offer is received by the Seller, the Buyer shall be notified and given 48 hours to remove the contingency pertaining to the sale of their property. Evidence of the ability to perform must be provided by the Buyer, and the Seller has the sole discretion to proceed with this contract. If Buyer does not notify Sellers in writing within 48 hours after receipt of notice that it is their intent to waive the contingency pertaining to the sale of their home, this contract shall terminate, and Buyer shall automatically release Sellers from any obligation, and all deposits shall be returned to Buyer. Once the Buyer has accepted an offer on the sale of their property and provided proof to the Seller, this First Right of Refusal Clause shall be null and void.

## Rate Buy Down Clause

“Reference Paragraph 4.2 Seller Concession: At closing, Seller to contribute \$\_\_\_\_\_ towards buyer's closing costs and/or prepaid expenses or any other items referenced in paragraph 4.2. Furthermore, Seller funds may also be used towards an interest rate buydown as allowed by the lender and/or loan program for the benefit of the buyer.”

## Septic Verbiage for Buyer and Seller (please verify this is still the process the county requires as changes are made all the time)

**Buyers:** (Jeffco and Clear Creek, verify other Counties) Prior to the Inspection Objection Deadline, Seller will, at Seller's expense, uncover septic lids, pump septic tank and provide Buyer with a written septic pumping and inspection report. On or before Closing Date, Seller will pay for and provide Buyer with a passing septic use permit as required by the county health department. If any repairs are required to obtain the septic use permit, Seller will arrange and pay for those repairs prior to Closing Date.

(For Park County, verify other Counties) Prior to the Inspection Objection Deadline, Seller will, at Seller's expense and by providing Buyer with copies of documentation and all reports, A) uncover septic lids, B) have septic tank pumped, C) install an effluent screen (if there is not currently one in place and if it is required), D) obtain a National Association of Wastewater (NAWT) certified inspection as required by the Park County health department, E) provide Park County the transfer of title packet along with the fee, and provide copies of the same to the Buyer.

**Sellers:**

(For Jefferson and Clear Creek, verify other Counties) Seller will, at Seller's expense, uncover septic lids, have septic tank pumped, have septic system inspected and obtain a septic use permit as required by the county health department prior to Closing Date. If the septic use permit is not obtainable for any reason and Seller is unable or unwilling to make the necessary corrections, Seller will notify Buyer and Seller and Buyer will attempt to re-negotiate the terms of this Contract. If Seller and Buyer cannot agree on satisfactory terms within 3 business days after written notice from Seller, this Contract will be null and void and the Earnest Money will be released to the Buyer.

(For Park County, verify other Counties) Prior to Closing Date, Seller will, at Seller's expense, A) Uncover septic lids, B) Have septic tank pumped, C) Install an effluent screen (if required), D) Obtain a National Association of Wastewater (NAWT) certified inspection as required by the Park County Health Department, and E) Submit the transfer of title packet, along with the fee, to Park county. If the certified inspection is not obtainable for any reason and Seller is unable or unwilling to make the necessary corrections, Seller will notify Buyer and Seller and Buyer will attempt to re-negotiate the terms of this Contract. If Seller and Buyer cannot agree on satisfactory terms within 3 business days after written notice from Seller, this Contract will be null and void and the Earnest Money will be released to the Buyer.

## Post Closing Occupancy Language/Additional Verbiage to Add to PCOA

### **Post Closing Occupancy Clause (Buyer) – This clause would go into additional provisions of the PCOA when we represent the Buyer:**

A. The preprinted language in section 6 addressing "Buyer Access" of this Post-Closing Occupancy Agreement is wholly deleted and replaced with the following: "In the event of an emergency Buyer may enter the Property without notice to Seller. Otherwise, the Buyer will not have access to the Property without approval of Seller".

B. Brokers will neither hold security deposits nor pay rents on behalf of Buyer and Seller. Enforcing the terms of the agreement will be the sole responsibility of the parties after closing. Buyer and Seller agree to exchange contact information at closing and arrange a final walkthrough/deposit refund. Seller shall remove all pet excrement from the yard. If it snows, Seller will make reasonable attempts to remove snow from driveway and walkway to front door. Seller agrees to leave the property in the condition outlined in the Contract to Buy and Sell Real Estate: Seller agrees to remove all personal possessions, staging items, and debris from property, garage, and yard prior to possession. (OPTION) Seller agrees to have the property professionally cleaned upon removal of personal possessions and staging items prior to possession.

### **Post Closing Occupancy Clause (Seller) – This clause would go into additional provisions of the PCOA when we represent the Seller:**

1. Brokers will neither hold security deposits nor pay rents on behalf of Buyer and Seller. Enforcing the terms of the agreement will be the sole responsibility of the parties after closing. Buyer and Seller agree to exchange contact information at or before closing and arrange a final walkthrough/deposit refund. The Buyer/New Owner/ Landlord, at their own discretion, may activate or winterize any systems requiring activation or winterization at a seasonally appropriate time (e.g., a sprinkler system). Seller agrees to leave the property in the condition as outlined in the Contract to Buy and Sell Real Estate: Seller agrees to remove all exclusions and applicable items per the contract, such as, personal possessions, staging items, and debris from the property, garage, and yard, etc, prior to possession.

If you need language about rent and deposits, consider something like:

*Buyers agree to refund the \$750 "rent" upon taking possession. This money is only being held temporarily so Buyer can enforce the collection of a security deposit.*

**Buyer Agency Clause (for Exclusive Right-to-Buy Contracts):**

Buyer should carefully consider the risk(s) associated with entering into a Post Closing Occupancy Agreement. This is a semi-common practice by which the Seller is legally allowed to remain in the home after closing (for a predetermined amount of time not to exceed 60 days). Buyer will be a landlord during this timeframe and is subject to tenant/landlord laws. Buyer should discuss any concerns with an attorney. Broker is unauthorized to assist with Post-Closing disputes, enforcing possession, collecting rent and refunding the security deposit.

**Seller Agency Clause (for Exclusive Right-to-Sell Contracts)**

Seller should carefully consider the risk(s) associated with entering into a Post Closing Occupancy Agreement. This is a semi-common practice by which the Seller is legally allowed to remain in the home after closing (for a predetermined amount of time not to exceed 60 days). Buyer will be a landlord during this timeframe and is subject to tenant/landlord laws. Seller should discuss any concerns with an attorney. Broker is unauthorized to assist with Post-Closing disputes, enforcing possession, collecting rent and refunding the security deposit.