



Non-Typical Transactions- Recent Trends

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Construction Loans – Endorsements



Order opened for \$950,000 construction loan.

Borrower is Builder LLC. Loan guarantors are LLC members.

Lender's instructions include the below closing conditions:

You have confirmed that Title Company is irrevocably committed to issue an ALTA Extended Coverage Policy of Title Insurance in the amount of \$950,000.00, insuring Lender that (i) fee simple title to the Property is vested in Borrower, and

(ii) The Deed of Trust, when recorded, will be in a first lien position subject only to those liens and encumbrances shown as Schedule B, Exceptions 7-10 of the preliminary report dated August 1, 2022, and

...

Construction Loans – Endorsements



EFFECT OF REMOVING THE CONSTRUCTION LIEN EXCEPTION FROM A LOAN POLICY

Subject to policy Exclusions and the Schedule B Exceptions,
Covered Risk 11(a) insures against loss or damage by reason of:...

11. The lack of priority of the lien of the Insured Mortgage upon the Title:
 - a. as security for each advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for service, labor, material, or equipment arising from construction of an improvement or work related to the Land when the improvement or work is:
 - i. contracted for or commenced on or before the Date of Policy; or
 - ii. contracted for, commenced, or continued after the Date of Policy, if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on the Date of Policy to advance;

Construction Loans – Endorsements



More from those lender's instructions. Note the lender's **typo**.

- (iii) *the Policy of Title Insurance will be issued with the following Endorsements: OTIRO 209.10-06, OTIRO **323**-06, OTIRO 233-06, and OTIRO 70.*

Construction Loans – Endorsements



OTIRO 70 Statutory Construction Lien Endorsement

The Company hereby assures the Insured:

That, except as otherwise expressly provided herein, there are no statutory construction liens shown by the Public Records affecting said estate or interest other than those shown in said policy, except:

[Show any recorded construction liens here.]

The Company hereby insures against loss which the Insured shall sustain in the event that the assurances of the Company herein shall prove to be incorrect.

Does the OTIRO 70 provide coverage for construction liens? **No**

OTIRO 70

- is not a date down of the loan policy.
- does not provide coverage for unrecorded construction lien claims.
- historically used with a loan policy that does not provide lien coverage.

CONSTRUCTION LOANS – ENDORSEMENTS



INCREMENTAL COVERAGE—232 SERIES ENDORSEMENTS

232-06 CONSTRUCTION LOAN — LOSS OF PRIORITY ENDORSEMENT (ALTA 32-06)

232.1-06 CONSTRUCTION LOAN — LOSS OF PRIORITY — DIRECT PAYMENT ENDORSEMENT (ALTA 32.1-06)

232.2-06 CONSTRUCTION LOAN — LOSS OF PRIORITY — INSURED'S DIRECT PAYMENT ENDORSEMENT (ALTA 32.2-06)

CONSTRUCTION LOANS – ENDORSEMENTS



- THE 232 SERIES ENDORSEMENT IS ISSUED WITH THE LOAN POLICY.

- STANDARD EXCEPTION NO. 5 (CONSTRUCTION LIENS) MUST BE MODIFIED PER OTIRO 5.002D. FOR EXAMPLE, WHEN ISSUING AN OTIRO 232.2-06 ENDORSEMENT, THE EXCEPTION IS:
 - Any statutory lien or claim of lien, affecting the title, that arises from services provided, labor performed, or materials or equipment furnished, except as insured by the attached ALTA 32.2-06 [OTIRO 232.2-06] endorsement as it may be revised by ALTA 33-06 [OTIRO 233-06] Endorsements.

- ENDORSEMENT PREMIUM:
 - \$1.00 PER THOUSAND BASED ON THE LOAN AMOUNT (MINIMUM \$250)

- EACH OF THESE THREE ENDORSEMENTS:
 - DELETES COVERED RISK 11(a)
 - PROVIDES LIEN COVERAGE FOR:
 - CONSTRUCTION LOAN ADVANCES
 - SECURED BY THE INSURED MORTGAGE
 - AS OF THE POLICY DATE
 - ON TERMS SET FORTH IN THE ENDORSEMENT.

CONSTRUCTION LOANS – ENDORSEMENTS

IDENTICAL PROVISIONS IN 232, 232.1 AND 232.2

1. Covered Risk 11(a) of this policy is deleted.
2. The insurance [for Construction Loan Advances] added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:
 - a. “Date of Coverage,” is [] [Date of Policy] unless the Company sets a different Date of Coverage by an ALTA 33-06 Disbursement Endorsement issued at the discretion of the Company.
 - b. “Construction Loan Advance,” shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.
 - c. “Mechanic’s Lien,” shall mean any statutory lien or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;
 - b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and

CONSTRUCTION LOANS – ENDORSEMENTS



DIFFERENT COVERAGE IS PROVIDED BY PARAGRAPH 3.C. OF EACH ENDORSEMENT

232-06 CONSTRUCTION LOAN - LOSS OF PRIORITY

PROVIDES COVERAGE FOR LIENS ARISING FROM CHARGES FOR LABOR, MATERIALS, EQUIPMENT, ETC., IF THE CHARGES WERE DESIGNATED FOR PAYMENT IN THE DOCUMENTS SUBMITTED FOR THE DRAW/ADVANCE.

232.1-06 CONSTRUCTION LOAN - LOSS OF PRIORITY - DIRECT PAYMENT

PROVIDES COVERAGE FOR LIENS ARISING FROM CHARGES FOR LABOR, MATERIALS, EQUIPMENT, ETC., IF THE CHARGES WERE PAID DIRECTLY TO THE LIEN CLAIMANT BY THE TITLE INSURER OR BY THE LENDER WITH THE TITLE INSURER'S WRITTEN APPROVAL.

232.2-06 CONSTRUCTION LOAN — LOSS OF PRIORITY — INSURED'S DIRECT PAYMENT

PROVIDES COVERAGE FOR LIENS ARISING FROM CHARGES FOR LABOR, MATERIALS, EQUIPMENT, ETC., IF THE CHARGES WERE PAID BY OR ON BEHALF OF THE LENDER.

CONSTRUCTION LOANS – ENDORSEMENTS



233-06 DISBURSEMENT ENDORSEMENT (ALTA 33-06)

CHARGE: \$250 PER ENDORSEMENT

1. The Date of Coverage is amended to _____.
 - a. The current disbursement is: \$ _____.
 - b. The aggregate amount, including the current disbursement, recognized by the Company as disbursed by the Insured is: \$ _____.
2. Schedule A is amended as follows:

[FILL IN]
3. Schedule B is amended as follows:

[Part I] [FILL IN]
[Part II] [FILL IN]

CONSTRUCTION LOANS – ENDORSEMENTS



SUMMARY

- ✓ REVIEW LENDER'S INSTRUCTIONS AND ENDORSEMENT REQUESTS WHEN RECEIVED.
- ✓ IF ALTA 32 SERIES AND/OR ALTA 33 (OTIRO 232 AND 233) ENDORSEMENTS ARE REFERENCED, CONTACT YOUR TITLE OFFICER OR UNDERWRITER IMMEDIATELY.
- ✓ YOUR UNDERWRITER WILL PROVIDE REQUIREMENTS FOR ISSUANCE OF THE REQUESTED 232 SERIES ENDORSEMENT, AND FOR ISSUANCE OF THE POST-POLICY 233 DISBURSEMENT ENDORSEMENTS.
- ✓ LENDER'S CLOSING INSTRUCTIONS MUST INCLUDE APPROVAL OF MODIFIED LIEN EXCEPTION (STANDARD EXCEPTION 5) AS REQUIRED BY OTIRO 5.002D.
- ✓ IF LENDER REQUESTS 233 DISBURSEMENT ENDORSEMENT, CLARIFY THE NUMBER OF 233 ENDORSEMENTS LENDER WILL REQUIRE.
- ✓ CHARGE THE CORRECT PREMIUM FOR THE 232 SERIES ENDORSEMENT AND FOR THE NUMBER OF 233 ENDORSEMENTS LENDER REQUESTS.

WHOLESALE – FLIP – NOVATION



- RESIDENTIAL SALE TRANSACTION.
- PURCHASE AND SALE AGREEMENT (“PSA”) IS THE USUAL BROKER FORM.
- PRELIMINARY REPORT IS ISSUED AND ESCROW IS PROGRESSING NORMALLY.
- ESCROW RECEIVES DOCUMENTS FROM AN ENTITY, TYPICALLY AN LLC, THAT IS NOT A BROKER AND NOT A PRINCIPAL IN THE TRANSACTION.

- DOCUMENTS TYPICALLY RECEIVED FROM LLC:
 1. CONTRACT FOR SALE & PURCHASE OF REAL ESTATE (NOT BROKER’S FORM)
SELLER IS HOMEOWNER.
BUYER IS WHOLESALE LLC
 2. EARNEST MONEY PROMISSORY NOTE
 3. AUTHORIZATION TO SIGN LISTING DOCUMENTS AND OFFERS
 4. NOVATION AGREEMENT

WHOLESALE – FLIP – NOVATION



3. AUTHORIZATION TO SIGN LISTING DOCUMENTS AND OFFERS

I/we, John Homeowner, the “Seller”, do hereby grant a limited and specific authorization to sign WHOLESALE LLC, a ___ limited liability company, located at [address] as my “Attorney-in-Fact”.

Said Attorney-in-Fact shall have full power and authority to undertake and perform the following acts on my behalf, related to [property address] (the “Property”):

1. Seller specifically authorizes and gives permission to the Attorney-in-Fact to list the property on any and all multiple listing service(s) (MLS), investor networks, Zillow, and/or realtors for the purpose of marketing and selling the Property. This includes executing listing agreements, listing agreement addendums, disclosures, sale contracts and addendums.

The authority herein shall include such incidental acts as reasonably required to carry out the authorities granted herein.

This authorization is effective upon execution. This authorization may be revoked when the above power or responsibility has been completed.

This authorization form shall automatically be revoked upon my death or incapacitation, provided any person relying on this power of attorney shall have full rights to accept and rely upon the authority of the Attorney-in-Fact until the receipt of actual notice of revocation.

Seller signature _____ Printed Seller name _____ Date _____

WHOLESALE – FLIP – NOVATION



ORS 696.020 License required for individuals engaged in professional real estate activities

(2) An individual may not engage in, carry on, advertise or purport to engage in or carry on professional real estate activity, or act in the capacity of a real estate licensee, within this state unless the individual holds an active license as provided for in this chapter.

ORS 696.010 Definitions

(17) “Professional real estate activity” means any of the following actions, when engaged in for another and for compensation or with the intention or in the expectation or upon the promise of receiving or collecting compensation, by any person who:

- (a) Sells, exchanges, purchases, rents or leases real estate;
- (b) Offers to sell, exchange, purchase, rent or lease real estate;
- (c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate;
- (d) Lists, offers, attempts or agrees to list real estate for sale;

* * *

(j) Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, leasing or rental of real estate;

(k) Assists or directs in the negotiation or closing of any transaction calculated or intended to result in the sale, exchange, leasing or rental of real estate;

WHOLESALE – FLIP – NOVATION



ORS 696.030 Exemptions.

(2) A nonlicensed individual who acts as attorney in fact under a duly executed power of attorney from the owner or purchaser authorizing the supervision of the closing of or supervision of the performance of a contract for the sale, leasing or exchanging of real estate if ...:

- (a) The power of attorney is recorded in the office of the recording officer for the county in which the real estate is located;
- (b) The power of attorney specifically describes the real estate; and
- (c) The nonlicensed individual does not use the power of attorney as a device to engage in professional real estate activity without obtaining the necessary real estate license.



4. NOVATION AGREEMENT

THIS NOVATION AGREEMENT is dated _____,

by and between _____ (hereinafter referred to as "Seller"), and _____ (hereinafter referred to as "Buyer")

WHEREAS, Seller and Buyer entered into an Agreement of Sale dated _____ (the "Agreement of Sale"), for the sale of Seller's real estate at _____ (the "Property"), for a purchase price of \$ _____; and

WHEREAS, the parties have agreed that Seller may assign or novate the Agreement of Sale in favor of a new agreement with a new buyer, permitting the Property to be transferred directly to a Third-Party Purchaser; and

WHEREAS, Buyer has successfully marketed the Property to _____ the "Third-Party Purchaser"), having proposed a substitute Agreement of Sale, with related addenda and other documents, to be entered into between the Seller and the Third-Party Purchaser (together, the "Third-Party Agreement of Sale"), and

WHEREAS, the parties hereto intend to conditionally terminate the Agreement of Sale between the Buyer and Seller under the terms and conditions herein set forth so as to structure the transfer of the Property directly to the Third-Party Purchaser (who shall replace Buyer as the ultimate purchaser of the Property) under the Third-Party Agreement of Sale, with substituted obligations of the parties as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein set forth, the parties hereto, intending to be legally bound, do hereby agree as follows:

- 1. Seller to Execute Third-Party Real Estate Purchase Agreement.** Contemporaneously with the execution of this Novation Agreement, Seller will execute the Third-Party Real Estate Purchase Agreement and all addendum related thereto.
- 2. Conditional Termination of Real Estate Purchase Agreement.** The Real Estate Purchase Agreement between the Seller and Buyer is hereby conditionally terminated in accordance with the terms hereof, effective immediately upon the execution of the Third-Party Real Estate Purchase Agreement by the Seller and the Third-Party Purchaser. Seller agrees that all monies deposited by Buyer pursuant to the Real Estate Purchase Agreement and held by any third party as escrow agent, shall be refunded to the Buyer immediately upon the deposit being made by the Third-Party Purchaser under the Third-Party Real Estate Purchase Agreement. The deposit paid by the Third-Party Purchaser shall be paid to the closing agent and applied to the purchase price payable under the Third-Party Real Estate Purchase Agreement.
- 3. Renovation and Repair Obligations to Third-Party Purchaser.** Buyer agrees to be solely responsible for any and all renovations, replacements and repairs required to be made to the Property, and any appliances or services to be provided to the Third-Party Purchaser pursuant to the Third-Party Real Estate Purchase Agreement or any addendum thereto. Seller shall have no responsibility or liability to perform or pay for such renovations.
- 4. Net Proceeds Payable to Seller.** Upon closing under the Third-Party Real Estate Purchase Agreement, Seller shall retain the balance of \$ _____, plus/minus the pro-rated assessed taxes and other pro-rated assessments (which proration shall be made as of the date of closing), less any payoffs for mortgages or liens, less any unpaid assessed taxes, less Seller's attorneys' fees (if any). The Seller shall authorize the escrow agent to pay / disburse the balance of the net proceeds immediately to the Buyer in readily available funds upon closing.
- 5. Failure to Close.** In the event that the Third-Party Purchaser fails to close on the purchase of the Property as specified in the Third-Party Real Estate Purchase Agreement, whether for failure of a contingency or otherwise, the Real Estate Purchase Agreement between Seller and Buyer shall be deemed to be reinstated, and the parties shall then be

WHOLESALE – FLIP – NOVATION



4. NOVATION AGREEMENT

Paragraph 2: **Conditional Termination of Real Estate Purchase Agreement**

The Real Estate Purchase Agreement between the Seller* and Buyer** is hereby conditionally terminated in accordance with the terms hereof, effective immediately upon the execution of the Third-Party Real Estate Purchase Agreement by the Seller and the Third-Party Purchaser.

Paragraph 4: **Net Proceeds Payable to Seller**

Upon closing under the Third-Party Real Estate Purchase Agreement, Seller* shall retain the balance of \$ [*purchase price in LLC agreement with seller*], plus/minus the pro-rated assessed taxes and other pro-rated assessments (which proration shall be made as of the date of closing), less any payoffs for mortgages or liens, less any unpaid assessed taxes, less Seller's attorneys' fees (if any). Seller* shall authorize the escrow agent to pay/disburse the balance of the net proceeds immediately to the Buyer** in readily available funds upon closing.

*Seller = Homeowner

**Buyer = Wholesale LLC

WHOLESALE – FLIP – NOVATION



SUMMARY

- IF PRESENTED WITH THESE TYPES OF DOCUMENTS, CONTACT YOUR ESCROW ADVISORY OR MANAGEMENT TEAM RIGHT AWAY.
- THIS IS NOT A TYPICAL FLIP BY ASSIGNMENT OF BUYER'S INTEREST IN THE ORIGINAL SALE AGREEMENT.
- THIS IS NOT A SIMULTANEOUS CLOSING FLIP.

JUDGMENTS FOR SPECIFIC PERFORMANCE



- RESIDENTIAL SALE TRANSACTION IS OPENED.
- SELLER CANNOT BE REACHED OR DOES NOT RESPOND.
- OR, SELLER INFORMS ESCROW THEY DO NOT INTEND TO PERFORM.
- PRELIMINARY REPORT SHOWS PENDING ACTION BY BUYER AGAINST SELLER.
- JUDGMENT IS ENTERED AGAINST SELLER.
- BUYER EXPECTS CLOSING TO OCCUR WITHOUT SELLER INVOLVEMENT AND DEED.
- BUYER EXPECTS TO RECEIVE OWNER'S POLICY OF TITLE INSURANCE.

JUDGMENTS FOR SPECIFIC PERFORMANCE



TYPICAL JUDGMENT PROVISIONS:

1. A copy of this Judgment shall be posted on the front door of the Property and mailed via US Mail to Defendant at the Property, along with any other address that Plaintiff has for Defendant. Plaintiff shall also email the same to Defendant at the email address that Plaintiff has for Defendant, [*email address*]. Service of this Judgment shall be deemed complete three (3) consecutive days after Plaintiff has fully complied with this paragraph;
2. Upon completing service, Plaintiff shall deposit the sum of \$ [*purchase price*] (“Funds”), with the title company/escrow agent selected by Plaintiff to handle the sale of the Property (“Title Company”);
3. Upon receipt of the Funds, the Title Company shall be authorized to comply with Plaintiff’s escrow instructions to: (a) use the Funds to satisfy all property taxes, assessments, encumbrances, and liens against the Property, (b) record a certified copy of the Judgment with the ___ County Recorder, (c) deduct its escrow fees, recording fees, and related costs of closing from the Funds, and (d) pay all remaining Funds into this Court;
4. The recording of a certified copy of the Judgment in the real property records of ___ County shall constitute a full conveyance of the Property to Plaintiff, with the same legal effect as if the Property had been conveyed by deed to Plaintiff by Defendant;
5. Upon recording a certified copy of the Judgment, fee title to the Property shall be owned by Plaintiff, and Defendant and her heirs, successors, and assigns shall have no further right, title, claim or interest in the Property; ownership of the Property, as a matter of law, shall be hereby vested in Plaintiff without any further action by Defendant and Plaintiff’s ownership shall be reflected in the tax records of ___ County;
6. Upon deposit of all remaining Funds into Court, Plaintiff shall be entitled to submit a supplemental judgment for a disbursement in accordance with the Money Award below. Plaintiff may seek its attorneys’ fees in this matter through ORCP 68.

JUDGMENTS FOR SPECIFIC PERFORMANCE



ORCP 71

B Mistakes; inadvertence; excusable neglect; newly discovered evidence, etc.

B(1) **By motion.** On motion and upon such terms as are just, the court may relieve a party or such party's legal representative from a judgment for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; ...

The motion shall be made within a reasonable time, and for reasons (a), (b), and (c) not more than one year after receipt of notice by the moving party of the judgment.

IF JUDGMENT WAS ENTERED BY DEFAULT, CONSIDER SHOWING A RIGHT, TITLE AND INTEREST EXCEPTION IN THE OWNER'S POLICY.

IF JUDGMENT WAS ENTERED IN FAVOR OF A SPECIFIC BUYER ENTITY, CAN THAT BUYER'S PRINCIPAL DIRECT CLOSING WITH A DIFFERENT ENTITY AS THE BUYER?

IF JUDGMENT WAS ENTERED ON A PURCHASE AND SALE AGREEMENT SHOWING A CASH PURCHASE, CAN BUYER NOW BRING A LENDER INTO THE TRANSACTION?

Recognizing a Non-Typical Transaction

Charlie Cookson

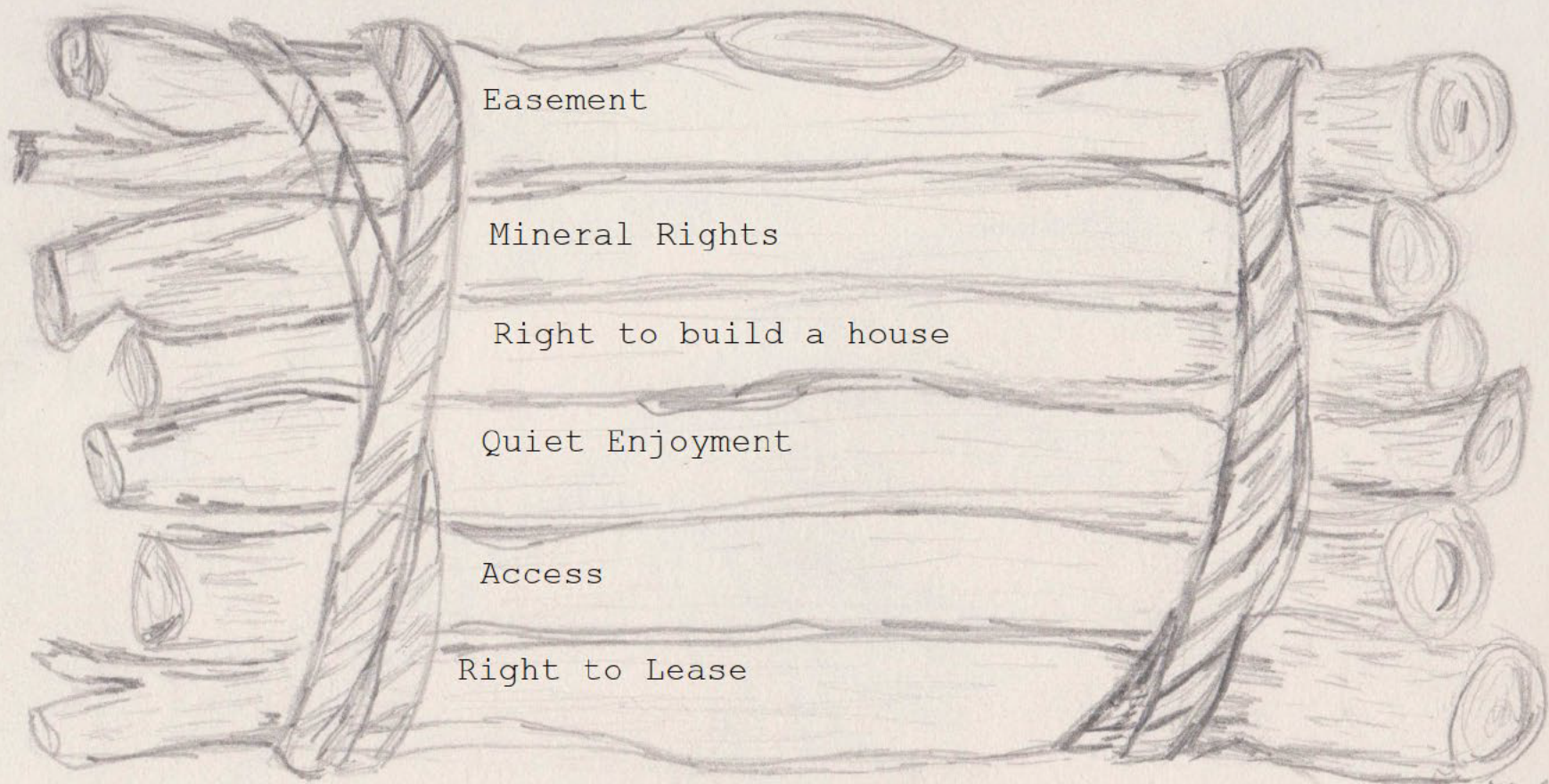
Commercial Underwriter

Fidelity National Title Group



Sale of the Bundle of Sticks AKA “Ordinary Transaction”

- ◆ Fee Simple
- ◆ All or most of the Sticks Remain in the Bundle
- ◆ Parties to the Transaction are the usual players
 - ◆ Seller, Buyer, Lender



Easement

Mineral Rights

Right to build a house

Quiet Enjoyment

Access

Right to Lease

MC Aug 2022

Sale of a Stick out of the Bundle

Less than Fee Simple Transaction

- ◆ Leasehold
- ◆ Timber Sale
- ◆ Grant of an Easement
- ◆ Right of First Refusal
- ◆ Transferable Development Credit AKA FAR(Floor Area Ratio)

Knowing when to raise your hand

- ◆ READ YOUR DOCUMENTS!!!
- ◆ Transaction is not something you are familiar with.
- ◆ The Documents presented at closing are something you have never seen before.
- ◆ Does It Make Sense?



Out of the Ordinary

- ◇ What is “Out of the Ordinary”?
- ◇ When does “Ordinary” change to “Out of Ordinary”?
 - ◇ Additional Documents presented for recording.
 - ◇ Additional Parties involved.
 - ◇ Real Property or Personal Property?
 - ◇ Is that a Second Transaction?
- ◇ Wait, What are they asking us to do?

Out of the Ordinary

- ◆ Flips involving the simultaneous sale of a lesser interest.
- ◆ Transactions involving the sale or encumbrance of more than one interest(Stick in the bundle).
- ◆ Documents presented at recording are unorthodox and unexpected.

A Flip By Any Other Name

- ◇ A simultaneous sale of a lesser interest may not obviously be a Flip.
- ◇ The same considerations in handling a Fee Title Flip apply to the subsequent sale of a lesser interest.
- ◇ What's the worst that can happen?

Timber Surprises

- ◆ Timber Transactions need extra review, and Timber Deeds often contain additional provisions that change the nature of the conveyance.
- ◆ The Timber Sale Agreement and the Timber Deed should both be carefully reviewed for additional provisions that may apply.
- ◆ Residual or future payment obligations are common additions.

Timber Flip Example

- ◇ Fee Title Sale for \$360,000
- ◇ Timber being Flipped for \$350,000
- ◇ Wait, that sounds a bit concerning, what do the docs say?

TIMBER DEED

THE GRANTOR, ██████████ LLC, an Oregon limited liability company, for and in consideration of Ten (10) Dollars and other consideration in hand paid, conveys to GRANTEE, ██████████, LLC, a Washington limited liability company, the following species of timber: (i) all the hardwood timber, including all Alder and Maple, (ii) all Cedar, and (ii) and all non-exportable conifer (together the "Timber"), lying, standing or existing on the real property legally described on the attached EXHIBIT A (the "Property") and is subject to the following terms and conditions:

1. Title to Timber and Timber Rights. Grantor warrants it has good and merchantable title to the Timber and all rights related to the Timber free and clear of all monetary liens and encumbrances and subject only to those exceptions set forth on the attached EXHIBIT B.

2. Timber Harvest; Indemnity for Timber Harvest. Under the terms of the Timber Sale Agreement dated December 5th, 2017 between Grantor and Grantee (the "Timber Sale Agreement"), Grantor has agreed to harvest the Timber on the Property for Grantee. Grantor will indemnify and hold harmless Grantee and its affiliates and their respective officers, directors, owners, agents, representatives, successors and assigns, from and against all losses, claims,

3. Purchase Price. The purchase price for the Timber is set forth on the attached Exhibit B (the "Purchase Price"). At Closing, Purchaser will make an initial payment to Seller through Escrow of a portion of the Purchaser Price for the Timber in the amount of Three Hundred Fifty Thousand Dollars (\$350,000) (the "Advance Payment"). Purchaser will pay the balance of the Purchase Price as described on the attached Exhibit B.

12.1 Harvest of Timber; Qualified Operator. Seller will be responsible for harvesting the Timber and causing the Timber to be logged in accordance with the specifications set forth on the attached Exhibit B (the "Logging Specifications") and delivered to Purchaser's

Exhibit B contained a lot of provisions and conditions for Timber Price and percentage to be paid to Seller, Purchaser and Third-Party Buyers

PURCHASE PRICE AND DELIVERY LOCATION FOR HARDWOOD TIMBER:

<u>Hardwood Size</u>	<u>Alder Value/MBF</u>	<u>Maple Value/MBF</u>
12" & Up	\$800	\$450
11"	\$750	\$425
10"	\$725	\$425
9"	\$700	\$400
8"	\$650	\$400
7"	\$525	\$350
6"	\$425	
5"	\$350	
Undersized	\$ 50	\$ 50
Grade 5 – 5" and up	\$100	

Another Timber Example



Roseburg, OR 97471

TIMBER DEED

THIS TIMBER DEED made and entered into this 22 day of Sept.
and between



██████████ hereinafter referred to as "Grantor" and ██████████, an Oregon Limited Liability Company, hereinafter referred to as "Grantee". The parties' hereto covenant and agree as follows:

1. Conveyance. Grantor does hereby sell, transfer, convey, and warrant to Grantee, subject to the terms and conditions hereof, all timber, trees, and logs (merchantable and un-merchantable) standing, lying, or being within the boundaries of the following described real property of Grantor:

See Exhibit "A" attached hereto and by this reference made a part hereof.

Grantee shall have the right to cut and remove the timber, trees, and logs conveyed by this deed at any time prior to October 31st, 2021. All timber, trees, and logs not removed prior to October 31st, 2021, shall on that date revert to the Grantor herein.

2. Consideration. The consideration for this conveyance is the sum of sixty thousand and No/100 Dollars (\$60,000.00). Said consideration shall be paid as follows: The sum of twenty thousand and No/100 Dollars (\$20,000.00) shall be paid by grantee upon the execution of this Timber Deed. The remaining balance of forty Thousand and No/100 Dollars (\$40,000.00) shall be paid in 2 annual installments of fifteen thousand and No/100 Dollars (\$15,000.00) each and a final third payment of ten thousand and no/100 dollars (\$10,000). The first of said annual installments shall be due on the date exactly one year after the close of this timber deed, and said annual installments shall continue on or before that date of each and every year thereafter until the entire consideration under this Timber Deed has been paid in full. No interest shall accrue on the unpaid balance owed under this Timber Deed. The consideration under this Timber Deed may be prepaid in whole or in part at any time without penalty. If any payment under this Timber Deed is not paid when due, at Grantors' election, the entire unpaid balance then owed under this Timber Deed shall become immediately due and payable. Payment shall



Cell Tower Leases

- ◇ Recording of Lease or Memorandum of Lease is a normal transaction.
- ◇ May contain provisions that effect future Transactions
 - ◇ Restrictions
 - ◇ Right of First Refusal
 - ◇ Consent Requirements

22. SALE OF PROPERTY.

(a) Landlord shall not be prohibited from the selling, leasing or use of any of the Property or the Surrounding Property except as provided below.

(b) If Landlord, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property or Surrounding

Exhibit 12

Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Tenant's rights hereunder. In the event the Property is transferred, the new landlord shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paperwork to effect a transfer in Rent to the new Landlord. Upon notification to Tenant of such transfer, Landlord will be relieved of all future performance, liabilities and obligations under this Agreement to the extent of such transfer.

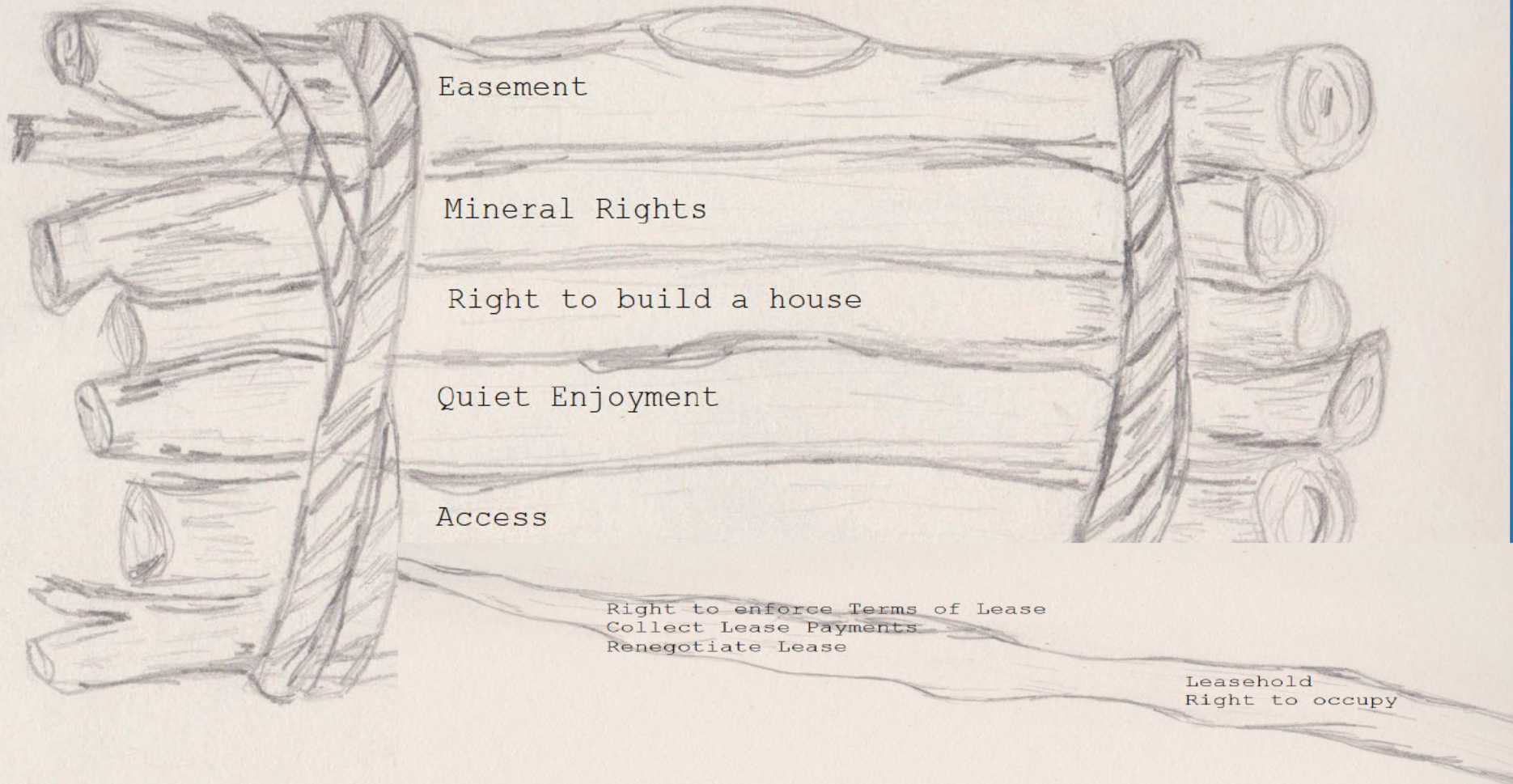
(c) Landlord agrees not to sell, lease or use any areas of the Property or Surrounding Property for the installation, operation or maintenance of other wireless communications facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion, any such testing to be at the expense of Landlord or Landlord's prospective purchaser, and not Tenant. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the Property or the Surrounding Property for purposes of any installation, operation or maintenance of any other wireless communications facility or equipment.

(d) The provisions of this Section shall in no way limit or impair the obligations of Landlord under this Agreement, including interference and access obligations.

23. **RENTAL STREAM OFFER.** If at any time after the date of this Agreement, Landlord receives a bona fide written offer from a third party seeking an assignment of the rental stream associated with this Agreement (“**Rental Stream Offer**”), Landlord shall immediately furnish Tenant with a copy of the Rental Stream Offer. Tenant shall have the right within twenty (20) days after it receives such copy and representation to match the Rental Stream Offer and agree in writing to match the terms of the Rental Stream Offer. Such writing shall be in the form of a contract substantially similar to the Rental Stream Offer. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the twenty (20) day period, Landlord may assign the rental stream pursuant to the Rental Stream Offer, subject to the terms of this Agreement.

22. **SALE OF PROPERTY.**

(a) If Landlord, at any time during the Term of this Agreement, decides to sell, subdivide or rezone any of the Premises, all or any part of the Property or Surrounding Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such sale, subdivision or rezoning shall be subject to this Agreement and Tenant's rights hereunder. Landlord agrees not to sell, lease or use any areas of the Property or Surrounding Property for the installation, operation or maintenance of other wireless communications facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion, any such testing to be at the expense of Landlord or Landlord's prospective purchaser, and not Tenant. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the Property or the Surrounding Property for purposes of any installation, operation or maintenance of any other wireless communications facility or equipment. Landlord shall not be prohibited from the selling, leasing or use of any of the Property or the Surrounding Property for non-wireless communication use. In the event the Property is transferred, the new landlord shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in Rent to the new landlord. The provisions of this Paragraph 22 shall in no way limit or impair the obligations of Landlord under Paragraph 8 above.



Easement

Mineral Rights

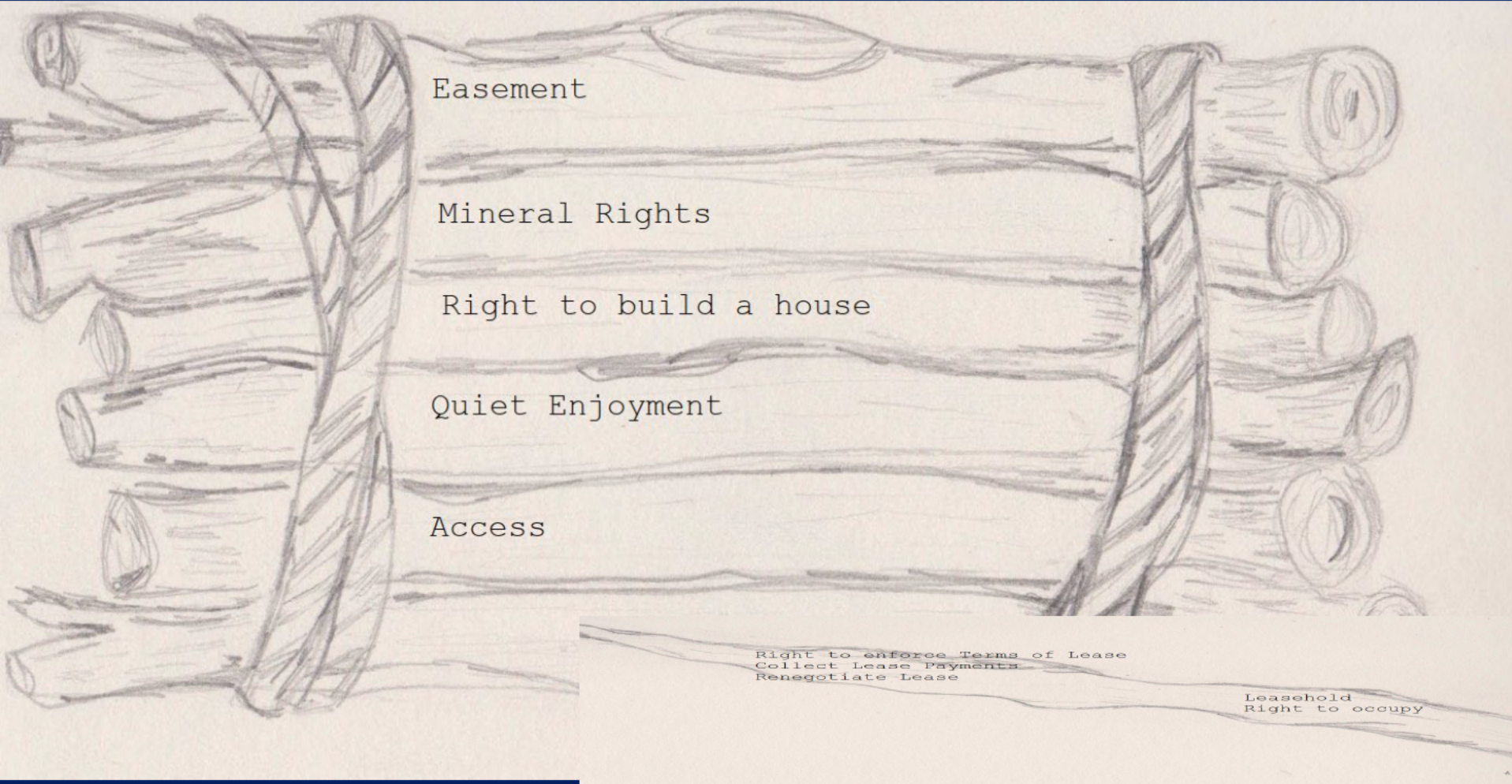
Right to build a house

Quiet Enjoyment

Access

Right to enforce Terms of Lease
Collect Lease Payments
Renegotiate Lease

Leasehold
Right to occupy



Subsequent Leasehold Sale Transaction

- ◆ Sale Transaction with Fee Title Holder selling “Lease” interest. Landlord is selling Landlord Rights only.

MEMORANDUM OF PURCHASE AND SALE OF LEASE AND SUCCESSOR LEASE AGREEMENT

This Memorandum of Purchase and Sale of Lease and Successor Lease Agreement (this “Memorandum”) is made as of the later of the dates set forth below the signatures to this Memorandum (such date, the “Effective Date”), between [REDACTED], an Oregon corporation (“Landlord”), and [REDACTED], LLC, a Delaware limited liability company (“Buyer”).

A. Landlord, as lessor, and [REDACTED], LC, a Delaware limited liability company (“Tenant”), as lessee, are parties to the lease described on Schedule A, attached hereto and incorporated herein by reference (as amended or supplemented, the “Lease”), with respect to the premises therein described (the “Premises”). The Premises form a part of the real property described on Schedule B, attached hereto.

Lease - Unrecorded

Subsequent Leasehold Sale Transaction

Landlord has leased the Premises to Tenant and the expiration date of the Lease (taking into account all options in favor of the Tenant to extend the term of the Lease) occurs on or about September 23, 2035. As of the Effective Date, Landlord has sold and assigned, and hereby does sell and assign, all of its right, title and interest in and to the Lease to Buyer, on the terms and subject to the conditions set forth in the Agreement. Additionally,

- ◆ Sale of Landlord Rights in the Lease. Seller is conveying the right to collect payments from Lessee.
- ◆ Real Property Interest being conveyed? Or Personal Property?

Subsequent Leasehold Sale Transaction

◇ What interest can be insured?

◇ Is there an Easement being granted also?

1. **GRANT OF EASEMENT.** Grantor hereby grants to Grantee an exclusive easement over the Telecom Easement Area for the purpose of leasing space within the Telecom Easement Area to telecommunications tenant(s) for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of communications fixtures and related equipment, cables, accessories and improvements (which may include a suitable support structure, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Telecom Easement Area) (collectively, the "**Permitted Use**"). Any new, additional, or replacement tower placed in the Telecom Easement Area shall be of equivalent height to any existing tower and of a mono-pine design.

A Flip By Any Other Name

- ◆ A simultaneous sale of a lesser interest may not obviously be a Flip.
- ◆ The same considerations in handling a Fee Title Flip apply to the subsequent sale of a lesser interest. (Lease, Timber, Mineral Rights, Transferrable Development Credit)
- ◆ What's the worst that can happen?

A Really Sad Story

Fee Title Sale 20 Acre Property Mrs. Granny Jones selling to Shady Flipper LLC.
\$400,000 sale. Property has a Cell Tower lease located on it with Lease income.

- ◆ Seller Carry Back Trust Deed for \$360,000
- ◆ Shortly before closing(2 days), Title is asked about insuring an additional Owners Policy and Lenders Policy. Shady Flipper LLC assigning the Landlord Rights in the Cell Tower to Cellular Investor LLC for \$105,000. Cellular Investor LLC getting a loan from Lease Lender for \$100,000
- ◆ Should be good with full disclosures... right?...

More to the story

- ◆ Inexperienced Realtor on both sides of transaction
- ◆ Lease Lender is insisting on a SNDA from Seller Carryback
- ◆ Realtor and Granny Jones daughter read the Subordination together and don't think there is a problem.
- ◆ Shady Flipper threatening to sue if we don't close immediately!!!!

What Happened Next?

- ◆ We declined to close unless Seller Granny Jones had an Attorney review the Transaction
- ◆ Any guesses as to what happened?



REMEMBER TO LAUGH!

IT'S TITLE INSURANCE, PEOPLE, WE HAVE
TO MAKE OUR OWN HUMOR OR WE'LL CRY!