

SPECIMEN FORM

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**POSSESSION AGREEMENT**  
(Buyer Pre-Closing Possession)

THIS POSSESSION AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 199\_\_ by and between \_\_\_\_\_ ("Sellers") and \_\_\_\_\_, who reside at \_\_\_\_\_, who reside at \_\_\_\_\_ ("Buyers").

WHEREAS, Sellers and Buyers have entered into a Purchase and Sale Contract for Residential Property dated \_\_\_\_\_ (the "Contract"), whereby Sellers have agreed to sell and Buyers have agreed to buy certain real property and improvements located at \_\_\_\_\_ (the "Property"); and

WHEREAS, pursuant to the terms of the Contract, the closing thereunder is to occur on or about \_\_\_\_\_; and

WHEREAS, circumstances have now arisen whereby Buyers wish to enter into possession of the Property prior to the date of title transfer; and

WHEREAS, Sellers have agreed to permit Buyers to have possession of the Property upon the terms and conditions hereinafter described; and

WHEREAS, except as expressly modified by the terms hereof, the parties intend to transfer title to the Property pursuant to the terms of the Contract.

NOW, THEREFORE, for a good and valuable consideration, Sellers and Buyers covenant and agree as follows:

1. Buyers shall be permitted to enter into possession of the Property on \_\_\_\_\_, 199\_\_ at \_\_\_\_ o'clock [a.m.] [p.m.] Sellers grant Buyers the right to early possession solely as a convenience to Buyers and no tenancy shall be created thereby. As consideration for such temporary possession, Buyers shall pay Sellers rental [upon execution hereof] [on the first day of each month during the term hereof] [at closing] in the amount of \$\_\_\_\_\_ per [day] [month], which amount includes compensation for [real property taxes] [\_\_\_\_\_] for the Property, plus such additional charges relating to the occupancy of the Property as hereinafter described. [If this Agreement is effective on a day other than the first of the month, Buyers shall pay Sellers upon execution pro-rata rental for the remaining number of days for the first partial month of possession.]

2. The closing of title to the Property shall occur on or about \_\_\_\_\_, 199\_\_, at which time it is anticipated this Possession Agreement shall terminate. Closing adjustments (including real property tax adjustments unless specifically included as rental in paragraph 1 above) pursuant to the Contract will be adjusted as of the date of closing. If the closing shall fail to occur, for whatever reason, Buyers shall remain obligated to pay rent accruing during their period of occupancy of the Property.

3. While Buyers are in possession of the Property, Buyers shall be responsible for and pay all utility charges and service contracts, including but not limited to all refuse collection, gas, electricity, telephone, water and pure waters, cable and security system charges which are payable with respect to Buyers' use of the Property.

4. Buyers shall comply with the requirements of all laws, orders, ordinances, and regulations of any competent authority which shall impose any duty on Buyers with respect to their use or occupancy of the Property.

5. Buyers acknowledge that prior to their taking possession that they have had the opportunity to fully inspect the Property and they hereby waive any objections to closing based upon the condition thereof. This shall not be a waiver of any other rights or obligations under the terms of the Contract.

6. Buyers shall maintain the Property in good repair during their period of occupancy. Buyers shall promptly inform Sellers as to any structural repairs or other repairs the cost of which exceeds \$\_\_\_\_\_. Unless an emergency situation exists, Buyers shall not have any repairs made unless Sellers agree to them; in any event repairs shall be made at Buyers' cost. In the event that the Contract is terminated, through no fault of Buyers, Sellers shall reimburse Buyers for any structural repairs or repairs the cost of which exceeded \$\_\_\_\_\_ and which were either emergency repairs or approved by Sellers. Notwithstanding, Buyers shall be responsible for the cost of any repairs necessitated by damage resulting from their use of the Property during the term of this Possession Agreement.

7. Buyers shall not make any changes to the appearance of the Property during the term hereof without the prior written consent of Sellers. This prohibition includes, without limitation, the agreement by Buyers not to remove any carpeting, paint all or any portion of the interior or exterior of any structures, redecorate or remodel any portion of the property, remove any trees or landscaping or install any fencing. If Buyers do not comply with the terms of this paragraph, Buyers shall be fully responsible to Sellers for any resultant damages.

8. During the term of this Possession Agreement, Buyers shall insure the Property against fire with extended coverage endorsement in the amount of \$\_\_\_\_\_ and shall also carry a policy of insurance covering public liability, personal liability and contents, naming Sellers as additional insureds.

9. Sellers shall have the right to inspect the Property at any time upon reasonable notice.

10. The rent obligations of Buyers hereunder shall continue until Buyers vacate the Property, the Contract is terminated or until closing, whichever first occurs. Upon the transfer of title pursuant to the terms of the Contract, the obligations of Buyers under this Possession Agreement shall terminate.

11. Upon termination of the Contract, Buyers shall immediately vacate the Property. Notwithstanding the status of the Contract, nothing contained herein, however, shall impose any duty on Sellers, whether express or implied, to permit Buyers to remain in possession after \_\_\_\_ o'clock [a.m.][p.m.] on \_\_\_\_\_, 199\_, at which time the possessory interest created hereunder shall terminate.

12. Buyers shall pay all costs, including reasonable attorneys fees, incurred by Sellers in evicting Buyers from the Property upon a default hereof. Buyers agree that Sellers may

use summary legal proceedings to evict Buyers from the Property in the event it becomes necessary for Sellers to institute a legal action to evict Buyers.

13. Buyers shall deposit the amount of \$ \_\_\_\_\_ with Sellers' attorneys to be held as a security deposit to secure Buyers' obligations hereunder. The security deposit shall be placed in an "IOLA" attorney trust account. No interest shall be paid on such funds to Sellers or Buyers. If Buyers fully comply with the terms hereof, the security deposit shall be returned or credited against the purchase price at closing. If Buyers do not fully comply with the terms hereof, the security deposit may be used by Sellers to pay amounts owed hereunder by Buyers and the balance returned.

14. Buyers shall be in default hereunder should they fail to comply with any of the terms hereof. Upon Buyers' default, Sellers shall have the authority to commence a legal action to evict Buyers.

15. The rights of possession hereunder are personal to Buyers and may not be assigned, nor may the Property be sublet.

16. Any notices given pursuant to this Possession Agreement shall be made in writing, mailed first class registered, postage prepaid, or delivered, as follows:

(1) If to Sellers, to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) If to Buyers, to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The parties agree that notices hereunder may be given and/or received by their respective attorneys. Copies of any notices sent to a party hereunder shall likewise be forwarded to that party's attorneys.

17. If any of the terms and provisions of the Contract conflict with any of the terms and provisions of this Possession Agreement, the terms and conditions of this Possession Agreement shall prevail. Notwithstanding, the parties expressly reserve all rights and remedies available under the Contract unless otherwise modified by this Possession Agreement.

18. Buyers agree to indemnify and hold Sellers harmless from any liability incurred as a result of Buyers' possession of the Property.

19. The parties mutually waive trial by jury in any action or proceeding commenced by them concerning the terms of this Possession Agreement. In any proceeding by Sellers to obtain possession of the Property, Buyers shall have no right to assert any counterclaims or set-offs.

20. This Possession Agreement represents the complete agreement of the parties concerning the granting of possession to the Property. No verbal agreements or promises will be binding on either party unless such agreements are in writing and signed by both parties.

21. This Possession Agreement shall inure to the benefit of and bind the heirs, successors and representatives of the parties hereto, except as herein otherwise provided.

22. This Possession Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunder set their hands as of the \_\_\_\_ day of \_\_\_\_\_, 199\_.

Witness:

\_\_\_\_\_  
\_\_\_\_\_

Sellers:

\_\_\_\_\_

Witness:

\_\_\_\_\_  
\_\_\_\_\_

Buyers:

\_\_\_\_\_