

## **Rider Clauses to Contract of Sale—Seller**

1. In the event of any inconsistency or conflict between the terms and provisions of this Rider and those contained in the printed portion of the Contract of Sale to which this Rider is attached, the terms and provisions of this Rider shall govern and be binding.

2. It is expressly understood and agreed that this instrument shall not be considered an offer and shall not bind Seller in any way unless and until (a) the same is duly executed by Seller and Purchaser, (b) a fully executed copy of same is delivered by Seller to Purchaser, and (c) Purchaser has paid the Contract Deposit due hereunder to Escrowee.

3. Purchaser acknowledges and agrees that the Executor(s) of the Estate of \_\_\_\_\_ are acting solely in their fiduciary capacity as Executor(s) under the Last Will and Testament of \_\_\_\_\_, deceased, that said Executor(s) shall not be individually liable under this Contract and Purchaser shall not seek to impose any liabilities on said Executor(s) for any covenants hereof, expressed or implied, in their individual capacities, but shall look solely to the funds in their possession as Executor(s) of the Estate of \_\_\_\_\_, deceased. Seller represents that the Executor(s) are authorized to enter into this Contract.

### **CONDITIONS OF TITLE**

4. The premises are to be sold and conveyed:

SUBJECT TO any state of facts which a survey of current date may show provided same do not render title unmarketable.

SUBJECT TO covenants, restrictions, agreements, and utility easements of record, if any, provided same are not violated by the present use, nor render title unmarketable.

SUBJECT TO any state of facts a personal inspection of the premises would show provided same do not render title unmarketable.

### **PERSONAL PROPERTY INSPECTION**

5. It is understood and agreed by the parties hereto that the Purchaser(s) (has) (have) made a personal inspection of the premises and the personal property located therein included in this sale, and hereby represent that they have done so, and agree to accept the same in an “as is” condition.

### **REPAIRS TO AND CONDITION OF THE PREMISES**

6. The Seller(s) (is) (are) not required to make any repairs to the premises and the personal property located therein included in the sale prior to or following closing of title; the Seller(s) agree(s), however, to keep the premises in substantially the same condition as they are on the date of this agreement, reasonable wear and tear excepted.

## REPRESENTATIONS AND WARRANTIES

7. The Seller(s) make(s) no representation, warranty or guaranty, express or implied, of fitness or merchantability with respect to said premises or any personal property, fixture or appliance located therein and included in this sale, except that the latter are owned by the Seller(s) and are free and clear of any liens and encumbrances and the Purchaser(s) acknowledge(s) that they have not relied on any other representation, warranty or guaranty.

## TOXIC OR HAZARDOUS SUBSTANCES

8. Purchaser assumes all risk of loss, damage or injury which may arise as a result of, or may be in any way connected with, the presence of radon gas, asbestos or any other toxic or hazardous substance in or about the Property, if any. Purchaser fully and forever releases and discharges Seller, its officers, employees and agents, from any and all claims, liabilities, expenses and damages, whether now or hereafter known, which Purchaser has or may hereafter have against Seller, its officers, employees and agents. Purchaser releases and indemnifies Seller, its officers, employees and agents from and against any loss, damage, cost or expense (including attorney's fees), relating to any claim concerning the presence of radon gas, asbestos or other toxic or hazardous substances in or about the Property, which claim is made by Purchaser, or any person Purchaser allows to reside in or about the Property or come in contact with the Property. This provision shall survive delivery of the Deed and the closing.

## THIS AGREEMENT IS THE ENTIRE CONTRACT

9. This agreement constitutes the entire contract between the parties hereto and the Seller(s) (is) (are) not bound in any manner by expressed or implied warranties, guaranties, promises, statements, representations or information pertaining to said premises, made or furnished by the Seller(s) or by any real estate broker, agent, employee, servant or other person purporting to represent Seller(s), unless such warranties, guaranties, promises, statements, representations or information are expressly set forth herein.

## PLUMBING, HEATING, ELECTRICAL SYSTEMS

10. Notwithstanding the foregoing, the Seller(s) agree(s) that the plumbing, heating, electrical systems and appliances will be in working order on the day of closing.

## FULL PERFORMANCE AND DISCHARGE OF SELLER

11. The acceptance of a deed by Purchaser(s) shall be deemed full and complete performance by and discharge of the Seller(s) of all the terms, conditions and agreements made or required to be performed hereunder and no liability therefor on the part of the Seller(s) shall survive the delivery of the deed.

## REPORT OF OBJECTIONS TO TITLE

12. In the event that the report of a reputable title company shows objections and exceptions, the Seller(s) shall, upon prior written notice to the Seller(s)' attorney(s) by Purchaser(s)' attorney(s) of such defects or objections to title, have the right at Seller(s)' option, to cure the

defect or objections in title within thirty (30) days from the date such notice is received, and the date for the closing of title shall be adjourned accordingly.

13. Seller shall be entitled to such adjournments as shall be required to remove any objections or exceptions to title, but Seller shall not be compelled to bring any actions or proceedings or to incur any expense whatsoever in order to render title marketable or insurable. In the event Seller elects not to cure such marketability or insurability objections or exceptions, or if the Seller is unable to convey title hereunder, it is agreed by the Purchaser, as a condition precedent to the Seller's obligations hereunder, that the Seller's sole obligation shall be to repay to the Purchaser the amount deposited hereunder, together with the net cancellation cost of title examination, if any, without issuance of policy, and upon such repayment this contract shall be terminated without any liability in damages on the part of the Seller to the Purchaser by reason of said title to the premises being unmarketable or uninsurable, or for any other reason whatsoever. The Purchaser, however, shall have the option to accept such title as the Seller may be able to convey without abatement of the purchase price.

14. Purchaser represents to Seller that Purchaser has inspected the premises and the personal property included in this sale and has conducted termite and engineering inspections of the premises, or has had an opportunity to conduct such inspections and/or tests but elects not to do so, and is purchasing the premises "AS IS" as of the date hereof, reasonable wear and tear to the date of the closing excepted.

#### SELLER(S)' OBLIGATION TO CURE DEFECTS OR OBJECTIONS

15. If the Seller(s) should be unable to convey a good and marketable title subject to and in accordance with this agreement, the sole obligation of the Seller(s) shall be to refund the Purchaser(s)' down payment made hereunder and to reimburse the Purchaser(s) for the cost of title examination (without policy) and, upon the making of such refund and reimbursement, this agreement shall wholly cease and terminate, and neither party shall have any further claim against the other, by reason of this agreement and the lien, if any, of the Purchaser(s) against the premises shall wholly cease.

The Seller(s) shall not be required to bring any action or proceeding or otherwise incur any expense to render the title to the premises marketable. The Purchaser(s) may, nevertheless, accept such title as the Seller(s) may be able to convey, without reduction of the purchase price or any allowance or credit against the same and without any other liability on the part of the Seller(s).

#### CONTRACT—RETURN

16. This contract is void unless signed by the Purchaser(s) and delivered with the down payment check made payable to the Seller(s)' attorney no later than [date].

#### ASSIGNMENT OF CONTRACT

17. This agreement may not be assigned without the prior written consent of the Seller(s).

#### CLOSING DATE—TIME IS OF THE ESSENCE

18. Time is of the essence with respect to the Seller(s) and Purchaser(s) in connection with the closing date set forth in Paragraph 7 of the contract. In the event that for any reason not attributable to the Seller(s), other than reasons which would relieve Purchaser(s) of (its) (their) obligations hereunder pursuant to the terms of this contract, Purchaser(s) shall not close title hereunder on or before said date, Seller(s) shall have the option of declaring Purchaser(s) in default of (his/her) (their) obligations hereunder, and upon declaration of Purchaser(s)' default, Seller(s) shall be entitled to the down payment made pursuant to Paragraph 1 of the contract, together with interest earned thereon. In the event that for any reason not attributable to the Purchaser(s), other than reasons which would relieve Seller(s) of (his/her) (their) obligations hereunder pursuant to the terms of this contract, Seller(s) shall not close title hereunder on or before [date], Purchaser(s) shall have the right to commence an action for specific performance and/or damages on account of Seller(s)' failure to close title as aforesaid, as well as the right to cancel this contract by giving notice thereof to Seller(s) at any time after [date].

#### LIQUIDATED DAMAGES

19. It is expressly understood and agreed that, in the event Purchaser(s) shall willfully default upon this contract, the amount of \$\_\_\_\_\_, paid by Purchaser(s) upon the execution of this contract shall be deemed liquidated damages and shall be retained by Seller(s) as such, and thereafter this contract shall be cancelled and of no force and effect.

#### ESCROW—DOWN PAYMENT HELD UNTIL

20. The down payment shall be held in escrow by \_\_\_\_\_, until a mortgage commitment of \_\_\_\_\_ is obtained. (Note: Seller(s) may wish to remain silent on escrow, thereby allowing Seller(s) to immediately have use of down payment. If Purchaser(s)' attorney insists on escrow, Seller(s) should seek to provide for release of escrow funds sooner than closing, i.e., on obtaining firm mortgage commitment or on obtaining title report which raises only standard objections.)

#### DOWN PAYMENT TO BE NON-INTEREST BEARING

21. (a) In the event that the Purchaser(s) (has) (have) required the contract down payment to be held in escrow by Seller(s)' attorneys, such sums shall be non-interest bearing.

(b) The interest earned on the Contract Deposit shall not be a credit toward the purchase price.

#### INTEREST-BEARING ESCROW

22. It is agreed that down payment shall be held by Seller(s)' attorney, as escrow agent, in an interest-bearing account, any interest thereon to be paid over by such attorney as follows:

(a) Upon closing of title, to the Seller(s);

(b) Upon termination of this agreement without the fault of Purchaser(s), to the Purchaser(s);

- (c) Upon termination of this agreement due to the fault of the Purchaser(s) which would entitle Seller(s) to retain the down payment, to Seller(s).

#### PROTECTION OF ESCROWEE

23. It is specifically understood that the escrow is being held for the convenience of the parties, and the parties agree to indemnify and hold the escrowee harmless for any and all loss, claim or damage as a result of the escrow.

24. In the event of any litigation, the escrowee is authorized to deposit paid escrow in court and upon such deposit to be relieved of any liability in connection therewith.

25. The down payment given hereunder shall be paid for Seller(s)' account to \_\_\_\_\_, Esq. ("Escrow Agent") to be held in Escrow in a non-interest-bearing account until [date], at which time such amount shall be paid to Seller(s). If for any reason such contingency does not occur and either Seller(s) or Purchaser(s) (makes) (make) a written demand upon Escrow Agent for payment of the down payment, Escrow Agent shall give at least ten (10) days' written notice to the other party of such demand and of his intention to pay over such amount to the other party. If Escrow Agent does not receive a written objection to the proposed payment within ten (10) days after the date on which Escrow Agent shall have mailed such notice, Escrow Agent is hereby authorized and directed to make such payment. If such other party delivers to Escrow Agent written objection to such payment within ten (10) days after the date on which Escrow Agent shall have mailed such notice, Escrow Agent shall continue to hold the down payment until otherwise directed by written instructions signed by all parties or by a final judgment of a court of competent jurisdiction. In the event of a dispute, Escrow Agent may deposit the down payment with a court of competent jurisdiction or commence an action for interpleader, and, after giving written notice of such action to the parties, Escrow Agent shall have no further obligations with respect to the down payment and shall be released of and from any liability hereunder. Escrow Agent shall receive no compensation for handling the down payment and shall not be liable for such handling except in the case of gross negligence or willful disregard of the provisions of this Contract. The parties shall be jointly and severally liable to Escrow Agent for all reasonable costs and expenses incurred in performing his duties as Escrow Agent, including reasonable attorney's fees, and the Escrow Agent shall have a lien on the down payment to such extent. Nothing contained herein shall preclude the Escrow Agent from the right to represent Seller(s) in any dispute between Seller(s) and Purchaser(s) with respect to the escrow funds or otherwise.

#### CONVENTIONAL MORTGAGE

26. It is understood and agreed that this agreement is subject to the Purchaser(s) obtaining a conventional mortgage loan from a lending institution in a sum of not less than \$\_\_\_\_\_, for a period of not less than \_\_\_\_\_ years with interest at the prevailing rate at closing of title.

#### MORTGAGE APPLICATION

27. Said mortgage shall be procured at the sole cost and expense of the Purchaser(s), self-liquidating and at the interest rate set forth above, or such higher as may prevail with the lending

institution at the time of the closing of title, and to be payable in monthly installments which may include amortization of principal, interest, taxes, water rates if not a private company, fire and other hazard insurance premiums and such other provisions as may be required by the lending institution. The Purchaser(s) hereby agree(s) to make diligent, truthful and proper application to a lending institution to obtain said mortgage commitment and without delay to furnish such verification of bank accounts and employment or other instruments or information as may be required by said lending institution in the processing of the Purchaser(s)' application for the mortgage loan described herein.

#### MORTGAGE CONTINGENCY PERIOD

28. The Purchaser(s) shall have until [date] to obtain final approval from the lending institution. Unless the attorneys for the Seller(s) receive written notice that the aforesaid approval has been obtained by the date set forth herein, irrespective of whether said approval or commitment has actually been obtained, the Seller(s) shall have the option of cancelling this agreement, and, upon the return to the Purchaser(s) of the balance of the down payment paid hereunder, both parties shall be released from further liability to the other and this agreement shall be terminated and shall wholly cease.

29. The Seller(s) shall not be responsible for or be obligated to pay, in whole or in part, any expenses, fees, discounts or other charges in connection with the Purchaser(s) obtaining a mortgage in the connection with the performance of this agreement.

#### LOAN PROCEEDS

30. The proceeds of the mortgage loan are to be used as payment of the purchase price in accordance with the terms of this agreement.

#### NOTICE OF CANCELLATION

31. In the event mortgage commitment cannot be obtained by the mortgage commitment date, Purchaser(s) may cancel this contract by giving written notice by certified mail, return receipt requested, to Seller(s)' attorney, postmarked no later than the mortgage commitment date, at which time all monies paid under this contract will be returned to the Purchaser(s). If said notice is not received in due course of mailing or otherwise delivered in person, this clause shall fall and the remaining terms of this contract shall otherwise remain in full force and effect and this shall be an all-cash transaction.

#### ATTORNEYS' FEES FOR PREPARATION OF CONTRACT

32. The attorneys for the Seller(s) may retain the sum of \$150.00 from the contract down payment for their services in the preparation of this agreement in the event:

- (a) The Purchaser(s)' application for a conventional mortgage commitment is denied by the lending institution; or

- (b) The Purchaser(s) have failed to obtain the conventional mortgage commitment by the date set forth herein *and* the Seller(s) shall have elected to cancel this agreement by reason thereof.

#### TERMITE INSPECTION

33. The Purchaser(s) shall have right to obtain a termite inspection within 10 days of the signing of this agreement at their own cost and expense. If inspection shows a termite condition, the curing of which would exceed \$350, either the Seller(s) or the Purchaser(s) may elect to either (i) withdraw from this agreement and cancel the sale, or (ii) to proceed with the purchase, provided the work is performed in accordance with the statement at the expense of the Seller(s), or, at Seller(s)' option, an allowance is made in the purchase price to cover the work set forth in the statement. However, said cost should not exceed \$500.

#### CANCELLATION

34. If an election is made by either the Seller(s) or Purchaser(s) to cancel this agreement, upon the return by the Seller(s) to the Purchaser(s) of all monies paid hereunder, this agreement shall be deemed null and void, and neither party shall have any rights or obligations as against the other, and this agreement shall be terminated and wholly cease. (Note: If Seller can avoid all termite riders, this is preferable. House goes "as is.")

#### "AS IS"

35. Purchaser has inspected the premises and agrees to accept same in an "as is" condition except as otherwise provided in Section 5-1311 of the General Obligations Law of the State of New York.

#### RENT PAYMENTS

36. If at the time of the delivery of the deed there are past-due rents owed by the tenants for periods not exceeding one month, and Seller(s) (is) (are) entitled to all or part of the same, Purchaser(s) agree(s) that the first monies received from said tenants shall be received in trust for the Seller(s) on account of such past-due rental and will be remitted by the Purchaser(s) to Seller(s) forthwith, unless said tenants claim to have made prior payment hereof to the Seller(s).

#### TITLE DEFECTS

37. Purchaser(s) shall give prompt notice to Seller(s) of any defects in title and Seller(s) shall, at Seller(s)' option, within thirty (30) days from the giving of such notice or from the date herein originally fixed for the closing of title, whichever is later, cure any such defects which are valid objections to title. The closing of title shall be adjourned accordingly and adjustments shall be made as of the date of closing. If the closing has been adjourned as herein set forth, Seller(s) shall give notice to the Purchaser(s) of the curing of any such defects and shall set a date and hour for closing of title not less than five (5) nor more than ten (10) days from the mailing of said notice. If within said thirty (30) days from the giving of the first-mentioned notice or on the date originally set for the closing of title, whichever is later, Seller(s) (has) (have) failed to cure said defects in title or have elected not to cure the same, then and in such case, unless

Purchaser(s) shall give notice to Seller(s) of Purchaser(s)' election to accept title to the premises subject to said defects without abatement therefor, the provisions elsewhere contained in this contract in the event Seller(s) is unable to convey title in accordance with the terms thereof shall apply. Seller(s)' efforts to cure a defect of which notice has been given by Purchaser(s) as herein provided shall not be deemed to be an acknowledgement by the Seller(s) that any such alleged defect is a valid objection to title.

#### NO POSSESSION

38. It is expressly understood and agreed that Purchaser(s) shall in no event take possession of the premises or any part thereof prior to the time of delivery of the deed and full compliance with the terms of this contract, and should the Purchaser(s) violate this provision, the Purchaser(s) consent(s) that the Seller(s) shall have the right to dispossess them from the premises as squatters and intruders by summary proceedings, nor shall any personal property of any nature or description be placed on the premises by the Purchaser(s) before taking title without the written consent of the Seller(s).

#### PERSONAL PROPERTY—NO VALUE

39. The articles of personal property as contained in Paragraph 18 which are attached or appurtenant to or used in connection with the premises are included in this sale; and no part of the purchase price is attributed thereto, as they have no separate value, except in conjunction with the real property described herein.

#### PERSONAL PROPERTY—"AS IS"

40. All personal property, as indicated in Paragraph 18 to be the subject of this sale, will be delivered to Purchaser(s) on closing in their "as is" condition as of the date of the first inspection of the house by Purchaser(s) for which the Seller(s) make(s) and give(s) no warranty as to fitness for purposes or operating condition.

#### PURCHASER(S)' RIGHT TO POSSESSION PRIOR TO CLOSING

(Note: It is far more advisable for Seller(s) *not* to allow possession prior to closing to avoid contingencies of having to force Purchaser(s) to vacate if deal falls through, etc.)

41. In consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) and other good and valuable consideration from Purchaser(s), Seller(s) hereby grant(s) to Purchaser(s) the right to enter into possession of the premises upon the execution of this Contract of Sale by all parties upon the following terms and conditions:

42. The Purchaser(s) shall pay to the Seller(s) in advance on the execution of this Agreement the sum of \$\_\_\_\_\_, which represents forty (40) calendar days' occupancy charge at the rate of \$\_\_\_\_\_ per day, to be computed from the date of the taking of possession.

43. In the event that title shall close or Purchaser(s) shall surrender possession before the expiration of said forty (40) days, the *Purchaser(s) shall be entitled to a credit at closing* or a refund upon surrender of possession for the prepaid unexpired days. In the event that title shall



close after the expiration of said forty (40) days, the Seller(s) shall receive an additional \$30.00 per day for each day of occupancy after the expiration of said forty (40) days to the date of closing of title, or for each day of occupancy after the expiration of said forty (40) days to the date of surrender of possession within the ten (10) day grace period as provided in paragraph (7) hereof, whichever sooner occurs.

44. The contract down payment of \$\_\_\_\_\_ also shall be held by Seller(s)' attorneys as "rent security" in the event that title shall not pass pursuant to the terms hereof for any sums due Seller(s) and/or any damage or injury caused to the premises or any personal property therein by Purchaser(s) during Purchaser(s)' occupancy. If title shall not pass and Purchaser(s) shall be entitled to a refund of the contract down payment hereunder, Seller(s)' attorneys shall pay over said contract down payment after deducting therefrom the reasonable value of any such damage or injury.

45. Risk of loss pursuant to Sec. 5-1311 of the General Obligations Law shall be borne by the Purchaser(s).

46. Purchaser(s) assume(s) all risk of loss for any improvements or repairs made to the premises by Purchaser(s), for their personal property, and any and all liability arising out of their occupancy upon the taking of possession.

47. The warranties and representations contained in paragraphs \_\_\_\_\_ shall not survive the delivery of possession if Purchaser(s) take possession prior to closing of title.

48. The fuel adjustment provided for in paragraph \_\_\_\_ shall be determined as of the date of the taking of possession or the closing of title, whichever shall sooner occur.

49. In the event that Purchaser(s) shall be unable to obtain the conventional mortgage referred to in paragraph \_\_\_\_, they shall vacate the premises within ten (10) days of the date of the writing denying the mortgage application.

50. In the event that the Purchaser(s) shall default in their performance hereunder, Seller(s) may remove the Purchaser(s) from possession pursuant to Sec. 713 of the Real Property Actions and Proceedings Law and shall be entitled to retain from the contract down payment the sum of \$100.00 per day after the date of default to and including the date of possession being delivered to Seller(s).

#### "AS IS" CONDITION

51. The Purchaser(s) specifically agree(s) to take delivery of title to the premises herein described "as is" except as otherwise set forth, provided the Seller(s) maintain(s) the premises in its present physical conditions, normal wear and tear excepted, until title passes, and the Purchaser(s) acknowledge(s) and agree(s) that (he/she) (they) (has) (have) knowledge of and (has) (have) inspected the condition of the land and the buildings on it, is (are) thoroughly familiar with their condition, and that no representations, information or promises, not contained in this contract, have been made by the Seller(s), their agents, or any broker or other person as to the character, quality, use, value or condition relating thereto.

#### DEED—FULL COMPLIANCE

52. Except as otherwise provided, it is specifically understood and agreed by the parties hereto that the acceptance and delivery of the deed of conveyance at the time of the closing of title hereunder shall be deemed to constitute full compliance by the Seller(s) with the terms, covenants and conditions of this contract on its part to be performed. It is further agreed that none of the terms hereof except those specifically made to survive delivery of the deed shall survive delivery of the deed.

#### VACANT POSSESSION

53. Premises shall be delivered vacant at closing.