

15 FAM 440

PURCHASE AGREEMENTS

(CT:OBO-10; 08-24-2006)
(Office of Origin: OBO)

15 FAM 441 OPTION AGREEMENTS AND PROCEDURES

15 FAM 441.1 Option Agreements

(CT:OBO-10; 08-24-2006)
(Uniform State/USAID/Commerce/Agriculture/DIA)

An option to purchase real property is a continuing offer. The period during which the option is in force gives the U.S. Government the opportunity to examine all aspects of the potential purchase. Posts should obtain an option that is valid for a specified period of time and that contains the proposed terms of the sale. Exercising an option to purchase is a unilateral action. *It* does not require the *property owner's* agreement.

15 FAM 441.2 Option Agreement Procedures

(CT:OBO-10; 08-24-2006)
(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. Posts *must* follow these steps in the drafting, approval, and execution of purchase *option* agreements:
 - (1) Draft an option agreement, using the model format in 15 FAM Exhibit 441A;
 - (2) Send the option agreement to the Bureau of Overseas Buildings Operations (OBO) *and the Office of the Assistant Legal Adviser for Buildings and Acquisitions (L/BA)* or the Overseas Management Staff in the Bureau for Management, USAID/Washington (USAID/W - M/OMS) for approval;
 - (3) Upon approval, *present* the option agreement *to the property owner*, along with an Affidavit of Title (*see* the model format in 15 FAM Exhibit 441B) *and have the owner execute the Affidavit before a notary or other public official authorized to administer oaths*;
 - (4) Sign the option agreement *with the owner* before a notary or other

- public official to ensure it complies with local law; and
- (5) *Register* or record the option as provided by local law to ensure that it is officially validated and recognized in the locally accepted manner.
- b. *Once all due diligence is complete and final approvals to purchase the property have been received, send the Notice of Exercise of Option in 15 FAM Exhibit 441C to the owner. Hand carry it or send it by registered mail, and have the owner acknowledge receipt in writing by dating and signing a copy that the post retains.*

15 FAM 442 PURCHASE AGREEMENT PROVISIONS

(CT:OBO-10; 08-24-2006)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Pursuant to the Foreign Buildings Act of 1926, OBO provides authority to sign relevant real property purchase and sales agreements. The authority for USAID to sign real property purchase and sales agreements is the Foreign Assistance Act of 1961, as amended (see ADS 535). A contracting warrant officer appointment is not required. Posts must obtain prior OBO or M/OMS authority to execute purchase and sales agreements. Whether the purchase agreement arises out of a formal sales contract or out of an option and exercise of the option, the agreement must contain the following provisions:

- (1) *The vendor conveys to the United States* an unencumbered “fee simple” title, or the nearest equivalent, *to* the property, with the vendor’s warranty against any and all persons claiming title under the vendor’s name or in the name of the vendor’s heirs or assigns. *(with title being* acquired in the name of the United States of America, whether the purchasing agency is the Department of State or the U.S. Agency for International Development);
- (2) Payment of the purchase price is conditional upon the receipt of an opinion from a competent, disinterested expert to be selected by the post, certifying to all the points listed in 15 FAM 432.4 and 15 FAM 432.5;
- (3) *The sale is subject to OBO or USAID/W (M/OMS) completing and accepting a field verification survey made by a competent and disinterested engineer or surveyor that the post selected, who is authorized to practice in the locality and who must show by certified plat the information required by 15 FAM Exhibit 432.3;*
- (4) *The purchase agreement must* include the most complete property

- description possible under local law and custom, which should correspond exactly to the description in the valid conveyance and other instruments affecting title to real property as they are officially recorded, *and should include the following items:*
- (a) The land area;
 - (b) The nature of existing boundaries (e.g., walls, streams, streets);
 - (c) The lengths and direction of boundary lines;
 - (d) The measurement of angles between boundary corners;
 - (e) The names of abutting streets and owners of adjoining property;
 - (f) *An attached property plan, if local regulations permit;*
 - (g) *A description of any buildings, improvements, and fixtures on the property; and*
 - (h) *An inventory of any furniture, furnishings, or equipment included in the sale;*
- (5) *Unless OBO or USAID (M/OMS) expressly authorizes otherwise, any of the following provisions are strictly prohibited:*
- (a) U.S. Government *payment* of insurance or indemnity charges;
 - (b) U.S. Government responsibility for damages to persons or property on adjoining properties not owned by the U.S. Government;
 - (c) The submission of disputes to boards or panels for arbitration, or to the jurisdiction of the local courts;
 - (d) The reversion of the property to the previous owner without full repayment to the United States, if the United States fails to improve the property within a specified period of time;
 - (e) The inspection of the property by any person *or persons* not in the employ of the U.S. Government;
 - (f) Any servitude or easement for public or private use that does not directly benefit the U.S. Government;
 - (g) The *seller's* retention of rights to exploit any mineral or other resources on or under the property; *and/or*
 - (h) The inclusion of conveyance taxes in the purchase price.

15 FAM 443 ACQUISITION BY GIFT

15 FAM 443.1 Gifts Covered by this Section

(CT:OBO-1; 04-29-2005)

(Uniform State/USAID/Commerce/Agriculture/DIA)

These procedures apply to all offers of real property, improvements to real property, furniture, furnishings, equipment, stocks, bonds, or other valuables to the U.S. Government for purposes of supporting the U.S. Government's foreign buildings and properties program. Proposed gifts may also take the form of personal services or materials.

15 FAM 443.2 Reporting and Approval of Gifts

(CT:OBO-10; 08-24-2006)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. Only the Bureau of Overseas Buildings Operations (OBO) and the Overseas Management Staff in the Bureau for Management, USAID/Washington (USAID/W - M/OMS) are authorized to accept gifts of real property. Posts must report all offers of such gifts to OBO or USAID/W, including the information required by 15 FAM 432.2 or similar information. Posts may not accept such property *without prior* OBO or USAID/W *approval*. (See also 2 FAM Exhibit *962.1-3*.)
- b. *Posts must report* offers of personal services or materials to OBO, USAID/W, or the Department of Commerce's U.S. and Foreign Commercial Service (US&FCS) *and seek their approval*, as appropriate. Posts should forward cost invoices or other documents evidencing the stated value, the name and nationality of the donor, and proof of ownership of the proposed gift. Other information may be required.
- c. Posts must submit reports of offers or bequests and requests for approval to accept these as follows:
 - (1) Real property offered to USAID: USAID/W, Attention: M/OMS;
 - (2) Personal property offered to US&FCS: US&FCS/OPM 31-2;
 - (3) All other offers of real or personal property: *OBO/RE/AQD* (OBO's Acquisitions and Disposals Division in the Real Estate Office).
- d. Any conditions pertaining to a gift should be reported fully, since a prohibitive condition or a requirement to pay additional sums before acceptance will preclude acceptance.

15 FAM 444 THROUGH 449 UNASSIGNED

15 FAM EXHIBIT 441A

MODEL OPTION AGREEMENT FOR THE PURCHASE AND SALE OF REAL ESTATE

(CT:OBO-10; 08-24-2006)

(This model option agreement should only be used with OBO/RE assistance, and is for site acquisition only. Amend, as appropriate, for use with USAID options.)

This Option Agreement (the "Agreement") is made on this the ___ day of _____, 20___, by and between _____, ("SELLER"), and the United States of America, acting by _____ of the American Embassy/Consulate at _____ ("PURCHASER").

FOR GOOD AND VALUABLE CONSIDERATION as described below, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. GRANT OF OPTION: The Seller does hereby grant to the Purchaser the exclusive, irrevocable right, privilege and option to purchase, upon the terms and conditions set forth below, Seller's property situated in _____, together with all improvements located thereon, described as follows:

[Insert full description including land size, address, legal description/plot/lot numbers and other sufficient identification], and as generally illustrated on Exhibit "A" (the "Property"):

The Property to be sold by the exercise of this Agreement shall be sold to the Purchaser in fee simple (complete, absolute and perpetual ownership).

2. EXERCISE AND TERM OF OPTION: This option to purchase may be exercised by the Purchaser, at its sole discretion, at any time prior to midnight on _____, 20___, or if extended at Purchaser's election, the later date specified in Section 8 (the "Term"), by notice in writing to the Seller as indicated in Article 16 below and in the form illustrated in Exhibit B.

3. PURCHASE PRICE: The total purchase price for the Property shall be _____ (_____). The purchase price shall be paid by Purchaser to Seller by U.S. Government check or wire transfer upon completion of transfer of ownership and possession of the Property to the Purchaser at settlement according to Article 9 herein.

4. OPTION PRICE: Upon execution of this Option, Purchaser has paid unto Seller the sum of _____ (_____). In the event that Purchaser acquires the Property through this option to purchase,

the Purchaser shall receive a credit toward the Purchase Price for this and any additional fee paid pursuant Article 8 (together, the "Option Fee").

5. DEFAULT BY PURCHASER: Except as expressly provided in Sections 6, 7 and 13, in the event of the failure of the Purchaser to exercise this option during the Term, or in the event of any default by the Purchaser after the exercise of this option, so long as Seller is not in default, all money paid by the Purchaser to the Seller during the Term, including the Option Fee, shall be retained by the Seller as consideration for the granting of this Option to the Purchaser, and all rights of the Purchaser under this Agreement shall terminate upon expiration of the Term.

6. DEFAULT BY SELLER: In the event of the failure of the Seller to deliver vacant possession and ownership, or in the event of any default by the Seller, all money paid by the Purchaser to the Seller, including but not limited to the Option Fee, shall be returned by the Seller immediately upon demand or, at Purchaser's discretion, the Purchaser shall have the option to avail itself of any legal or equitable rights, including without limitation, the right of specific performance, which Purchaser may have at law or in equity.

7. TITLE: Within ten (10) days after the date of this Agreement, the Seller shall deliver to Purchaser a current certificate of title or formal title report on the property by a reputable attorney or notaire, as appropriate, covering the Property which shall reflect that marketable fee simple title to the subject property is fully vested in Seller. Title to the Property shall be free and clear of any and all liens, debts, charges, easements, covenants, restrictions, encumbrances, tenancies, leases, subleases, conveyances, mortgages, assignments, assessments, security interests, and rights of other parties to use, possess, occupy or otherwise restrict or interfere with the use of, or the transfer of title to, the Property (any of the foregoing "Liens"). Promptly upon the exercise of this Option by the Purchaser, Purchaser agrees to obtain a final title report on the Property, and within fifteen (15) days of receipt of the report shall notify Seller of any title exceptions shown on the report to which Purchaser objects and the Seller shall have ten (10) days in which to make the title good and marketable. If after using due diligence the Seller is unable to make the title acceptable to Purchaser, it shall be the option of the Purchaser either to accept the title in its existing condition, or to terminate this Agreement. If Purchaser thus terminates this Agreement, all money paid by the Purchaser to the Seller upon the execution of this Agreement or any extension shall be returned to the Purchaser. At settlement Seller shall convey title to Purchaser by Warranty Deed [or appropriately defined local equivalent] subject only to exceptions acceptable to Purchaser. Seller shall not create or allow to be created any Liens in respect of the Property during the term of this Agreement.

8. EXTENSION: Purchaser shall be entitled to extend the time within which this Option may be exercised to midnight _____, 20____, by

paying unto Seller an additional sum of \$_____ prior to the expiration of the initial option period and by giving notice in writing to Seller of Purchaser's election to extend the option. Upon closing of the sale within the extended option period, said sum shall apply toward the purchase price.

9. SETTLEMENT DATE: If the Purchaser exercises this option to purchase the Property and finds title to be satisfactory in accordance with Article 7, then title and vacant possession shall be transferred to the Purchaser on a mutually agreed upon date (herein referred to as "SETTLEMENT DATE") no later than SIXTY (60) days after the Purchaser exercises this Option. The Purchase Price, less credits for Option Fees, shall be paid immediately after the transfer of title and vacant possession is complete.

10. EXPENSES OF SALE: In the event that Purchaser exercises this option to purchase the Property, the following costs shall be paid at settlement, or other appropriate time, as follows.

[Local counsel should be consulted first to determine what taxes, fees, and charges are borne by which party under local law. What may be required under law may differ from customary practice. With the assistance of local counsel, the most favorable distribution of expenses allowed under local law should be included in this article as the initial negotiating position.]

Purchaser's agreement to be responsible for any taxes, costs, and fees does not constitute a waiver of any exemptions it is or may be entitled to under international or local law.

11. POSSESSION: Purchaser shall be entitled to, and Seller shall deliver, vacant possession of the property at settlement.

12. RIGHT OF ENTRY: During the term of this Agreement or any extension, Purchaser and its representatives, agents, consultants and contractors shall be entitled to enter upon the property at all reasonable times for the purpose of conducting soil tests, engineering studies, surveys and any other desired inspections, tests, evaluations or studies of the Property.

13. REPRESENTATIONS: Seller represents that as of the Closing Date there will be no Liens in respect of the Property which will not be satisfied out of the sales proceeds. If any representation in this contract is untrue or incomplete on and as of the Closing Date, Seller will be in default and Purchaser may terminate this contract and avail itself of all remedies provided in Section 6. All representations contained in this contract will survive closing.

14. GENERAL: It is understood by the Seller that the Purchaser is interested in pursuing the acquisition of the Property for the purpose of constructing facilities for its diplomatic mission in _____.
During the term of this Agreement, the Purchaser may investigate and

option alternative properties in order to determine, in its sole opinion, whether or not the Property should be acquired. Seller shall not create or allow to be created any Liens in respect of the Property during the term of this Agreement. At Purchaser's expense, tests and inspections on the Property and studies and evaluations related to the Property, including but not limited to soil tests, engineering studies, soil borings, surveys, environmental testing, test pits, archaeological studies, may be conducted to allow the Purchaser to determine the extent to which the Property meets its requirements and how it compares to alternative properties. Funding for the acquisition of the Property must be identified and the Purchaser must secure internal approvals and support for the acquisition from the U.S. Congress before the option can be exercised. If any of these conditions or other terms and conditions of this Agreement are not satisfied, in Purchaser's sole opinion, during the term of this Agreement or the Property is determined by Purchaser not to be the best property alternative, all factors considered, the Purchaser will not exercise its Option to purchase the Property and the Agreement shall terminate.

15. AGREEMENT OF PARTIES: This contract contains the entire agreement of the parties and cannot be changed except by their written agreement.

16. NOTICES: All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile machine or Email as follows:

*To Purchaser at _____
Telephone _____ Facsimile _____ Email _____
To Seller at _____
Telephone _____ Facsimile _____ Email _____*

This provision does not apply to service of judicial process, which must be made through diplomatic channels or otherwise in accordance with international law.

17. ASSIGNMENT: This Agreement () may () may not be assigned by Purchaser without the consent of Seller. This Agreement may not be assigned by Seller without the prior written consent of Purchaser, and shall be binding on the heirs and permitted assigns of the parties hereto.

18. PRIOR AGREEMENTS: This contract incorporates all prior agreements between the parties, contains the entire and final agreement of the parties, and cannot be changed except by their written consent. Neither party has relied upon any statement or representation made by the other party or any sales representative bringing the parties together. Neither party shall be bound by any terms, conditions, oral statements, warranties, or representations not herein contained. Each party acknowledges that he has read and understands this contract. The provisions of this contract shall

apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties hereto. When herein used, the singular includes the plural and the masculine includes the feminine as the context may require.

19. BROKER OR AGENTS: The parties represent that they () have () have not employed the services of a real estate broker or agent in connection with the property, and if such agents have been employed, THEN the party employing said agent shall pay any and all expenses and commission and commissions to such broker or agent outside the closing of this Agreement.

20. RECORDING: Upon execution of this Agreement, at Purchaser's request, Seller and Purchaser shall execute in recordable form for purposes of recordation, a short form of this option containing the names of the parties, a description of the Property, the term of the Option and such other provisions as Purchaser may reasonably require.

21. OTHER PROVISIONS

22. GOVERNING LAW: This contract shall be governed by the laws of _____.

IN WITNESS WHEREOF, the parties have executed this Agreement on this the ___ day of _____, 20__.

Seller

Purchaser

Seller

Purchaser

Add notary or witness items as customary/required under local practice/law.

PERSONALLY appeared before me, the undersigned authority, the within named, _____, who acknowledged, signed, executed and delivered the above and foregoing agreement.

DATED this the ___ day of _____, 20__.

NOTARY PUBLIC

My Commission Expires:

_____.

PERSONALLY appeared before me, the undersigned authority, the within named _____, who acknowledged, signed, executed and delivered the above and foregoing agreement.

DATED this the ____ day of _____, 20____.

NOTARY PUBLIC

My Commission Expires:

_____.

MODEL OPTION AGREEMENT EXHIBIT "A"
ILLUSTRATIVE PROPERTY BOUNDARIES
[Add diagram of property boundaries here.]

MODEL OPTION AGREEMENT EXHIBIT "B"
NOTICE OF EXERCISE OF OPTION TO PURCHASE

TO: _____

The United States of America, acting by the undersigned, hereby gives notice to you that it elects to EXERCISE its option to purchase your property at _____ on the terms stated in an Option Agreement executed by you on the ____ day of _____, 20____. Please comply with the terms of that agreement and be prepared to go to settlement on or about _____.

The United States of America, Acting by:

[signature]

[typed name and title]

[place and date]

MODEL OPTION AGREEMENT EXHIBIT "C"

NOTICE OF TERMINATION OR RELEASE OF OPTION TO PURCHASE

TO: _____

The United States of America, acting by the undersigned, hereby gives notice to you that it elects to TERMINATE its option to purchase your property at _____ as a result of findings or determinations stemming from Article 14 of the Option Agreement executed by you on the ___ day of _____, 20__.

The United States of America, Acting by:

[signature]

[typed name and title]

[place and date]

15 FAM EXHIBIT 441B AFFIDAVIT OF TITLE

(CT:OBO-10; 08-24-2006)

(Amend, as appropriate, for use with USAID options.)

[Fill in name(s) and address(es) of owner(s) who is (are) granting the option to which this affidavit is an attachment.]

being (all) duly sworn, does (do) depose and state:

That (he, she, it, they) is (are) the absolute owner(s) of the premises known as _____ and more particularly described in the option, dated _____, to which this affidavit of title is an attachment;

That said premises have been held by the deponent(s) and preceding owners from whom title is derived for the period of _____ years last past and upwards and that the possession thereof has been peaceable and undisturbed and that the title thereto has never been disputed or questioned to the knowledge of the deponent(s);

That the deponent(s) does (do) not know of anything that might tend to bring said title into question or by reason of which any claim to any part of said premises or to any undivided interest therein, adverse to deponent(s), might be set up or made;

That said premises are free and clear of any and all liens, *claims*, encumbrances, or clouds of every name, nature or kind, either recorded or unrecorded, EXCEPT:

[Here describe any claims or clouds on title.]

Deponent(s) does (do) further state that there is no judgment, order or decree against deponent(s) unpaid or unsatisfied of record; *or, to the best knowledge of deponent(s), threatened or pending*;

That no proceedings in bankruptcy have ever been instituted by or against deponent(s) nor has (have) deponent(s) ever made any assignment for the benefit of creditors;

That at this time there are no unpaid taxes or assessments, ordinary or extraordinary, now due or levied against said premises or any part thereof, EXCEPT:

[Here describe any unpaid taxes or assessments.]

That deponent(s) is (are) citizen(s) of _____ and are of competent age to convey real estate under local law;

That deponent(s) is (are) married to _____, who is (are) *of competent age to convey real estate under local law;*

(or)

That deponent(s) has (have) never been married to any one else now living;

That deponent(s) is (are) now in possession of said premises above described;

That each and all of the foregoing statements and representations are in each and all respects true and are made for the purpose of inducing the United States of America, acting by _____, of the American Embassy (Consulate) at _____, to purchase the said property for the sum of _____.

_____ [name, title and address] _____ DEPONENT(S)

The United States of America, Acting By:

_____ [signature] _____

_____ [name and title] _____

Subscribed and sworn to before me this ____ day of [Month], [Year], after the contents thereof had been fully explained to me by deponent(s).

[Seal of Notary Public, Commissioner of Deeds, or other person authorized to administer oaths.]

15 FAM EXHIBIT 441C NOTICE OF EXERCISE OF OPTION

(CT:OBO-1; 04-29-2005)

(Amend, as appropriate, for use with USAID options.)

To: _____

The United States of America, acting by the undersigned, hereby gives notice to you that the United States Government elects to exercise its option to purchase the property at _____ on the terms stated in an option agreement executed by you on the ____ day of [month], [year]. Will you please comply with paragraph number 4 of that agreement within the next 15 days?

The United States of America, Acting By:

_____ [signature]
_____ [name and title]
_____ [place and date]