

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 held 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' from 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.

Service shall be deemed made when made personally upon the person to be noticed, or when mailed registered or certified to the address, if any, listed as the post-closing address of the parties at paragraph _____, or, if none is listed, to the attorney for such party, or, if none, to the address for such party recited in the original Contract.

- 7) Objection to release of escrow based on either rent or damage claims shall be specific, detailed, itemized and as to physical damage claims, cost estimated as to each item specified. The excess, if any, over the aggregate of the itemized amounts shall be promptly remitted to the Seller by the escrow holder.

As to claims related to cost of enforced removal or unspecified (due to lack of access to inspect) physical damage, the entire escrow shall be retained until such removal costs are finally determined or such repair and/or replacement of physical damage claims finally mutually settled or judicially settled or judicially determined.

- 8) The seller will be responsible for the payment of, and shall pay for, all utilities used subsequent to the date of closing and to the date of delivery of possession. Neither party shall take any action in regard to changing the name on any utilities accounts until the date of delivery of possession.
- 9) Risk of casualty loss shall be in Seller to the date of closing of title and in Purchaser thereafter. The parties will maintain and keep in force and effect fire or homeowner's insurance accordingly, but neither party shall have, and each hereby expressly disclaims, any interest in any policy of the other.
- 10) Seller will, either by change of endorsement of former homeowner's policy or by new issuance, obtain and keep in effect a tenant liability policy for the period of holdover possession with minimum limits of \$ _____/\$ _____ for personal injury and \$ _____ for property damage.
- 11) Purchaser will, for the same period, obtain and keep in effect a homeowner's liability policy with minimum limits of \$ _____/\$ _____ for personal injury and \$ _____ for property damage.
- 12) Seller will assume all obligations for maintenance and repair (other than related to casualty events) of the property during the holdover period. The Seller will be responsible for delivery of the property at the conclusion of the holdover in a physical condition equal to that which existed at the time of closing of title.
- 13) The Seller will indemnify and hold the Purchaser harmless during the holdover period from claims arising out of [his/her] said use and occupancy during that period in favor of [himself/herself], members of [his/her] family and household and all lawful guests, licensed and invitees.

14) The addresses, if any, other than those listed in the primary contract, which this agreement amends, for the giving of notices hereunder, are to be as follows:

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

Purchaser

Seller

Purchaser

Seller

Attorney for Purchaser

Attorney for Seller

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Tradition Title Agency
67 East Main Street
Bay Shore, NY 11706