

# **“As Is” RESIDENTIAL CONTRACT FOR SALE and PURCHASE**

**6/10**

## **SUMMARY OF NEW PROVISIONS**

Title of Agreement now includes the word “residential”

### **1. Property Description**

1.(c)

- Additional items specified in Paragraph 1 include fixtures, built-in appliances and furnishings, attached wall-to-wall carpeting and flooring.

1.(d)

- If the disposal, intercom, garage door openers, security devices, rods and draperies are Seller owned and exist on the Property on the date of the initial offer, they will be conveyed to Buyer unless excluded.
- There is now a list of personal property with blanks to be checked if named item is included in the sale.
- Line 19 can be used to add details to any of the Personal Property description, in addition to using the line to add other Personal Property.

### **2. Purchase Price**

2.(a)

- Checks are subject to Collection (previously clearance was term used)
- Check boxes to indicate that the original deposit is to be made (i) with the offer (ii) upon acceptance (Effective Date) or (iii) within specified number of days after Effective Date
- Lines to be filled in with the Escrow Agent’s contact information

2.(b)

- Deposit is now a defined term and means all deposits paid or agreed to be paid.

2.(c)

- Financing amount may be expressed as a dollar amount or percentage so \$ or % should be inserted along with the appropriate number in the blank.

2.(e)

- Balance to close is limited to wire transfers or other Collected funds. The term Collected or Collection is defined in Standard S. (requires broker escrow checks and official bank checks to be “finally Collected” by Closing Agent by Closing).

**3. Time for Acceptance of Offers and Counteroffers and Effective Date**

3.(a)

- Specifies if offer is not accepted timely, than the Deposit will be returned to Buyer
- Acceptance requires that all parties sign the offer and that an executed copy be delivered to all parties. It is no longer sufficient to send written notice that all parties have signed, instead of delivering the executed contract. Previous language... Fact of Execution communicated in writing...was deleted.

**4. Closing Date**

- Clause added that time for Closing will be established by Closing Agent.
- Language regarding delays of Closing Date moved to Paragraph 5.

**5. Extension of Closing Date**

5.(a)

- New provision specifies that Closing can be delayed if required by the Truth in Lending Act (TILA). The delay may not exceed 7 days.

5.(b)

- In the event of force majeure (which is defined in Standard G), Closing Date may be extended for a reasonable period of time, up to 3 days after restoration of utilities or services essential for the Closing or when insurance becomes available. (3 day time frame is new)

**6. Occupancy and Possession**

- Seller to remove personal items and trash from the Property and deliver keys, garage door openers and access devices and codes to Buyer.
- If Buyer occupies the Property prior to Closing, the property condition is accepted by the Buyer in its existing condition.

**7. Assignability**

- Clause relocated here.

**8. Financing**

8.(a)

- Cash check box now also provides that Buyer may obtain a loan but there is no financing contingency to Buyer's obligation to close

8.(b)

- If no cap on interest rate is inserted in the blank the Buyer's obligation will be to obtain a loan at prevailing rate based upon Buyer's creditworthiness.
- Buyer shall keep Seller fully informed of loan application and Loan Commitment status.
- If Seller terminates the Contract in writing (due to Buyer's failure either to waive the financing contingency or failure or notify Seller of receipt of Loan Commitment) there is no longer a requirement that Buyer be given 3 days to waive the financing.
- If Buyer notifies Seller in writing that he obtained Loan Commitment but fails to close the transaction, Buyer will lose Deposit unless: Seller defaults; the appraisal is too low to support the loan; the loan conditions related to the Property aren't met (unless waived in the contract); or the loan isn't funded due to the financial failure of lender

## **9. Closing Costs; Title Insurance; Survey; Homeowner's Warranty; Special Assessments**

### Closing Costs

#### 9.(a) & (b)

- Lists Seller' and Buyer' costs
- Now includes HOA/Condo association estoppel fees to be paid by Seller
- Provides for escrowing 125% of Seller's Maintenance Requirement if work not completed prior to Closing
- HOA /Condo application fees and transfer fees to be paid by Buyer

### Title Insurance

#### 9.(c)

- If Seller has an existing owner's policy of title insurance, Seller is to furnish Buyer a copy of same 5 days after Effective Date.
- Owner's Policy and Charges is a defined term that includes costs of the premium for the owner's title policy, charges for owner's policy endorsements, title search and closing services.
- First checkbox (which provides Seller to pay for Owner's Policy and Charges) now specifies that Buyer is to pay charges for closing services related to Buyer's lender's policy, endorsements and Loan Closing.
- New check box for Miami-Dade/Broward Regional contracts for Seller to provide title evidence (prior owner's policy or other) and update of the evidence. Seller is to pay for the tax and lien search at a cost not to exceed a negotiated amount (\$200 if left blank) and Buyer to pay post-closing title evidence update and premium for Buyer's owner's policy. (This language was

previously contained in the Evidence of Title (south Florida contracts) Rider

9.(d)

- Survey may be obtained by Buyer at Buyers expense five days prior to Closing. If Seller has a survey covering the property a copy should be furnished to Buyer and Closing Agent within 5 days after Effective Date.

Special assessments

9.(f)

- Special assessments (by public bodies, not condo or hoa special assessments) that are certified, confirmed and ratified or where improvements are substantially completed are to be paid by Seller. (Previously, there were boxes to be checked regarding who would pay any assessment, including pending assessments or those to be paid in installments with default language that the Seller would pay at Closing if left blank.)
- Now check boxes are provided to indicate which party will pay for special assessments to be paid in installments and if boxes are not checked Buyer to pay installments due after Closing.
- The special benefit tax assessment/lien by a Community Development District (CDD) shall be treated as an ad valorem tax. (The cost of a special benefit tax assessment is not to be paid as if it was a special assessment.)

## **10. Disclosures**

10.(b)

- Provides that a Seller does not know of permits on the Property which were not properly closed out or any improvements made to the Property without required permits unless disclosed to Buyer in a written disclosure.

10.(d)

- Provides that Buyer may obtain a flood elevation certificate. Buyer may cancel by written notice within 20 days after Effective Date if the Property is in a special flood hazard area or coastal high hazard area and the finished floor elevation is below the minimum flood elevation

10.(j)

- Moved Johnson v Davis language here and moved other provisions that were previously in Standard W here too.

## **11. As Is Property Inspection Period, Right to Cancel, Access**

### **Property Maintenance**

- Seller's is to maintain the property in its condition as of Effective Date. (Maintenance requirement)

## **12. Property Inspection and Right to Cancel**

### **12.(a)**

- Buyer has negotiated period of time (if none inserted than 15 days) to have inspection made of the Property (defined as Inspection Period)
- During Inspection Period, Buyer has a free look and right to terminate by written notice.

### **Walk Through**

#### **12.(b)**

- Walk through inspection is to occur on the day prior to Closing Date or on the Closing Date as designated by the Buyer or Buyer's representative.
- Buyer or Buyer's representative can conduct the walk-through and a follow up walk through if one is necessary.

### **Seller's Assistance and Cooperation in Close-out of Building Permits**

#### **12.(c)**

- If permit remedies are necessary, Seller is to assist and cooperate in obtaining remedies, including signing consents, authorizations and providing documentation if there is any. However, Seller is not required to expend sums to remedy permit problems.

### **Assignment of Repair**

- At Buyer's option and cost, Seller will assign all repair, treatment warranties or contracts at Closing.

## **13. Escrow Agent**

- Funds will be disbursed by Escrow or Closing Agent subject to Collection.

## **14. Professional Advice; Broker Liability**

- Parties should obtain expert advice from qualified professionals and should verify information they receive about the Property. Limited indemnity and hold harmless provision for Broker under certain specified circumstances.
- Specifies broker does not reside on the Property (alter if necessary)
- Parties to pay their vendors whether the transaction closes or not

### **15. Default**

- If a portion of the Deposit is paid to Listing Broker upon default by Buyer, it will be divided equally between the Listing and Cooperating Broker provided the Cooperating Broker's portion shall not exceed the commission the Cooperating Broker would have received had the sale occurred.

### **16. Dispute Resolution**

- Dispute is a defined contract term.
- Deposit Dispute: Buyer and Seller will have 10 days after date of conflicting demands over the Deposit to resolve the Dispute, failing which, they will mediate pursuant to the Florida Rules for Certified and Court-Appointed Mediators with a mediator who is certified or has real estate industry experience.
- Other disputes: Buyer and Seller must mediate all non-deposit disputes in the same manner as Deposit disputes except there is no 10 day time-period to resolve these disputes before submitting the dispute to mediation.
- Litigation will resolve all disputes not resolved by mediation.

### **17. Attorney's Fees**

- The parties will split mediator's fee but each pay their own costs, expenses and attorney's fee in mediation.
- In litigation, the prevailing party will be entitled to attorney's fees. Previously, Broker was specifically included as a possible prevailing party.

## **Standards**

### **A. Title:**

- Language from Paragraph VII of the previous version of the contract was moved here.
- The blank line that previously existed in this paragraph was removed and now reads nothing prohibits the property from being used for residential purposes. The sentence which had the strike out through it which read in part, ....provided however that there are no violations of the foregoing of certain matters including zoning, land use restrictions or other governmental requirements... was omitted on this version.

### **B. Survey**

- Seller is to execute an affidavit of no change if applicable. If items specified in Standard A (i) (a) appear on the survey, are timely noticed to Seller, they will constitute title defects.

**D. Leases**

- Seller shall furnish to Buyer copies of Lease Information and income and expense statements for the preceding 12 months within 5 days after Inspection Period. (Previously it was 10 days before Closing and it didn't include the income and expense statements.). If this differs materially from what was represented by Seller, Buyer has 5 days after receipt to terminate the contract, but not later than 5 days prior to Closing (previously it was 5 days prior to Closing).

**F. Time**

- All time periods will be computed in calendar days (as in the previous contract ) but periods of 5 days or less do not automatically exclude Saturdays, Sundays or legal holidays. National legal holidays are those listed in 5 United States Code 6103.

**G. Force Majeure:**

- Allows for delay of performance of obligations in the event of force majeure (which is defined) for the time the force majeure exists. Force Majeure will include natural disasters, and some manmade disasters and causes not reasonably within the control of the Buyer or Seller. If extension goes 14 days beyond Closing then either party can terminate contract.

**I. Closing Location, Documents and Procedure**

- Disbursements of proceeds and recording the deed are subject to Collection of funds.

**K. Prorations**

- Includes special benefit tax assessments imposed by a CDD as an item to be prorated.

**L. Access to Property**

- Language from Standard X from previous version of the contract moved here. Provides that Seller will provide access to and utilities for Property for appraisals, inspections and walk-through upon reasonable notice.

**M. Risk of loss provision:**

- Tree loss limited to pruning and removal of damaged trees. If restoration isn't complete as of Closing Date, 125% of the estimate (up to cap) is to be escrowed at Closing

**N.1031 Exchange:**

- This language previously appeared in Standard Y.

**R. Riders; Addenda, Typewritten or Handwritten Provisions**

- This clause was relocated from the second page of the contract to the Standards.

**S. Collection or Collected**

- Checks must have become actually and finally collected in the Escrow Agent or Closing Agent's account.
- Closing may be delayed and disbursement of funds delayed by Closing Agent until such amounts have been Collected.

**T. Loan Commitment**

- There is a definition of loan commitment.

**U. Applicable Law and Venue**

- Contract specifies that Florida law applies in any contract interpretation
- The county in which the property is located is the place to resolve any disputes that arise.

**X. Buyer Waiver of Claims**

- Previously Standard Z. Language relocated here.

**Addenda**

- Some new addenda contained in the list. They include appraisal contingency, Short Sale, Arbitration, Defective Drywall, Housing for Older Persons, Licensee-Personal interest in Property, Lease Purchase/Lease option, Homeowner's Insurance (Note: Riders L and K are purposefully omitted because they are not needed for an as is sale.)

**New Paragraph: Counter Offer/Rejection**

- Check boxes to use if Seller counters Buyer's offer or rejects

**New Paragraph: Broker**

- Defines Broker as the Listing and Cooperating Broker
- Provides instruction to the Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in a cooperative brokerage agreement or separate brokerage agreement except that amount retained by Broker from the escrowed funds.
- States the contract shall not be used to modify the MLS offer of compensation