

CAUTION: THIS AGREEMENT MAY CREATE IMPORTANT CHANGES IN THE SELLER-PURCHASER CONTRACT RELATIONSHIP. IT IS RECOMMENDED THAT ANY PERSON NAMED IN THIS AGREEMENT CONSULTS HIS OR HER ATTORNEY BEFORE SIGNING.

POST-CLOSING POSSESSION AGREEMENT

THIS AGREEMENT made this _____ day of _____, 20____ by and between _____, hereinafter referred to as "Purchaser," and _____, hereinafter referred to as "Seller."

W I T N E S S E T H :

WHEREAS, the parties have heretofore executed a Contract dated _____ for the purchase and sale of certain property commonly known as _____ (herein "Premises"), hereinafter referred to as "Contract"; and

WHEREAS, circumstances have arisen subsequent to said contract which require or make it desirable for the parties to alter the dates therein specified for closing and delivery of possession, so that the date for delivery of possession will succeed the date for closing.

NOW THEREFORE, provided the mortgage commitment is granted and its terms and conditions accepted, it is hereby agreed as follows:

- 1) The closing of the sale shall occur on _____ or on any other date prior to the date stated in said prior contract which the Purchaser shall designate by _____ days, written notice to the Seller, provided (a) said notice shall not accelerate without Seller's consent any time limited in the Contract for the performance by the Seller of any other condition precedent by the Seller to be performed, and (b) Purchaser has tendered or tenders, at the time of such accelerated closing date, due performance of all Purchaser's obligations under the Contract, as herein modified.
- 2) The seller shall have the option of remaining in possession subsequent to the closing of title for all or any part of a period expiring the _____ day of _____, 20_____.
- 3) It is agreed that the relationship between the Purchaser and Seller during such period of deferred possession shall be subject to termination at the lapse of this agreement by summary proceedings on _____ days' written notice pursuant to Section 713(8) of the Real Property Actions and Proceedings Law.
- 4) The rent due pursuant to this agreement shall be at the rate of \$_____ per day for each day of such deferred possession.
- 5) (a) To secure the payment of the rent, the Purchaser may withhold from the payment due to the Seller at the closing of title (1) the sum of \$ _____, or (2) a sum determined by multiplying the maximum allowable days of the hold-over period by the above-stated per diem rental rate. Such withholding shall constitute advance payment of rent, or so much thereof as may thereafter accrue.

- (b) In addition to said advance rent payment, Purchaser may withhold the further sum of \$ _____ as security against damages arising out of (1) the cost and expense of enforcing timely removal; and/or (2) repair of damage, if any, caused by Seller and occurring subsequent to closing of title; and/or (3) to apply to rental at the increased rate of \$ _____ per day, which shall be the accrual of rental subsequent to the last date limited herein for holdover.
- 6) The attorney for the Purchaser/Seller, upon signing this agreement, shall act as escrow agent in regard to such withheld sums, and shall have no duty or obligation to either of the parties hereto, than with respect to any sums hold against pursuant hereto, to hold same in his or her attorney trust account without obligation for the payment of interest, and with respect to any sums held against rent, to: (a) pay accrued rent to the Purchaser at the time of removal by the Seller; (b) pay any surplus to the Seller after such payment of accrued rent to the Purchaser, provided, however, that the escrow holder shall release no funds until the key to the premises has been delivered to such escrow holder or to the Purchaser and that the key delivery date shall be presumptively determinative of the last day of the holdover period; and (c) with respect to any sums held as security against either expenses of enforced removal, physical damage to the subject premises or increased rental, to hold same until the sooner of (i) receipt of written authorization to release by Purchaser or Purchaser's attorney, or (ii) the lapse of ____ days' form the date of service of written notice of intention to release escrow by the holder thereof without a responsive written objection, or (iii) the laps of ____ days' from the date of service of written notice of demand for release of the escrow without a responsive written objection.

All adjustments including but not limited to purchasers mortgage interest and homeowners insurance provided for in the Agreement shall be made as of the date of possession.

Upon Delivery of possession of the Premises,

- (i) same shall be vacant and broom clean
- (ii) the plumbing, heating and electrical systems included in the sale shall be in working order;
- (iii) the roof and basement shall be free of leaks; and
- (iv) the premises shall be free of violations of law and municipal ordinances.

Purchaser shall have the right to inspect the premises prior to delivery of possession.

Possession of the premises shall be that of a licensee.

Either form of notice shall be served by the person issuing it simultaneously to each of the other parties and their respective attorney(s)

Failure of response of written objection, within the time limited, shall constitute a waiver of objection.