

II. FINANCING AGREEMENTS (MSC-2010)

Section 5 of the Contract (discussed above) contains sufficient flexibility to describe the particular features of any desired type of conventional financing (*e.g.*, interest rate adjustments, amortization periods). MSC-2010 should be used in connection with the Contract only if the financing sought will involve a loan assumption, seller financing or a government loan (*e.g.*, FHA or VA).

The terms of MSC-2010 equally apply to the MAR Vacant Land and Farm sale contract forms (LND and FRM 2000). MSC-2010 is generally not applicable to the MAR form Commercial and Industrial Real Estate Sale Contract (COM-2000), unless a government sponsored loan is involved. The particulars of MSC-2010 are discussed below.

| | |
|------------------------|--|
| A. | Complete the Reference (identification) line consistent with the Contract. |
| Loan Assumption | <p>Check Box A if Buyer is to assume the Seller's existing loan which encumbers the subject Property. Identify the "Existing Lender", and preferably its address and phone number, at the blank indicated by "B" on the form. Insert the remaining term of the loan (at "C"), interest rate (at "D") and the amount which the parties agree is to be balance of the loan as of the Closing (at "E"), in the spaces provided.</p> <p>If the actual balance of the note at the time of Closing does not match exactly the agreed-upon amount pegged by the parties, then the Purchase Price proceeds due at Closing are to be adjusted lower (<i>i.e.</i>, a credit to the Buyer) by the amount which the actual principal balance exceeds the pegged amount. Likewise, if the actual principal balance due as of the Closing is less than the anticipated balance agreed upon by the parties, then Buyer is to reimburse Seller for the difference (plus any deposits held by the Existing Lender and transferred to Buyer). Consistent with Section 5 of the Contract regarding conventional financing, this section also requires that a Buyer "<i>do all things necessary</i>" to obtain such financing, and sets forth the procedures Buyer must follow in order to exercise its right to terminate the Contract (and become entitled to return of the Earnest Money) on account of the failure of this condition (<i>e.g.</i>, provide written Notice from the Existing Lender, or an appropriate sworn/notarized affidavit), or the same will be deemed waived. Insert the time period in which Buyer is allowed to obtain any necessary consent of the Existing Lender at "F".</p> <p>Line 23 makes clear that the Buyer's notarized affidavit, if any, must be presented by 5:00 pm. on the Loan Commitment Date (<i>i.e.</i>, the same time as is required for a rejection Notice from the Existing Lender). Subparts A, B and C specify that any return of the Earnest Money to Buyer remains "<i>subject to terms of Contract</i>" regarding such matters (see discussion of Section 8 of the Contract above).</p> |



This document has legal consequences. If you do not understand it, consult your attorney.

Financing Agreements

(Only those paragraphs which are checked and completed shall be applicable.)

1 **The use of any capitalized terms not otherwise defined herein shall be given the same meaning as set**
 2 **forth in the Contract to which this form is attached and incorporated. To the extent not specifically**
 3 **amended hereby, the terms and conditions of the Contract shall remain in full force and effect; provided,**
 4 **however, that in the event of any inconsistency between the terms set forth herein and the terms set forth**
 5 **in the Contract, the terms set forth herein shall control. (Note: This form is generally not applicable to**
 6 **COM-2000, unless a government sponsored loan is involved – See subpart C).**

7 **A. LOAN ASSUMPTION.** The Property is subject to the lien of a first deed of trust, securing the
 8 payment of a promissory note payable to _____ (B)
 9 ("Existing Lender"), with a remaining term of approximately _____ (C) years, and bearing interest at the rate of
 10 _____ (D) percent per annum. Seller shall make any payments required until Closing. The parties agree the
 11 unpaid principal balance on the note shall be \$ _____ (E) as of the Closing (or the
 12 Purchase Price shall be adjusted lower by the amount by which the actual principal balance due as of the Closing
 13 exceeds such amount). Buyer will, at Closing and as part of the Purchase Price, assume and agree to pay the
 14 actual remaining unpaid balance on the note, and shall reimburse Seller for any additional principal reductions not
 15 already considered above in computing the Purchase Price, and for any deposits held by Existing Lender that are
 16 transferred to Buyer. **Note: Assumption by Buyer does not necessarily release Seller from continued**
 17 **liability.** Buyer agrees to do all things necessary, including but not limited to execution of a completed loan
 18 application and other instruments, and to cooperate fully in order to obtain the financing necessary to complete
 19 this transaction. If Buyer does not deliver written notice, provided by Existing Lender, to Seller of Buyer's inability
 20 to obtain Existing Lender's consent to this assumption (if required) by 5:00 p.m. on the date (the "Loan
 21 Commitment Date") which is _____ (F) days after the Effective Date, then this condition shall be deemed waived
 22 and Buyer's performance under this Contract shall not thereafter be conditioned upon Buyer's obtaining Existing
 23 Lender's consent to this assumption; provided, however, if Existing Lender will not give Buyer such notice then
 24 Buyer may directly notify Seller (on or before 5:00 p.m. on the Loan Commitment Date) by providing a sworn
 25 notarized affidavit that Buyer has timely complied with all of the terms of this paragraph and that despite request,
 26 Buyer was unable to obtain such written notice from Existing Lender. If Buyer has complied with the terms of this
 27 paragraph and has timely provided written Notice to Seller of Buyer's inability to obtain Existing Lender's consent
 28 to this assumption (if required), then this Contract shall be terminated with Earnest Money to be returned to
 29 Buyer, subject to terms of Contract.

30 **B. SELLER FINANCING.** Seller agrees to finance \$ _____ (G) as part of the Purchase Price,
 31 to be evidenced by a negotiable purchase money promissory note to be amortized in equal monthly installments
 32 over a period of _____ (H) years, bearing interest at the rate of _____ (I) percent per annum, and secured by a
 33 _____ (J) deed of trust covering the Property, with the entire unpaid principal and interest to be paid in full at
 34 the end of _____ (K) years. Unless otherwise agreed in writing, the parties will use the currently effective single
 35 family FNMA/FHLMC note and deed of trust forms. Seller shall have _____ (L) days to investigate Buyer's credit
 36 credentials and financial condition, and if unacceptable to Seller, shall so notify Buyer in writing on or before said
 37 date, at which time Buyer shall be given an additional _____ (M) days after receipt of Seller's Notice (the "Loan
 38 Commitment Date") to obtain alternate financing. In such case, unless Buyer shall provide to Seller, by 5:00
 39 p.m. on the Loan Commitment Date, an unconditional loan commitment for at least the amount set forth above,
 40 then this Contract shall automatically terminate and the Earnest Money shall be returned to Buyer, subject to
 41 terms of Contract. Failure of Seller to timely notify Buyer of unacceptability shall constitute Seller's acceptance of
 42 Buyer's credit credentials and financial condition. Buyer authorizes any lender or credit agency to release credit
 43 information either directly to Seller or to any involved Broker for delivery to Seller. Brokers are not responsible for
 44 the contents of any credit reports or Buyer's financial disclosure.

45 Buyer's Initials _____ (V)

Seller's Initials _____ (V)

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| <p>Seller Financing</p> | <p>Check Box B if Seller agrees to finance part of the Purchase Price. If so, insert the amount agreed to be financed at “G”. Fill in the agreed upon amortization period in at “H” and the interest rate at “I”. Insert the priority of the deed of trust (<i>e.g.</i>, “<i>first</i>”, “<i>second</i>”, etc.) at “J”. Insert the term of the loan (<i>e.g.</i>, the period of time after which it will mature) at “K”. If the loan is intended to be fully amortized over the term of the loan, the inserts at “H” and “K” should be identical. If the loan is to include a balloon payment, “K” will be a shorter period of time than “H”. The form of promissory note and deed of trust to be used is to be based on the then effective form of such documents promulgated by FNMA/FHLMC (as opposed to “<i>a form approved by Seller</i>”). This is designed to reduce potential disputes which might otherwise arise between the parties regarding the content of such documents (such as prepayment penalties, fees, remedies, etc.). Realtors are encouraged to have their clients consult with legal counsel for advice regarding these matters.</p> <p>Insert at “L” the number of days that Seller is entitled to investigate Buyer’s credit, and to notify Buyer if it is unacceptable. Failure to timely do so constitutes a waiver of Seller’s rights in this regard. MSC-2010 provides a Buyer with possible additional time to obtain alternate financing. Insert the additional amount of time (if any) to be provided at “M”. Unless the Buyer timely provides Seller with an unconditional loan commitment to evidence such alternate financing, then the Contract automatically terminates and the Earnest Money is to be refunded to Buyer. This subparagraph also specifically allows for any credit information regarding the Buyer to be released directly to the Seller or any involved Broker, and absolves the Brokers from any responsibility for the contents or disclosure thereof.</p> <p>Note: It is possible that a transaction will involve both assumption of an existing loan as well as Seller financing (<i>e.g.</i>, a second priority “take-back” loan). In such case, both Box A and B should be checked and completed appropriately.</p> |
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| <p>Government loan</p> | <p>Check Box C if Buyer seeks any sort of federal, state or local government insured, guaranteed or subsidized loan. Given the wide variety of governmental financial loan programs and assistance available, the scope of this language is not limited to a U.S. Government insured or guaranteed government loan (<i>e.g.</i>, FHA or VA). As specifically noted in the bold type parenthetical, if a FHA or VA loan is to be applied for, the applicable subpart of Box C should also be checked. MSC-2010 may be used in connection with COM-2000 if a “Government Loan” of some sort is to be a condition to a Buyer’s obligation to close.</p> <p>Fill in the minimum acceptable amount of the loan at “N”, and the amortization period at “O”. Insert the maximum acceptable interest rate at “P”. At “Q”, insert the maximum amount of loan fees/points (expressed by either a total dollar amount or number of points; <i>e.g.</i>, “\$500” or “two (2) points”) which Buyer agrees to pay. Insert any portion of the loan fees/points which Seller is willing to pay at “R”.</p> <p>Note: One “point” is an amount equal to one percent (1%) of the amount of the loan. If a party is not willing to pay <u>any</u> loan fees/points, then insert “zero” or “none”.</p> |
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 2 **forth in the Contract to which this form is attached and incorporated. To the extent not specifically**
 3 **amended hereby, the terms and conditions of the Contract shall remain in full force and effect; provided,**
 4 **however, that in the event of any inconsistency between the terms set forth herein and the terms set forth**
 5 **in the Contract, the terms set forth herein shall control. (Note: This form is generally not applicable to**
 6 **COM-2000, unless a government sponsored loan is involved – See subpart C).**

7 **A. LOAN ASSUMPTION.** The Property is subject to the lien of a first deed of trust, securing the
 8 payment of a promissory note payable to _____ (B)
 9 ("Existing Lender"), with a remaining term of approximately _____ (C) years, and bearing interest at the rate of
 10 _____ (D) percent per annum. Seller shall make any payments required until Closing. The parties agree the
 11 unpaid principal balance on the note shall be \$ _____ (E) as of the Closing (or the
 12 Purchase Price shall be adjusted lower by the amount by which the actual principal balance due as of the Closing
 13 exceeds such amount). Buyer will, at Closing and as part of the Purchase Price, assume and agree to pay the
 14 actual remaining unpaid balance on the note, and shall reimburse Seller for any additional principal reductions not
 15 already considered above in computing the Purchase Price, and for any deposits held by Existing Lender that are
 16 transferred to Buyer. **Note: Assumption by Buyer does not necessarily release Seller from continued**
 17 **liability.** Buyer agrees to do all things necessary, including but not limited to execution of a completed loan
 18 application and other instruments, and to cooperate fully in order to obtain the financing necessary to complete
 19 this transaction. If Buyer does not deliver written notice, provided by Existing Lender, to Seller of Buyer's inability
 20 to obtain Existing Lender's consent to this assumption (if required) by 5:00 p.m. on the date (the "Loan
 21 Commitment Date") which is _____ (F) days after the Effective Date, then this condition shall be deemed waived
 22 and Buyer's performance under this Contract shall not thereafter be conditioned upon Buyer's obtaining Existing
 23 Lender's consent to this assumption; provided, however, if Existing Lender will not give Buyer such notice then
 24 Buyer may directly notify Seller (on or before 5:00 p.m. on the Loan Commitment Date) by providing a sworn
 25 notarized affidavit that Buyer has timely complied with all of the terms of this paragraph and that despite request,
 26 Buyer was unable to obtain such written notice from Existing Lender. If Buyer has complied with the terms of this
 27 paragraph and has timely provided written Notice to Seller of Buyer's inability to obtain Existing Lender's consent
 28 to this assumption (if required), then this Contract shall be terminated with Earnest Money to be returned to
 29 Buyer, subject to terms of Contract.

30 **B. SELLER FINANCING.** Seller agrees to finance \$ _____ (G) as part of the Purchase Price,
 31 to be evidenced by a negotiable purchase money promissory note to be amortized in equal monthly installments
 32 over a period of _____ (H) years, bearing interest at the rate of _____ (I) percent per annum, and secured by a
 33 _____ (J) deed of trust covering the Property, with the entire unpaid principal and interest to be paid in full at
 34 the end of _____ (K) years. Unless otherwise agreed in writing, the parties will use the currently effective single
 35 family FNMA/FHLMC note and deed of trust forms. Seller shall have _____ (L) days to investigate Buyer's credit
 36 credentials and financial condition, and if unacceptable to Seller, shall so notify Buyer in writing on or before said
 37 date, at which time Buyer shall be given an additional _____ (M) days after receipt of Seller's Notice (the "Loan
 38 Commitment Date") to obtain alternate financing. In such case, unless Buyer shall provide to Seller, by 5:00
 39 p.m. on the Loan Commitment Date, an unconditional loan commitment for at least the amount set forth above,
 40 then this Contract shall automatically terminate and the Earnest Money shall be returned to Buyer, subject to
 41 terms of Contract. Failure of Seller to timely notify Buyer of unacceptability shall constitute Seller's acceptance of
 42 Buyer's credit credentials and financial condition. Buyer authorizes any lender or credit agency to release credit
 43 information either directly to Seller or to any involved Broker for delivery to Seller. Brokers are not responsible for
 44 the contents of any credit reports or Buyer's financial disclosure.

45 Buyer's Initials _____ (V)

Seller's Initials _____ (V)

46 **C. GOVERNMENT LOAN.** (Note: If a FHA or VA loan is to be applied for, the applicable
 47 **subpart(s) set forth below should also be checked.**) This Contract is given subject to Buyer's ability to obtain
 48 a federal, state or local government insured, guaranteed or subsidized loan in the amount of \$ N
 49 payable over a period of O years and bearing interest at a rate of P percent per annum.
 50 Buyer shall pay the initial Q loan fees/points. Seller shall pay loan fees/points in excess of Buyer's
 51 obligations, if any, up to R. Buyer shall do all things necessary, including but not limited to
 52 execution of a completed loan application and other instruments, and to cooperate fully in order to obtain the
 53 financing necessary to complete this transaction. If Buyer does not deliver written notice, provided by Buyer's
 54 lender, to Seller of Buyer's inability to obtain a loan commitment on the terms described above by 5:00 p.m. on
 55 the date (the "Loan Commitment Date") which is S days after the Effective Date, then this condition shall
 56 be deemed waived and Buyer's performance under this Contract shall thereafter not be conditioned upon Buyer's
 57 obtaining financing; provided, however, if such lender will not give Buyer such written notice, then Buyer may
 58 directly notify Seller (on or before 5:00 p.m. on the Loan Commitment Date) by providing a sworn notarized
 59 affidavit that Buyer has timely complied with all of the terms of this paragraph and that despite request, Buyer was
 60 unable to obtain such written notice from lender. If Buyer has complied with the terms of this paragraph and has
 61 timely provided written Notice to Seller of Buyer's inability to obtain the loan commitment, then this Contract shall
 62 be terminated with Earnest Money to be returned to Buyer, subject to terms of Contract.

63 **FHA LOAN DISCLOSURE.** Buyer is seeking a Federal Housing Administration (FHA) loan, and the
 64 parties expressly agree that, notwithstanding any other provisions of this Contract, Buyer shall not be obligated to
 65 complete the purchase of the Property described herein or to incur any penalty by forfeiture of Earnest Money or
 66 otherwise unless Seller has delivered to Buyer a written statement issued by the Federal Housing Commissioner
 67 setting forth the appraised value of the Property (excluding Closing costs) of not less than \$ T,
 68 which statement Seller hereby agrees to deliver to Buyer promptly after such appraised value statement is made
 69 available to Seller. Buyer shall, however, have the privilege and option of proceeding with the consummation of
 70 the Contract without regard to the amount of the appraised evaluation made by the Federal Housing
 71 Commissioner. The appraised valuation is arrived at to determine the maximum mortgage amount the
 72 Department of Housing and Urban Development (HUD) will insure. HUD does not warrant the value or the
 73 condition of the Property. Buyer should satisfy himself/herself that the Purchase Price and condition of the
 74 Property are acceptable.

75 HUD disclosure form, "For Your Protection: Get a Home Inspection," is attached.

76 **VA LOAN DISCLOSURE.** Buyer is seeking a Department of Veterans Affairs (VA) loan, and the
 77 parties expressly agree that, notwithstanding any other provisions of this Contract, Buyer shall not be obligated to
 78 complete the purchase of the Property described herein or to incur any penalty by forfeiture of Earnest Money or
 79 otherwise, if the Contract Purchase Price exceeds the reasonable value of the Property established by the
 80 Department of Veterans Affairs. Buyer shall, however, have the privilege and option of proceeding with the
 81 consummation of this Contract without regard to the amount of the reasonable value established by the
 82 Department of Veterans Affairs.

83 **D. OTHER FINANCING AND/OR TERMS:** U

84 _____
 85 _____
 86 _____
 87 _____

88 **Note: A lender's loan approval process may not include an appraisal or other such comparison or**
 89 **determination of value of the Property. Different types of "appraisals" are available and lender**
 90 **underwriting requirements vary in this regard. If Buyer's performance under this Contract is to be**
 91 **independently conditioned upon the Property appraising at a specified value, then Buyer should complete**
 92 **and attach to this Contract MAR form MSC-2020 (Contract Conditions).**

93 Buyer's Initials V

Seller's Initials V

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| | <p>Again, although there is no specified time period in which a Buyer is required to apply for a government loan, a Buyer remains obligated to “<i>do all things necessary</i>” to obtain financing. MSC-2010 includes the same requirements and procedures set forth at lines 45-53 of the Contract regarding this point.</p> <p>As discussed above with respect to “Loan Assumption”, and consistent with the terms of Section 5 of the Contract for conventional financing, this section also sets forth the procedures a Buyer must follow in order to exercise its right to terminate the Contract and become entitled to return of the Earnest Money (<i>e.g.</i>, written notice from the proposed lender, or an appropriate sworn/notarized affidavit). The Contract will terminate only if the Buyer timely delivers (by 5:00 p.m.) such Notice to Seller that Buyer was unable to obtain a loan commitment for the described financing by the Loan Commitment Date (set forth at “S”). Otherwise this contingency is deemed waived.</p> |
| Loan Disclosure | <p>Insert (at “T”) the minimum value at which the Property must be appraised by the FHA (<i>e.g.</i>, the Purchase Price amount set forth in the Contract). Also mark the box if the HUD disclosure form “<i>For Your Protection: Get a Home Inspection</i>” (MAR form RES-3030) is attached.</p> |
| U. | <p>Given the innumerable financing terms and options available in today’s society, Box D (“Other Financing and/or Terms”) is designed to provide flexibility for the parties to identify any specific alternative type of loan which the Buyer is obligated to pursue. It can also be used in connection with the options already listed in MSC-2010 (<i>i.e.</i>, Boxes A-C) to describe any additional specific terms or nuances relating thereto upon which the parties mutually agree. As is the case with the “Special Agreements” section of the Contract and discussed elsewhere in this Manual, in order to protect Realtors against claims of engaging in the unauthorized practice of law, parties who desire or insist upon customized terms should be advised to consult with their attorney for specific language (to insert at “U”) and legal advice.</p> |
| 88-92 | <p>This disclaimer is identical to that found at lines 60-62 of the Contract. The same admonishment is applicable regardless of whether a Buyer seeks conventional or alternative financing.</p> |
| 45&93 | <p>When used, MSC-2010 should be initialed (at “V”) by both parties at the bottom of both pages of the form.</p> |

46 **C. GOVERNMENT LOAN.** (Note: If a FHA or VA loan is to be applied for, the applicable
 47 **subpart(s) set forth below should also be checked.**) This Contract is given subject to Buyer's ability to obtain
 48 a federal, state or local government insured, guaranteed or subsidized loan in the amount of \$ N
 49 payable over a period of O years and bearing interest at a rate of P percent per annum.
 50 Buyer shall pay the initial Q loan fees/points. Seller shall pay loan fees/points in excess of Buyer's
 51 obligations, if any, up to R. Buyer shall do all things necessary, including but not limited to
 52 execution of a completed loan application and other instruments, and to cooperate fully in order to obtain the
 53 financing necessary to complete this transaction. If Buyer does not deliver written notice, provided by Buyer's
 54 lender, to Seller of Buyer's inability to obtain a loan commitment on the terms described above by 5:00 p.m. on
 55 the date (the "Loan Commitment Date") which is S days after the Effective Date, then this condition shall
 56 be deemed waived and Buyer's performance under this Contract shall thereafter not be conditioned upon Buyer's
 57 obtaining financing; provided, however, if such lender will not give Buyer such written notice, then Buyer may
 58 directly notify Seller (on or before 5:00 p.m. on the Loan Commitment Date) by providing a sworn notarized
 59 affidavit that Buyer has timely complied with all of the terms of this paragraph and that despite request, Buyer was
 60 unable to obtain such written notice from lender. If Buyer has complied with the terms of this paragraph and has
 61 timely provided written Notice to Seller of Buyer's inability to obtain the loan commitment, then this Contract shall
 62 be terminated with Earnest Money to be returned to Buyer, subject to terms of Contract.

63 **FHA LOAN DISCLOSURE.** Buyer is seeking a Federal Housing Administration (FHA) loan, and the
 64 parties expressly agree that, notwithstanding any other provisions of this Contract, Buyer shall not be obligated to
 65 complete the purchase of the Property described herein or to incur any penalty by forfeiture of Earnest Money or
 66 otherwise unless Seller has delivered to Buyer a written statement issued by the Federal Housing Commissioner
 67 setting forth the appraised value of the Property (excluding Closing costs) of not less than \$ T,
 68 which statement Seller hereby agrees to deliver to Buyer promptly after such appraised value statement is made
 69 available to Seller. Buyer shall, however, have the privilege and option of proceeding with the consummation of
 70 the Contract without regard to the amount of the appraised evaluation made by the Federal Housing
 71 Commissioner. The appraised valuation is arrived at to determine the maximum mortgage amount the
 72 Department of Housing and Urban Development (HUD) will insure. HUD does not warrant the value or the
 73 condition of the Property. Buyer should satisfy himself/herself that the Purchase Price and condition of the
 74 Property are acceptable.

75 HUD disclosure form, "For Your Protection: Get a Home Inspection," is attached.

76 **VA LOAN DISCLOSURE.** Buyer is seeking a Department of Veterans Affairs (VA) loan, and the
 77 parties expressly agree that, notwithstanding any other provisions of this Contract, Buyer shall not be obligated to
 78 complete the purchase of the Property described herein or to incur any penalty by forfeiture of Earnest Money or
 79 otherwise, if the Contract Purchase Price exceeds the reasonable value of the Property established by the
 80 Department of Veterans Affairs. Buyer shall, however, have the privilege and option of proceeding with the
 81 consummation of this Contract without regard to the amount of the reasonable value established by the
 82 Department of Veterans Affairs.

83 **D. OTHER FINANCING AND/OR TERMS:** U

84 _____
 85 _____
 86 _____
 87 _____

88 **Note: A lender's loan approval process may not include an appraisal or other such comparison or**
 89 **determination of value of the Property. Different types of "appraisals" are available and lender**
 90 **underwriting requirements vary in this regard. If Buyer's performance under this Contract is to be**
 91 **independently conditioned upon the Property appraising at a specified value, then Buyer should complete**
 92 **and attach to this Contract MAR form MSC-2020 (Contract Conditions).**

93 Buyer's Initials V

Seller's Initials V