

## LAND CONTRACT

THIS LAND CONTRACT is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ ("Seller"), whose address is \_\_\_\_\_, and \_\_\_\_\_ ("Purchaser"), whose address is \_\_\_\_\_.

In consideration of the mutual covenants herein contained, it is hereby agreed as follows:

1. Seller hereby agrees to sell and convey to Purchaser a certain parcel of land (the "Premises"), located in the Township/City of \_\_\_\_\_, County of \_\_\_\_\_, State of Michigan, legally described on attached Exhibit A.

2. Purchaser agrees to buy the Premises and to pay Seller the sum of \$\_\_\_\_\_ (the "Purchase Price") as follows: \$\_\_\_\_\_ on signing this Contract, the receipt of which is acknowledged, and the remaining balance of \$\_\_\_\_\_ to be paid in monthly installments of \$\_\_\_\_\_ including interest which shall accrue at the rate of \_\_\_\_\_ percent (\_\_\_\_%) per annum over \_\_\_\_\_ (\_\_\_\_) years commencing on \_\_\_\_\_, 200\_\_\_\_ and on the first day of each month thereafter until \_\_\_\_\_, 20\_\_\_\_, at which time the entire balance of principal and accrued interest shall be due and payable.

3. Possession of the Premises shall be delivered to Purchaser at Closing, subject only to: \_\_\_\_\_.

4. Purchaser shall carry liability and casualty insurance on the Premises with companies and in amounts acceptable to Seller, naming Seller as additional insured and shall provide Seller with evidence thereof. Any such policy shall require ten (10) days' prior written notice of cancellation to Seller.

5. Purchaser shall enter the Premises for taxation in its name and shall pay, prior to the imposition of any interest or penalty, all taxes and assessments which become a lien on the Premises after the date hereof. Any special assessment may be paid in installments if permitted by the taxing authority.

6. If Purchaser defaults in making any required payments of taxes, assessments or insurance premiums within ten (10) days after Seller's written demand, Seller may pay same, including any interest or penalty, and the amount so paid shall be due at once, shall be added to the unpaid balance of this Contract, and shall be a lien on the Premises.

7. Upon full performance of Purchaser's covenants hereunder, Seller shall deliver to Purchaser a warranty deed, excepting only from the warranty, restrictions, rights and easements of record on the date hereof, taxes which Purchaser is obligated to pay and defects of title due to the acts or omissions of Purchaser. The deed shall convey the Premises to Purchaser or, at its option, to such other entity as Purchaser may designate. Transfer taxes due and owing shall be paid by Seller.

8. Purchaser shall not have the right to transfer its interest in this Contract or the Premises without the prior written consent of Seller other than to an entity in which all or some of the principals of Purchaser have a controlling interest. Furthermore, no transfer of the Premises by Purchaser shall release Purchaser from liability to Seller except in the case of explicit written release by Seller.

9. Seller reserves the right to convey her interest in this Contract. In addition, Seller may place one or more mortgages on the Premises, provided that at no time shall the total amount secured by such mortgage(s) secure more than the balance owing under this Contract, nor shall the total amount of the payments of interest and principal on such debt(s) exceed the payment amounts hereunder.

10. If Purchaser defaults in making any payment required hereunder or commits any other material default of this Contract, Seller may give Purchaser written notice of forfeiture of this Contract in the manner prescribed by law. If default is not cured within such time as is permitted by law, said Contract shall be forfeited to Seller. All payments made on said Contract shall belong to Seller as stipulated damages for breach of said Contract and Purchaser and all persons holding possession under it shall be liable to be removed from possession of the Premises in any manner provided by law.

11. Notwithstanding the provisions of the preceding Paragraph (10), Seller may elect to pursue any other legal or equitable remedy which Seller may have available to it in consequence of Purchaser's default hereunder. Seller also has the right to declare the entire balance of principal and interest immediately due and payable after default by Buyer.

12. It is hereby expressly agreed that time is of the very essence of this Contract. It is further agreed that all notices shall be conclusively presumed to be served upon the parties hereto when deposited in the United States mail, enclosed in an envelope with postage fully prepaid thereon, addressed to such party at the address given in the heading of this Contract or at such other address as may be specified in writing, from time to time.

13. Purchaser has received a title insurance policy covering the Premises and agrees to accept as merchantable the title disclosed thereby.

14. Purchaser has examined the Premises and is accepting such in their "as is" condition. Purchaser covenants to maintain the Premises in a good condition as they are at the date hereof, reasonable wear and tear excepted, and not to commit waste, remove or demolish any improvements thereon or otherwise diminish the value of Seller's security, without the written consent of Seller.

15. Purchaser will comply with all laws and regulations applicable to the Premises and will promptly notify Seller of receipt of any notice of a violation of any such law or regulation. Purchaser will indemnify and hold Seller harmless from and against any and all claims, losses and liabilities caused by Purchaser's breach of this paragraph.

16. Neither party may record this Contract. At the request of Purchaser, Seller will execute a Memorandum of Land Contract for the purpose of providing record notice of Purchaser's interest in the Premises.

IN WITNESS WHEREOF, the said parties have executed this Land Contract as of the day and year first written above.

PURCHASER:

SELLER:

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EXHIBIT A

Legal Description

# MEMORANDUM OF LAND CONTRACT

THIS MEMORANDUM OF LAND CONTRACT is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between [insert name of Seller], whose address is [insert address for Seller] ("Seller") and [insert name of Purchaser], whose address is [insert address for Purchaser] ("Purchaser").

WITNESSETH:

WHEREAS, Purchaser and Seller have entered into a Land Contract and desire to enter into this Memorandum of Land Contract to give record notice of the existence of the Land Contract.

NOW, THEREFORE, IN CONSIDERATION of the premises and other good and valuable consideration, the Seller acknowledges and agrees that the following described Property situated in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of Michigan, was sold to the Purchaser on land contract.

[insert legal description or attach as Exhibit A]

The purpose of this Memorandum of Land Contract is to give the record notice of the existence of the aforesaid Land Contract.

IN WITNESS WHEREOF, the parties have entered into this Memorandum of Land Contract as of the day and year first above written.

SELLER:

[type name of Seller]

STATE OF MICHIGAN )  
 )ss  
COUNTY OF )

\_\_\_\_\_  
\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Acting in \_\_\_\_\_ County, MI

[type name of Purchaser]

The foregoing instrument was acknowledged before me, a Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_ 2009, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, on behalf of said \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Notary Public  
County, MI

My Commission Expires: \_\_\_\_\_  
Acting in \_\_\_\_\_ County, MI

Gregory L. McClelland, Esq.  
McClelland & Anderson, L.L.P.  
1305 South Washington Avenue, Suite 102  
Lansing, MI 48910  
(517) 482-4890

## SAMPLE LEASE OPTION CLAUSE

Landlord hereby grants Tenant the option to purchase the Property (the "Option to Purchase") for a total purchase price of \_\_\_\_\_ (\$\_\_\_\_\_) (the "Purchase Price") by providing notice of the exercise of the Option to Purchase during the term of this Lease (the "Option Period"). The terms of the Option to Purchase shall be as follows:

a. Within fourteen (14) days of the Commencement Date, Tenant shall obtain a commitment for an owner's policy of title insurance with standard exceptions for the amount of the Purchase Price. Upon receipt of the commitment, Tenant shall notify Landlord of any objections to the condition of the title, including any conditions reflected in the commitment which render title unmarketable, within fourteen (14) days of receipt, and thereafter, Landlord shall have thirty (30) days to cure any such defects. If Tenant's objections to the condition of the title are not timely cured, Tenant may either: (i) terminate the Lease and receive a refund of the Earnest Money; or (ii) waive his objections. In the event the Option to Purchase is exercised, Landlord shall provide, at its expense a policy of title insurance in the amount of the Purchase Price pursuant to the commitment approved by Tenant pursuant to this Section. If Tenant exercises its Option to Purchase, any objection to condition of title, including any conditions reflected in the commitment which may render title unmarketable, shall be deemed waived by Tenant.

b. Tenant may exercise the Option by delivering to Landlord written notice of its intent to exercise the Option to Purchase during the term hereof.

c. Upon exercise of the Option to Purchase, Landlord and Tenant shall close the transaction within \_\_\_\_\_ days thereafter.

d. Upon closing of the sale of the Property, Landlord shall convey fee simple title to Tenant by a warranty deed in recordable form.

e. Upon closing of the sale of the Property, Landlord shall pay all county and state transfer taxes associated with the conveyance. Tenant shall pay the cost of recording the warranty deed. Landlord and Tenant will share equally the title company's closing costs.

f. One hundred (100%) percent of the divisions available under Section 108 of the Land Division Act are to be transferred by Landlord to Tenant upon closing after Tenant's exercise of the Option to Purchase. Landlord makes no representations as to the number of divisions available.

g. Tenant shall have no right to exercise its Option to Purchase if it is in default under the terms of this Lease during the period of time permitted for exercise of the Option to Purchase until it cures any such default during the period for exercise of its Option to Purchase.

h. Tenant shall not have the right to assign its interest in the Option to Purchase without the Landlord's prior written consent.

i. Landlord agrees that at the request of Tenant, it shall execute a Memorandum of Option Agreement which shall evidence Tenant's Option to Purchase, which shall be in recordable form and may be recorded by Tenant with the Register of Deeds for the County of \_\_\_\_\_.



## MEMORANDUM OF OPTION AGREEMENT

THIS MEMORANDUM OF OPTION is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, between \_\_\_\_\_, a Michigan \_\_\_\_\_, whose address is \_\_\_\_\_ ("Optionor"), and \_\_\_\_\_, a Michigan \_\_\_\_\_, the address of which is \_\_\_\_\_ ("Optionee").

### WITNESSETH:

For valuable consideration, Optionor has granted to Optionee an option, commencing on the date hereof (the "Commencement Date") and expiring on \_\_\_\_\_ (the "Expiration Date"), to purchase a certain parcel of land situated in the Township of \_\_\_\_\_, \_\_\_\_\_ County, Michigan, more specifically described in Exhibit A attached hereto (the "Property"), pursuant to the terms of a certain option agreement dated this date between the parties hereto (the "Option Agreement").

This instrument is executed for the purpose of giving public record of the fact of the execution of the Option Agreement and all the terms and conditions of the Option Agreement are incorporated herein by reference, and any reference to the Option Agreement may be made by referring to the Liber and Page in which this Memorandum of Option Agreement is recorded in the office of the Register of Deeds of \_\_\_\_\_ County, Michigan.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Option Agreement as of the day and year first above written.

OPTIONOR:

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MICHIGAN                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me, a Notary Public, this  
\_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by \_\_\_\_\_, the  
\_\_\_\_\_ of \_\_\_\_\_, a Michigan \_\_\_\_\_,  
on behalf of said \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_ County, MI

My Commission Expires: \_\_\_\_\_

Acting in \_\_\_\_\_ County, MI

OPTIONEE:

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MICHIGAN                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me, a Notary Public, this  
\_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by \_\_\_\_\_, the  
\_\_\_\_\_ of \_\_\_\_\_, a Michigan \_\_\_\_\_,  
on behalf of said \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_ County, MI

My Commission Expires: \_\_\_\_\_

Acting in \_\_\_\_\_ County, MI

Drafted by and when  
recorded return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EXHIBIT A

Legal Description for Property

DUE-ON-SALE CLAUSES (EXCERPT)  
Act 351 of 1984

445.1627. Contract for sale or transfer of residential property subject to mortgage; provisions in boldface type.

Sec. 7. Each contract for the sale or transfer of residential property which is subject to a mortgage shall provide in boldface type substantially as follows:

"Seller understands that consummation of the sale or transfer of the property described in this agreement shall not relieve the seller of any liability that seller may have under the mortgage(s) to which the property is subject, unless otherwise agreed to by the lender or required by law or regulation."

P.A. 1984, No. 351, § 7, Eff. Oct. 15, 1985.

445.1628. Violation by lender; liability; action to recover civil fine; prohibited conduct by licensee; liability for civil fine; revocation of license; action for declaratory judgment or injunction; action for actual damages and attorneys' fees.

Sec. 8. (1) A lender who knowingly enforces or attempts to enforce a due-on-sale clause in violation of this act shall be liable for a civil fine not to exceed \$5,000.00 for each offense. The attorney general or a prosecuting attorney may bring an action to recover a civil fine under this section.

(2) Any person licensed to do business in this state who, while carrying on that business, knowingly advises a person selling or transferring property securing a residential window period loan not to notify a lender as required by section 3<sup>1</sup> or who knowingly otherwise aids or assists a person in evading the enforcement of a due-on-sale clause enforceable under this act shall be liable for a civil fine not to exceed \$5,000.00 for each offense and shall be subject to revocation of his or her license.

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<sup>1</sup> M.C.L.A. § 445.1623.

(3) The attorney general, a prosecuting attorney, or any other person may bring an action for 1 or both of the following:

(a) A declaratory judgment that a method, act, or practice violates this act.

(b) An injunction to enjoin a lender, real estate broker, or real estate salesperson which is engaging or is about to engage in a method, act, or practice which violates or would violate this act.

(4) In addition to any other remedy provided by this act, a person who suffers loss as a result of a violation of this act may bring an action to recover actual damages or \$250.00, whichever is greater, together with reasonable attorneys' fees.

P.A. 1984, No. 351, § 8, Eff. Oct. 15, 1985.

## Land Contracts and the First-Time Homebuyer Tax Credit

Over the past few weeks the Association has fielded a number of calls regarding the applicability of the Federal \$8000 first time homebuyer credit to purchases on land contract. The federal legislation is silent on the specific issue so MAR requested a legal opinion on the subject from Greg McClelland.

This is a legal opinion supporting the ability of purchasers on land contract to qualify for the federal tax credit just as if they were using a purchase mortgage.

If you have any questions, please contact Brad Ward or Brian Westrin at the Michigan Association of Realtors, 800.454.7842.

## Land Contracts and the First-Time Homebuyer Tax Credit

As most REALTORS® are aware, the Internal Revenue Code now permits first-time homebuyers to claim a tax credit up to \$8,000 on their purchase of a principal residence (the "Credit"). This article is not designed to analyze or discuss who constitutes a "first-time homebuyer" or any other technical aspects with respect to the first-time homebuyer credit. Instead, this article addresses the very basic question of whether buyers who purchase property in Michigan through the use of a land contract are eligible for the first time homebuyer tax credit. Generally, the reference to a land contract means a contract under which a buyer (known as a "vendee") takes possession and control of the property and is contractually obligated to make installments under the contract until such time as the purchase price is paid in full. Upon payment of the full purchase price, the seller (known as the "vendor") is required to convey legal title to the property to the vendee.

The actual provision in the Internal Revenue Code defines a "purchase" to which the Credit applies. The term "purchase" means "any acquisition" (with certain exceptions that will not be discussed here). The word "acquisition" is not further defined in this section of the Internal Revenue Code. The question of whether a purchase under a

land contract in Michigan constitutes “an acquisition” would be determined by state law, *i.e.*, Michigan law.

There does not appear to be any question that first-time homebuyers who purchase a principal residence and receive a deed at closing would qualify for the Credit (again assuming all other technical requirements are met). The question is whether under Michigan law a land contract vendee receives the functional equivalent of a deed such that the transaction is deemed “an acquisition” and the Credit applies.

A review of Michigan law with respect to land contracts and the rights afforded a vendee under a land contract strongly supports the view that the Internal Revenue Service should view a land contract purchase as “an acquisition” for purposes of eligibility for the Credit. There are a number of arguments supporting this conclusion.

First, in a land contract, a vendee is vested with equitable title in the property, while legal title remains in the vendor as security for payment of the purchase price. Upon payment of the purchase price, the vendee is entitled to conveyance of the legal title. *Barker v Klingler*, 302 Mich 282, 288 (1942). It has been held that while legal title is held by the seller as security for payments on the land contract, “equitable title passes to the buyer/vendee upon proper execution of the contract.” *Zurcher v Herveat*, 238 Mich App 267, 291 (1999). The rights accruing to holders of equitable title in Michigan are substantially the same as rights granted to the title holders.

Second, in the past, the Michigan Supreme Court has been required to determine whether land contract vendees “have property” within the meaning of a constitutional provision governing certain voting rights. The Michigan Supreme Court held:

[w]ithin the broad spectrum of rights included in the term ‘property’ is the interest of a land contract vendee, according to common usage. Such an interest usually carries with it valuable rights ordinarily understood to be property rights such as the right of possession, control and disposition.



Hence, to 'have property,' within constitutional meaning, may be said to embrace having a vendee's interest in a land contract.

*Goldsmith v Albion Public Schools*, 373 Mich 397, 402 (1964).

Federal courts have recognized Michigan law of land contracts; specifically that the equitable title granted to land contract purchasers confers both rights and liabilities connected with the property:

Michigan recognizes a vendee's equitable interest under a land contract for the purchase of real property as an interest to which a federal tax lien may attach. Under Michigan law, a vendee under a land contract takes equitable title to the land, while the vendor holds legal title and an equitable lien on the land in the amount of the unpaid purchase price. The tax lien attaches to whatever equity interest the taxpayer has in the property.

*Cardinal v United States*, 26 F3d 48, 49 (6th Cir 1994).

Finally, the effect of holding equitable title under a land contract is essentially equivalent to holding legal title, as demonstrated by Michigan law with respect to a number of issues:

- (1) Equitable title obtained pursuant to a land contract by a vendee can be bought or sold by the vendee. *Cutler v Lovinger*, 212 Mich 272 (1920);
- (2) Equitable title obtained by a land contract vendee can be used as security for a mortgage. MCL 565.357;
- (3) Purchases on land contract can be recorded with the register of deeds "and the recording shall have the same force and effect, as to subsequent encumbrancers and purchasers, as the recording of deeds and mortgages as now provided by law." MCL 656.354;

(4) Vendees under a land contract have an insurable interest in the property and land contract sellers assume "the same position and status as a mortgagee for purposes of applying a mortgage clause to govern the rights of the vendor under an insurance policy issued to the land contract vendee." *Singer v American States Ins*, 245 Mich App 370, 378 (2001); and

(5) The procedure for foreclosing a defaulted land contract is nearly identical to that for foreclosing a mortgage by judicial action as provided by MCL 600.3101, *et seq.*

In sum, it is undisputed that a land contract vendee obtains equitable title to the property under Michigan law. It is also clear that equitable title is substantially equivalent to legal title: the property interest can be bought, sold, insured, recorded, encumbered and can be the subject of tax liens and judicial foreclosure. Thus, there would seem to be no rational basis for treating land contract purchasers any differently than mortgagors for purposes of the Credit.