

COMPREHENSIVE RIDER TO THE RESIDENTIAL CONTRACT FOR SALE AND PURCHASE

A. RIDER A - CONDOMINIUM ASSOCIATION DISCLOSURE:

1. **Requirements of the Florida Condominium Act:** The Condominium Association Disclosure is designed to comply with the requirements of the Florida Condominium Act (more specifically, Section 718.503, Florida Statutes). The disclosures in Paragraph 5 of the Rider are required by law to be included in the contract.

2. **Completing the Disclosure:** The agent should contact the condominium association or its management company for the purpose of obtaining the information necessary to complete the disclosure and to obtain a current copy of the condominium documents described in Paragraph 5(b) and the governance form described in Paragraph 10 of the Rider.

3. **Rescission Period:** If the disclosures set forth in Paragraph 5 of the Rider are not included in the contract the buyer may cancel at any time prior to closing (Section 718.503(2)). In addition, the buyer has a right to cancel the contract within 3 days following the receipt of all of the condominium documents required to be delivered. A prudent listing agent will obtain these documents in advance of any contract so that they are readily available for delivery to the buyer.

CAUTION: A buyer of a condominium unit may have an easy exit from the contract if current copies of the required condominium documents have not been delivered. An agent taking on the task of obtaining and delivering documents should insure that the documents include all amendments to the declaration, by-laws and rules/regulations.

CAUTION: Do not check the second box in Paragraph 6 of this Rider. The 3-day rescission right of the buyer following delivery of condominium documents cannot be waived and is not dependent upon a buyer's request for delivery of documents.

CAUTION: Condominium documents are usually delivered to the buyer after the execution of the contract. The receipt acknowledgment in Paragraph 7 can be completed if the documents are delivered prior to or concurrent with the execution of the Rider by the buyer. Otherwise, obtain a dated and signed written receipt from the buyer when delivery is made. The receipt should identify the documents being delivered. Florida courts have held that a signed written receipt is conclusive. A buyer signing a receipt cannot later contend that one or more documents were not delivered.

CAUTION: The governance form referred to in Paragraph 10 of the Rider is required to be delivered to the buyer pursuant to section 718.503, Florida Statutes. However, it is not one of the identified condominium documents contained in the rescission provisions of Paragraph 5 (probably due to legislative oversight). Avoid the issue by making sure that this form is part of the document delivery.

4. **Approval by the Association:** Most condominium associations are given the right under their declaration to approve the sale and lease of units. Inquiries should be made in advance as to the procedure for obtaining approval. Some governing documents provide that the association has a period of time within which to grant approval after the filing of an application and other required information. The closing date set by the parties should take into account the time necessary to obtain the approval. Notice that in Paragraph 1 of the Rider the seller is obligated to initiate the approval process within the time period specified and both the buyer and the seller are obligated to sign and deliver documents required by the association and use diligent effort to obtain the approval. Approval by the association is a condition of the contract and if approval is not obtained within the time period provided, the contract terminates.

5. **Special Assessments:** Paragraph 3(c) of the Rider requires the seller to disclose any pending or threatened special assessments. If prior special assessments have been levied but are payable in installments, the form offers an option allowing the buyer to assume the unpaid installments. Since special assessments are typically secured by a lien on the condominium unit, unless the buyer assumes the payment of the assessment, the seller is required to pay the assessment in full prior to or at the time of closing. The seller also remains responsible for the payment of any special assessments levied prior to closing. Paragraph 3 of the Rider also requires the seller to disclose any pending or anticipated litigation affecting the condominium.

CAUTION: A prudent buyer will review the financial statements of the association and fully investigate the possibility of future special assessments on the unit. Many condominiums in Florida suffered damage from the hurricanes occurring during the recent past. Because of uncertainty with respect to insurance claims, it was often difficult to determine a buyer's potential exposure to future special assessments relating to the repair or restoration of the condominium and its common elements. In this situation a buyer might consider requiring an escrow of funds to be disbursed for payment of such special assessments.

CAUTION: Section 3(c) addresses the responsibility for payment of levied and pending special assessments. However, it does not clearly address the responsibility for payment of a disclosed pending assessment. A "pending" assessment is defined as one which has appeared on an association meeting agenda or mentioned in the minutes of a meeting within the last 12 months prior to the Effective Date. If the seller discloses the assessment in Section 3(c)(i) but the assessment is officially levied by the association after closing, then, absent a special provision to the contrary, the payment responsibility will necessarily fall on the buyer. Curiously, under Section 3 (c) (iii), if the pending assessment is not disclosed, then the seller is obliged to pay the pending assessment in full at closing. That might be difficult if the assessment hasn't been levied prior to closing and the amount is unknown. Agents should determine whether a "pending" assessment situation exists and address payment responsibility with a special contract provision.

CAUTION: Prudent buyers and agents will closely examine the association budget and financial information with a focus on reserves. The Florida Condominium Act requires the annual funding of reserves, but the requirement can be waived, in whole or in part, by membership vote (See discussion in Section 7 below). Underfunded reserves suggest the probability of future special assessments.

6. Planned Communities: Occasionally a condominium may be part of a larger community which is governed by a homeowners association. The condominium unit may be subject to assessments imposed by multiple associations. In such a case, Comprehensive Rider B (Homeowners Association/Community Disclosure) must also be completed and attached to the contract.

7. Milestone Inspection; Turnover Inspection; Structural Integrity Reserve Study: The 2021 collapse of the Champlain Towers Condominium building in Surfside, Florida caught the immediate attention of the Florida legislature. The collapse revealed the possible existence of structural defects in aging condominium and cooperative buildings throughout the state. The current form of Condominium Rider requires delivery to a buyer of three types of reports required by new laws enacted in response to the Champlain Towers collapse.

(a) **Milestone Inspection Report:** F.S. Section 553.899 requires a structural inspection of any condominium or cooperative building, three stories or more, to take place before December 31 of the year in which the building reaches 30 years of age. Buildings reaching this age prior to July 1, 2022, must obtain a report prior to December 31, 2024. Buildings reaching this age after July 1, 2022, but before December 31, 2024, must obtain a report prior to December 31, 2025. The inspection must be conducted, and report prepared, by a licensed architect or engineer. The report is submitted to the local building department or other enforcement agency. The county or city may require repairs and remediation recommended by the report. The enforcement agency may also require the inspection/report for buildings reaching the age of 25 years if the building is affected by environmental conditions such as proximity to salt water. After the initial report, inspections/reports are required every 10 years thereafter. The report is required to be delivered to each unit owner in the condominium and become part of the official records of the association.

(b) **Turnover Inspection Report:** “Turnover” refers to the process by which the developer transfers control of the board of directors of the condominium association to the unit owners. For any condominium which was turned over after July 1, 2023, F.S. Section 718.301 (4) (p) & (q) requires that an inspection be conducted and a report prepared by a licensed architect or engineer or a certified reserve specialist or professional reserve analyst. The report includes a structural integrity reserve study attesting to required maintenance, condition, useful life and replacement costs of various components of the condominium property. The report becomes the basis for funding reserves which, beginning in 2025, are now mandatory with respect to certain elements of the building such as roof, load-bearing walls, etc.

(c) **Structural Integrity Reserve Study:** This inspection/report is required at least every 10 years following the creation of the condominium with respect to buildings of 3 or more stories. However, if an association existed prior to July 1, 2022, the report must be completed by December 31, 2024. The report is prepared by a licensed architect or engineer or a certified reserve specialist or professional reserve analyst. Like the Turnover Inspection Report, the purpose is to determine the mandatory reserves for repair and replacement of various elements of the building.

If any of these reports are required by the applicable statute, delivery of copies to a buyer of a condominium unit is required in the same manner as other condominium documents described in Section 5 of the Rider. Unless the reports are delivered more than 3 days prior to contract signing, the buyer has a right to void the contract at any time prior to 3 days (excluding Saturdays, Sundays and legal holidays) following delivery.

Caution: The new requirements for structural inspections and mandatory reserves have imposed a financial burden on many Florida condominium associations and unit owners. Until recently, unit owners could vote to waive funding of reserves and thereby minimize increases in regular maintenance assessments. Now, not only is periodic funding of reserves for certain components of the condominium property required, but associations must bring these reserves up to date. Associations have little choice other than to borrow money or levy special assessments to pay the cost of compliance. During this transition period, the projected amount of future special assessments could be uncertain at the time of a sale of a unit. For example, a Milestone Inspection or Structural Inspection Reserve Study may not have yet occurred. The agent should attempt to discover as much information as possible and disclose this information to the buyer. Post-closing escrow or other agreements regarding responsibility for payment of related special assessments may be necessary.

Note: As of beginning of 2025, the Florida Legislature is considering legislation providing relief to condominium associations from the financial burdens created by these inspections and mandatory reserves.

8. **Condominiums Created Within a Portion of a Building:** There are instances where only a portion of a building is submitted to the condominium form of ownership. For example, a building occupied by non-condominium commercial uses on the first floor and residential condominium units above. These configurations create issues concerning maintenance and operation, insurance, sharing of costs, etc. This disclosure directs the buyer to review the condominium declaration and other documentation addressing these issues.

B. RIDER B - HOMEOWNERS ASSOCIATION/COMMUNITY DISCLOSURE

1. **When Required:** This Rider is intended to meet the requirements of Section 720.401, Florida Statutes. It is applicable to both developers and sellers of properties which are or will be subject to recorded covenants and the control of an association. The disclosure requirement is not applicable to condominiums, cooperatives, time shares or mobile home rental parks unless those uses are located within a community which is subject to restrictive covenants and control by an association.
2. **Purpose of the Disclosure:** The purpose of the disclosure is to inform the buyer that the property being purchase is subject to the control of an association, the payment of assessments and to provide other general information concerning the community.
3. **Compliance/Rescission:** The disclosure is required by law to be delivered to a prospective purchaser before executing the contract. The language in bold print on the form is required to be included in the contract. Use of this Rider constitutes compliance with both requirements provided that the Rider is included with the original purchase offer. If the disclosure summary is not provided to the prospective buyer at or before execution of the contract the buyer has the right to cancel the contract by delivering to the seller or the seller's agent or representative written notice cancelling the contract. This cancellation notice must be delivered to the seller within 3 days after the receipt of the disclosure summary or prior to closing, whichever first occurs. The right to delivery of the disclosure cannot be waived but the right to the disclosure terminates at closing.
4. **Completing the Rider:** As is the case with the Condominium Association Disclosure Rider, the agent will need to determine, in advance, the amount of current regular assessments and special assessments, if any. If any recreational or other commonly used facility is subject to rent or land use fees, the amount of the obligation must also be disclosed.

5. Approval, Fees, Assessments & Fines:

- (a) If the community governing documents require approval of the buyer or the transaction, Part B.1 creates a contingency requiring approval within the time provided. If approval is not obtained, the buyer may elect to cancel the transaction. The seller is required to initiate the approval process within a default period of 5 days from Effective Date. The buyer pays application and related fees. Both buyer and seller are obliged to cooperate and use diligent effort to obtain timely approval. Governing documents often provide for a certificate of approval which is attached to the deed.
- (b) Many HOAs charge capital contributions and other fees as part of the approval process. Section B. 2 (a) is a disclosure of any application, contributions, membership, and other fees chargeable to the buyer.
- (c) Section B. 2 (b) provides that the seller shall pay any special and other assessments levied by the HOA either prior to the Effective Date or prior to closing. Such assessments which are payable in installments falling due after closing may be assumed by the buyer. **Notice that, unlike the Condominium Rider, “pending” assessments (discussed but not yet levied) are not addressed. The listing agent should investigate the existence of any threatened assessments and disclose these to any prospective buyer. Failure to disclose could be a material non-disclosure under Section 10 (j) of the contract.**
- (d) The Homeowner’s Association Act, Chapter 720, Florida Statutes, contains provisions permitting the HOA to impose fines on homeowners who violate restrictive covenants, rules and regulations. These fines, if not timely paid, can mature into recorded liens. A title/closing agent routinely obtains an estoppel certificate from the HOA or its management company. Any such fines should appear on the estoppel. Section B. 2 (c) requires the seller to pay these fines and the cost of obtaining estoppel certificates.

6. Delivery of Documents: Unlike condominiums, the seller is not required to deliver copies of restrictive covenants or other governing documents affecting the community. Restrictive covenants in planned residential developments typically contain a variety of use restrictions. A prudent buyer will review the restrictive covenants and other governing documents, including current financial statements of the association, prior to signing the contract.

C. RIDER C - SELLER FINANCING:

1. Purchase Money Mortgage: This Rider is intended to be used if Paragraph 8(d) of the contract is checked indicating that the seller will provide financing through a purchase money mortgage.

2. RIDER C - DODD-FRANK REQUIREMENTS:

- (a) DODD-FRANK: Rider C responds to regulations effective after January 10, 2014 adopted pursuant to the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”).
- (b) PRIVATE SELLERS SUBJECT TO FEDERAL REGULATION: There is a long history of federal regulation of banks and other institutional lenders particularly with respect to the mortgage financing of residential properties. Dodd-Frank extends this regulation, under certain circumstances, to private sellers of residential property who are providing purchase money financing to a buyer.
- (c). SELLER AS “LOAN ORIGINATOR”: In residential sales, the ability of a buyer and seller to freely negotiate the terms of seller financing has now been restricted by Dodd-Frank. Unless an exclusion

is available, a private seller may unwittingly become a “loan originator” under applicable federal laws and regulations and be subject to numerous requirements including licensing and compliance with the CFPB regulations.

- (d). **EXCLUSION FROM REGULATIONS:** Dodd-Frank offers sellers an exclusion from the regulations and avoidance of loan originator status if the seller and the terms of the financing meet the narrow requirements of either the “one-property exclusion” or the “three-property exclusion” as described in Rider C. The Rider describes these exclusions and then guides the parties into note and mortgage terms designed to create an exclusion. The three check-the-box choices are the only options available under Dodd-Frank that achieve exclusion status for the seller.

3. OBSERVATIONS:

- (a) As stated in Rider C, Dodd-Frank applies only to the seller who mortgage (first mortgage, second mortgage or otherwise) finances the buyer’s purchase of the seller’s residential property. The regulations do not apply to seller financing of commercial or other non-residential properties or vacant land.
- (b) The regulations do not apply if the buyer does not intend to occupy the residence.
- (c) The two exclusions are available only if the seller owns the property being sold and was not the contractor or builder of the residence in the ordinary course of business. Third party private lenders and contractor/sellers cannot qualify for these exclusions and therefore will be considered loan originators.
- (d) The one-property exclusion is available only to natural persons, estates or trusts. If the seller is an entity, only the three-property exclusion is available even if it’s an isolated sale of one property over a long period of time.
- (e) The one-property exclusion allows balloon notes. It would also permit interest-only installments and interest on maturity repayment terms.
- (f) The three-property exclusion prohibits balloon notes requiring that the debt be fully amortized over a period of time. Thus, any short term obligation would create large, perhaps unacceptable installment payments.
- (g) The three-property exclusion requires the seller to determine in good faith that the buyer has a reasonable ability to repay the loan. Criteria for making that determination can be found in Regulation Z Section 1026.43 (c). This requirement and the narrow debt repayment provisions of the three-property exclusion will likely encourage sellers in this category to engage the services of licensed loan originators, an approach frequently employed by volume investors and builders.

4. CONSEQUENCES OF NON-COMPLIANCE: Failure to meet the requirements for exclusions or otherwise comply with the Dodd-Frank regulations could result in seller forfeiture of down payments, interest, finance charges and the buyer/borrower having additional defenses to a foreclosure action and counterclaims for damages, and civil penalties of up to \$1,000,000 per day.

CAUTION: The Dodd-Frank regulations and exclusions require specified debt repayment terms. The typical seller will not be familiar with Dodd-Frank. The broker agent should direct any seller providing financing to a buyer to a qualified real estate attorney prior to execution of the contract. The broker/agent who produces a contract providing for seller financing that is non-compliant may be sharing the consequences with the seller.

5. Second Mortgage: If the purchase money mortgage is a second mortgage the Rider provides that the principal balance of the first mortgage being obtained by the buyer shall not exceed the amount of set forth in Paragraph 2(c).

CAUTION: Institutional lenders typically have down payment requirements which cannot be financed through a purchase money second mortgage provided by a seller. A purchase money second mortgage should be fully disclosed to any institutional first mortgage lender.

6. Make the Mortgage and Note Part of the Contract: See the discussion under Financing relating to purchase money mortgages. This Rider provides only the financial terms of the purchase money mortgage and note and does not address other provisions that would be included in the mortgage and note. To avoid pre-closing disagreements the form of mortgage and note should be prepared in advance and attached as an exhibit to the contract.

D. RIDER D - ASSUMPTION OF EXISTING MORTGAGE(S):

1. Assumption: This Rider should be used whenever a buyer is assuming an existing mortgage on the property. An assumption is selected by checking the box in Paragraph 8(c) of the contract. As previously discussed, assumption of existing institutional mortgages is rarely permitted. (See discussion under Financing). Existing mortgages held by non-institutional lenders and private parties are generally assumable absent provisions in the loan documents restricting or prohibiting assumption.

2. Estoppel Letter: The Rider directs that a statement be obtained from a holder of the existing mortgage reciting the principal balance, method of payment, interest rate and status of the mortgage. This is commonly known as an “estoppel letter” and is intended to provide assurances to the buyer relating to the principal amount due and absence of any defaults. Before signing a contract which provides for an assumption of an existing mortgage, a prudent buyer will examine the existing mortgage and note (and any other loan documents) to determine whether the loan documents contain such provisions as: (a) restrictions on assumption or requirements for approval, (b) payment of assumption fees and (c) prepayment penalty.

3. Formalities for Assumption: An existing mortgage can be assumed by including, in the deed, a statement to the effect that the property is being conveyed subject to the existing mortgage “...which mortgage the grantee assumes and agrees to pay.” Such an assumption creates personal liability on the part of the buyer to the holder of the assumed mortgage and note. The seller is not released from liability by virtue of the assumption. Institutional mortgages are typically assumed by the execution of an assumption agreement under the terms of which the buyer becomes liable on the note and mortgage.

E. RIDER E - FEDERAL HOUSING ADMINISTRATION (FHA) / US DEPARTMENT OF VETERANS AFFAIRS (VA):

This Rider contains numerous provisions which are unique to a transaction involving FHA or VA financing. These federal guaranteed loans may require repairs to the property as a condition to a loan closing. They also permit seller contributions to repair costs and, within prescribed limits, buyer's closing costs. If VA or FHA financing will be involved in the transaction, use this Rider.

F. RIDER F - APPRAISAL CONTINGENCY:

1. Purpose of Rider: The Rider provides that the buyer, at the buyer's expense may obtain a written appraisal for a licensed Florida appraiser. If the appraised value is less than the amount inserted into the

blank (or the purchase price if no amount is filled in) the buyer has 3 days after the inserted date (by written notice to the seller) to deliver a copy of the appraisal and cancel the contract or waive the contingency. Failure to deliver the appraisal and deliver notice of cancellation results in a waiver of the contingency.

G. RIDER G — SHORT SALE APPROVAL CONTINGENCY:

1. **Short Sale:** During the 2007-2009 recession and for several years thereafter, the residential real estate market suffered declining values. The recession was preceded by a housing bubble lasting several years which was fueled by market hyping, frenzied construction, loose lending practices and low interest rates. When the bubble inevitably burst, many homeowners had negative equity in their homes—their mortgage indebtedness exceeded the market value. This and other factors led to a large number of bank failures and foreclosures across the country. This Rider is a product of those times. It is suitable for a distressed sale transaction. It conditions the seller's obligation to close on a successful effort to convince a mortgagee lender to accept less than the full amount due under the mortgage and note and thereby allow a closing to occur.

2. **Multiple Liens:** Section 1 of the Rider recognizes that there may be more than one mortgage encumbering the property. Therefore, it requires short sale approval by all lien holders. The existence of a second mortgage, particularly when held by a lender other than the first mortgagee can frustrate the effort to obtain approval. The most common form of a second mortgage lien is a home equity mortgage. Depending on the amount of the purchase price, the value of the collateral held by the second mortgagee may be zero. Negotiations often occur between the first and second mortgagees and the effort to complete a short sale occasionally fails because the second mortgagee refuses to accept nominal payment.

3. **Choice of Contract:** Most short sales involve the use of the As-Is Form. This recognizes that the seller is often financially unable to meet the repair and remediation costs imposed by the Standard Form.

4. **Short Sale Approval:** Section 1 of this Rider defines "Short Sale Approval" as constituting (1) the lender's approval of the purchase price, terms of the contract and the HUD-1 Settlement Statement, (2) the lender's agreement to accept payment of an amount less than the balance due on the mortgage loan and (3) the lender's agreement to satisfy the mortgage upon the receipt of the reduced pay off amount. In addition, Section 1 specifically provides that if short sale approval does not include a waiver or complete release of the seller from deficiency liability then it is deemed not to be a short sale approval. Lenders will typically require a proforma HUD-1 Settlement Statement reflecting the net proceeds payable to the seller which will be available to the lender for payment of the loan. Lenders typically insist that the seller receive no proceeds or other benefits from the sale. The lender will also require an appraisal and the submission of financial information from the short sale seller. A seller with an impressive net worth is unlikely to be released from deficiency liability.

5. **Application for Short Sale Approval:** Section 2 imposes a deadline by which the seller is required to submit the required application and requested documents to the seller's lender. A cottage industry of facilitator companies has sprouted and many sellers, as well as brokers, engage the services of these companies to assist in the short sale approval process and negotiate settlements with lenders.

6. **Keeping the Parties Advised:** Section 3 is a direction from the seller authorizing the lender to provide information concerning the status of the short sale approval to the buyer, buyer's broker and the closing agent. Absent such authorization confidentiality considerations would inhibit the lender from sharing such information. As a practical matter many lenders refuse to honor this authorization in the contract and require a separate signed borrower authorization.

7. Deadlines/Termination: The time necessary to obtain a short sale approval differs from lender to lender. Prior to execution of the contract, an inquiry of the lender may give the seller and agent an idea as to the time it will take to obtain a short sale approval (or disapproval). The deadlines and time periods inserted in this Rider should be consistent with such estimates and preferably allow for additional time. Under the provisions of Section 4 of the Rider if the short sale approval is not delivered to the buyer within the prescribed time period buyer and seller are given the right to terminate the contract by written notice. Section 4 further provides for an automatic termination of the contract if the short sale approval is not delivered to the buyer within 30 days following the Short Sale Approval Deadline, in the case where neither the buyer nor the seller has provided an earlier notice of termination.

8. Time Periods: Section 5 modifies the definition of Effective Date set forth in Paragraph 3(b) of the contract. Initial deposits and calculations of the Short Sale Approval Deadline are measured from the Effective Date as defined Paragraph 3(b) of the contract. All other time periods are measured from the date that buyer receives the short sale approval.

CAUTION: The use of this Rider with the As-Is Form may create an undesirable situation for the seller. If the inspection period (see Paragraph 12(a)) commences when short sale approval is obtained, it means that the buyer has a discretionary right to cancel the transaction after short sale approval. If cancelled, the short sale approval is meaningless and the transaction fails. The seller will have expended time, effort and expense in seeking the short sale approval. The only benefit derived by the seller is the experience and possibly some idea as to what the lender is willing to accept. This may be useful in subsequent short sale attempts. A seller might consider negotiating a provision that would require the inspection period to commence as of the effective date of the contract as opposed to waiting until the short sale approval is obtained. This would eliminate the buyer's option to cancel after short sale approval is obtained.

9. Closing Date: A blank is provided for inserting the closing date. This is expressed in terms of a number of days following receipt of the short sale approval. If not completed, this blank defaults to 45 days. The agent should take into account the possibility that the short sale approval may contain additional conditions that will take time to satisfy following the approval.

10. Back-up Offers: Section 7 offers two choices regarding the seller's right to accept back-up contracts. The first option prohibits the seller from accepting back-up offers and the second option permits the seller to accept. In the event neither box is checked the provision makes option (a) (seller prohibited) applicable.

CAUTION: A back-up offer is an offer submitted by a third party which is contingent upon the failure of the current transaction to close. In a short sale context the receipt of a back-up offer of a higher purchase price may need to be disclosed to the lender considering the short sale application and could affect the lender's decision. If a buyer has the option to cancel the contract pursuant to Paragraph 12(a) exercisable after the short sale approval it is reasonable for a seller to want to solicit and accept back-up offers.

11. Acknowledgments: Buyers and sellers are typically unfamiliar with short sales in general and the process in particular. The acknowledgment contained in Sections 8 and 9 is designed to discourage unreasonable expectations on the part of the parties. Short sales can have adverse income tax consequences for sellers. The seller is advised in Section 8 to consult with tax and legal counsel for advice on such matters. Section

9(b) expresses the fact that neither the buyer nor the broker has the ability to control the short sale approval process and therefore will not be liable for delays, costs and expenses or the subsequent refusal of the lender to complete the short sale after receipt of the short sale approval.

12. Foreclosure Sale: It is not unusual for a mortgage foreclosure proceeding to be pending at the time a short sale approval is requested. Typically, foreclosing lenders will not delay the foreclosure process while they consider an application for short sale approval. Section 10 provides that a foreclosure sale occurring prior to the short sale approval and closing will terminate the contract. Prior to contract, a prudent agent will investigate the status of any pending foreclosure proceedings and determine whether there is sufficient time to obtain short sale approval.

H. RIDER H - HOMEOWNERS/FLOOD INSURANCE:

A buyer concerned about the cost of homeowner's and flood insurance coverage can, by using this Rider, condition his/her obligations under the contract on being able to obtain homeowner's flood insurance at a specified cost. This Rider is more appropriately used with the Standard Form. If the As-Is Form is being used, the buyer should investigate the cost of insurance during the Inspection Period. A seller accepting this condition will want to limit the time period so that the contingency is disposed of quickly.

I. RIDER I—MOLD INSPECTION:

Previously, the Contract provided the simple disclosure concerning mold in Section 10 (c). Under Section 12 there was no clear right to object and require the seller to remediate unless the mold condition was related to water leaks or water damage. Rider I should be used in any case where the possibility of mold contamination exists. Under this Rider, the buyer may obtain a Mold Inspection within the prescribed period. If the cost of remediation exceeds the amount recited in the Rider, the buyer may cancel by giving notice within the prescribed period. Similar to WDOs, the seller does not have the option of paying the excess costs.

J. RIDER J - INTEREST BEARING ACCOUNT:

In those situations involving larger deposits and/or longer time periods for closing, the buyer or seller may want the Escrow Agent to place the deposits into an interest bearing account. The interest earned on the deposits is typically paid to the buyer but this can be a subject of negotiation. If this Rider is used, the Escrow Agent should consider depositing the funds in FDIC insured accounts. A space is provided for inserting a fee payable to the Escrow Agent.

K. RIDER K - AS-IS:

Rider K will convert the Standard Form into the As-Is Form. Essentially, the Standard Form is modified in a manner such that it becomes an As-Is Form. A better approach is to use the As-Is Form in the first place.

L. RIDER L - RIGHT TO INSPECT AND RIGHT TO CANCEL:

1. Purpose of Rider: Cross references in this Rider are made to the Standard Form and therefore this Rider should only be used when the contract is the Standard Form. As discussed, this Rider combines the inspection/cancellation provisions of Paragraph 12(a) of the As-Is Form with the repair/remediation obligations of the seller contained in Paragraph 12 of the Standard Form.

2. **Termination:** The buyer is given a specified time period (default time 15 days) within which to conduct inspections. Similar to the provisions of Paragraph 12(a) of the As-Is Form, the buyer may cancel the contract at the buyer's discretion prior to the end of the "Right to Inspection Period."

3. **No Cancellation:** If the buyer fails to timely terminate the contract prior to the specified deadline the provisions of Paragraphs 12(b) (c) and (d) become applicable provided:

- a. The buyer has conducted inspections in the manner required by Paragraphs 12(b) (c) and (d); and
- b. The buyer has timely delivered to the seller prior to the specified deadline the reports and notices required by Paragraph 12 of the Standard Form.

CAUTION: A buyer under a contract utilizing Rider L should be advised to conduct inspections which meet the requirements of Paragraph 12 of the Standard Form. Otherwise, the seller may not be obligated under Paragraph 12 to conduct repairs and remediation.

M. RIDER M - DEFECTIVE DRYWALL:

1. **Defective AKA Problematic Drywall:** Florida and several other states have previously experienced a toxic building condition arising from the installation of Defective Drywall which, among other things, has caused health problems for the occupants of the residence. The first Section of this Rider describes these adverse conditions. In general, Defective Drywall has been discovered in homes and other structures built after the year 2000.

2. **Representation:** Section 1 of this Rider is a representation by the seller to the effect that the seller has no actual knowledge of a Defective Drywall condition. If the seller has any knowledge, the seller is required to describe such information and available documents pertaining to the Defective Drywall.

3. **Inspection:** Section 2 of the Rider offers two check-the-block options, the first being a waiver by the buyer of an opportunity to conduct a risk assessment or inspection. The second option provides for an inspection of the property by a home inspector, licensed contractor or other licensed professional. The inspection is for the purpose of determining the presence (or absence) of Defective Drywall. A blank is provided for inserting a remediation cost limit, the default amount being \$500.00. There is no guidance as to how the cost estimate is obtained but the inspector should be able to provide a rough estimate. If the removal/replacement cost estimate exceeds the limit the buyer is given a right to cancel by giving written notice to the seller before the end of the specified inspection period. If neither box is checked the provisions defaults to Option (b) (inspection).

CAUTION: An agent using this Rider should insert a fairly low amount as the removal/replacement limit or insert no dollar amount and allow the \$500.00 default limit to apply. Experience with defective drywall situations has indicated that in most cases a complete removal of all drywall in the residence is necessary.

N. RIDER N - COASTAL CONSTRUCTION CONTROL LINE:

The Florida Department of Environmental Protection has established a Coastal Construction Control Line ("CCCL") along coastal areas of the state. There are restrictions and permitting requirements applicable to land areas lying seaward of the CCCL. If the property is either partially or totally seaward of the CCCL then the seller, at or prior to closing, is required to provide an affidavit or a survey delineating the location

of the CCCL on the property. The Rider allows the buyer to waive this requirement by checking the appropriate box. Special building codes and requirements also apply if the property is in a Coastal Building Zone and notice of this included in this Rider.

CAUTION: This Rider is intended to comply with statutory requirements regarding notification to the buyer. If a property is subject to the CCCL, the failure to use this Rider can be regarded as a material non-disclosure under Paragraph 10(j) of the contract. If an oceanfront home has improvements constructed seaward of the CCCL the buyer should investigate whether these improvements were properly permitted by local and state agencies. As is the case with non-conforming structures, state and local laws and regulations may limit the ability of a property owner to replace and restore improvements seaward of the CCCL if the improvements are seriously damaged by casualty.

O. RIDER O - INSULATION DISCLOSURE FOR NEW RESIDENCE:

See the discussion under Paragraph 10(e) (Energy Brochure) in this manual. This Rider is required in those cases involving the sale of new residential property.

P. RIDER P - LEAD BASED PAINT DISCLOSURE:

See the discussion under Paragraph 10(f) of the contract in this manual. This disclosure is required to be included in all contracts involving the sale of any residential housing built prior to 1978 subject to certain narrow exceptions set forth in 42 U.S.C. Section 4852(d). The disclosure is also required in leases of any such residential property for a term of exceeding 100 days. If the seller has any knowledge of any lead based paint or lead based paint hazards, the seller must so disclose and also furnish buyer with all records and reports pertaining to the condition. The seller may also, by checking the box, disclose that the seller has no knowledge or records pertaining to such condition. In addition to the disclosure, the law requires the delivery of a pamphlet published by the Federal Department of Housing and Urban Development and the Environmental Protection Agency. The buyer is allowed a 10 day opportunity to conduct a risk assessment or inspection or alternatively, the buyer may waive this right. The Rider requires the disclosure to be signed by agents confirming that the agents have informed the seller of the seller's obligations under the applicable federal statute.

CAUTION: Rider P is designed to comply with federal law which requires disclosure and an opportunity to conduct an inspection and risk assessment. This Rider does not impose any obligation on the seller to remediate a lead-based paint condition. In addition, the buyer is not given a right to cancel (unless the As-Is Form is being used and the inspection is conducted during the inspection period). There are civil and criminal penalties under the federal law for violation and these penalties can be applied to agents. Therefore, care should be taken to insure that in those cases where the disclosure is required, Standard P is properly completed and made a part of the contract.

Q. RIDER Q - HOUSING FOR OLDER PERSONS:

The Federal Fair Housing Act contains certain exemptions for housing which is restricted to older persons. Many condominiums and other developments seek to qualify for this exemption. The listing agent should determine whether the condominium or development is age restricted, make this information available to the buyer and other agents and include Rider Q as part of the contract.

R. RIDER R - REZONING CONTINGENCY:

As previously discussed, the Standard Form is not well suited for use in connection with the purchase of non-residential properties. The As-Is Form is better suited. This Rider might be used in those situations where a larger vacant parcel is being purchased, perhaps for residential development, and a change to the local comprehensive land use plan and zoning ordinances must be obtained in order to develop the property. By filling in the blanks, the parties can identify the land use and zoning categories being sought and provide for deadline for obtaining the desired zoning and land use changes. The Rider is expressed in terms of a contingency meaning that failure to obtain the land use changes within the time specified allows either party to cancel the contract. A prudent agent will encourage the parties involved in such a transaction to engage legal counsel with experience in land use and real estate law.

S. RIDER S - LEASE PURCHASE/LEASE OPTION:

This Rider apparently contemplates that the nature of the transaction is a lease with an obligation or an option to purchase the property. This concept is somewhat convoluted in the sense that the parties are signing a contract for sale and purchase but are actually negotiating a lease/purchase/option agreement. Typically, parties involved in such a transaction will execute a lease which contains a provision for either an obligation or option to purchase the property. A copy of the purchase and sale agreement governing the terms of the purchase would be attached to the lease. On the other hand, assuming that the contract to which this Rider is attached adequately covers the terms of the purchase (if an option, when and how the option is exercised) then this Rider requires the parties to negotiate the terms of the lease. The Rider also provides options as to which party (or both) will pay the attorney's fees relating to the preparation of the lease purchase or lease option agreement.

CAUTION: It is difficult to understand the practical purpose of Rider S. The form suggests that the primary transaction is a lease, not a sale. A purchase and sale contract is ancillary to the lease and is typically attached to a lease as an exhibit. Parties contemplating a lease/purchase or lease with option to purchase should be referred to a competent real estate attorney.

T. RIDER T - PRE-CLOSING OCCUPANCY BY BUYER:

As previously discussed, permitting the buyer to take possession of the property prior to closing presents special problems and risks which need to be addressed. If early possession is agreed upon this Rider should be used. The Rider makes the obligations of the parties contingent upon reaching agreement on the terms of a written lease or similar occupancy agreement. Some basic terms of the Pre-Closing Agreement are included in the Rider but other terms and provisions need to be negotiated. The Rider contains a deadline (default deadline is 10 days) within which to negotiate, prepare and deliver a mutually agreeable Pre-Closing Agreement. If the parties fail to reach agreement within the time limit, then either party may terminate the contract. Notice that by taking early possession, the buyer is essentially accepting the property "As-Is" except for deficiencies reported to the seller under Paragraph 12 prior to taking occupancy.

CAUTION: A seller should be wary of allowing early occupancy. Insurance coverage issues may arise. The buyer may take possession of the property and later default under the contract. The same problems can arise where the buyer seeks permission to store furniture and other belongings on the property prior to closing. These early occupancy situations should be avoided if possible. Notice that if the parties are unable to reach agreement as to an acceptable form of Pre-Closing Agreement either

party may cancel the transaction. The buyer is not given the ability to waive the contingency. Unless the seller considers early occupancy by the buyer as an essential, inducing term of the contract the buyer should have a right to waive the contingency and take possession at the time of closing. It is suggested that the buyer and seller be given a short period of time (e.g., 10 days) within which to reach an agreement on an acceptable form of Pre-Closing Agreement. Satisfying a contingency at an early stage of the transaction increases the probability of a successful closing.

U. RIDER U - POST-CLOSING OCCUPANCY BY SELLER:

This Rider is similar to Rider T (Pre-Closing Occupancy by Buyer). However, there is less risk in allowing the seller to retain possession of the property following closing as compared to allowing early occupancy by a buyer. In effect, the buyer is simply taking the seller on as a tenant. This Rider creates a contingency conditioning the performance of the parties upon entering into a mutually acceptable written lease or similar occupancy agreement failing which either party may cancel the contract. The term of the Post-Closing Agreement and rental amount are provided for in the Rider. Other terms and provisions of the Post-Closing Agreement need to be negotiated and reduced to writing. The parties should be advised to seek competent legal assistance for the purpose of preparing the Post-Closing Agreement.

CAUTION: Similar to Rider T, Rider U allows cancellation by either party if the terms of a mutually acceptable Post-Closing Agreement are not agreed upon within the time limit. The Rider seems to presume that the Post-Closing Agreement is an inducing benefit to the buyer. The seller is not given an opportunity to waive the occupancy arrangement and proceed to a closing. Post occupancy by the seller may be simply a matter of convenience which the seller would be very willing to waive in order to allow the transaction to close. Note also that the time limit for reaching an agreement on a Post-Closing Agreement is described relative to the closing date. It is recommended that the parties be given a short period time (e.g., 10 days) within which to reach agreement on the Post-Closing Agreement form failing which either party can cancel. Removing a contingency at an early stage in the transaction enhances the probability of a closing taking place.

V. RIDER V - SALE OF BUYER'S PROPERTY:

In a buyer's market, a seller may be more willing than usual to accept a contract which is contingent upon the sale of other property owned by the buyer. Rider V offers a check-the-box option indicating whether the buyer's property is presently under contract. If the buyer's property is not under contract the seller may be less willing to accept such a contingency. The buyer's obligations are contingent upon the closing of the buyer's property by a specified deadline to be inserted in the Rider. If a contract on the sale of the buyer's property presently exists, the deadline should correspond to the date that the closing on the buyer's property is scheduled and allow some additional time for possible delays. If the transaction on the buyer's property fails to close, the buyer is given a 3 day period within which to deliver notice cancelling the contract. Failure to timely deliver notice results in a waiver of the contingency. Provisions are included which require the delivery of copy of the contract on the buyer's property to the seller. A prudent seller considering an offer of this type where the buyer's property is presently under contract would review the buyer's contract prior to execution of the contract. The buyer's contract may itself contain contingencies. By reviewing the contract in advance, the seller should be able to evaluate the probability of a successful closing on the sale of the buyer's property.

W. RIDER W - BACK-UP CONTRACT:

A back-up contract is occasionally used in a situation where the property is currently under contract to another buyer. The buyer under a back-up contract becomes obligated to purchase the property only if the prior contract fails to close or is otherwise terminated. If the prior contract successfully closes, the back-up contract is terminated. Under this Rider, the buyer can terminate the back-up contract by written notice given to the seller at any time prior to the seller delivering notice to the buyer that the prior contract has been terminated. Typically a seller will not want to reveal the terms of the primary contract to the back-up buyer. A deadline date for delivering a notice of termination of the primary contract is provided in this Rider.

CAUTION: Allowing the seller to accept back-up contracts poses some risks for the buyer under the primary contract. A seller who has accepted a back-up contract may not be able to negotiate issues arising prior to the closing of the transaction. For example, an agreement on the part of the seller to extend the closing date may create a default under the terms of the back-up contract. A prudent seller will require provisions in the back-up contract which allow the seller to make concessions and otherwise be flexible in an effort close on the primary contract. This is tough sell for a buyer who is incurring time, effort and expense in the form of inspections, loan applications, etc. Use of this Rider will be uncommon in buyer's market situations.

X. RIDER X - KICK OUT CLAUSE

A kick out clause is occasionally used in those situations where the contract contains conditions to the buyer's performance and there is some uncertainty as to whether the conditions will be satisfied. Under this Rider, the seller continues his efforts to market the property and enter into bona fide back-up purchase contracts with third parties. If a back-up contract is entered into a copy of the contract (with the identity of the back-up buyer and purchase price deleted) is given to the buyer. The buyer then has 3 days from receipt of the back-up contract within which to make an additional deposit (as prescribed) and waiving all contingencies failing which the contract is cancelled.

Y. RIDER Y - SELLER'S ATTORNEY APPROVAL:

This is a simple contingency clause allowing the seller to cancel the contract if the seller's attorney disapproves the contract. The termination is exercised by delivering written notice to the buyer prior to the specified deadline.

Z. RIDER Z - BUYER'S ATTORNEY APPROVAL:

Similar to Rider Y, this is simple contingency making the buyer's performance contingent upon the buyer's attorney approving the contract. If the buyer's attorney disapproves the contract the buyer may cancel the contract by delivering written notice to the seller prior to the specified deadline.

AA. RIDER AA—LICENSEE DISCLOSURE OF PERSONAL INTEREST OF PROPERTY:

Agents are required to reveal any interest which they have in the transaction or the property. This Rider is designed to meet that requirement.

BB. RIDER BB—BINDING ARBITRATION:

It is commonly believed that arbitration offers a speedy and less costly alternative to litigation. This is not always the case. Parties to a contract where arbitration is selected should be advised as to the following:

- a. A court may get involved in enforcing arbitration orders but otherwise there is no effective appeal from an arbitration order.
- b. Under this Rider, each party bears their own attorney's fees and costs. Under Paragraph 17 of the contract in litigation, the prevailing party is entitled to recover such fees and costs from the non-prevailing party.

CC. RIDER CC—MIAMI-DADE COUNTY SPECIAL TAXING DISTRICT DISCLOSURE:

This Rider seeks to comply with a section of the Miami-Dade County ordinances which require a disclosure to buyers of residential property. The disclosure is that the property is in one or more special taxing districts which impose special assessments included on the annual property tax bill. Information required to be disclosed includes the name of the district and types of services or improvements provided by the district. The agent should make this determination prior to contract. The existence of assessments imposed by these taxing districts can be determined by reviewing the tax bill or TRIM notice for the property.

DD. RIDER DD—SEASONAL AND VACATION RENTALS AFTER CLOSING:

Short term vacation rentals in Florida have become increasingly popular thanks to the emergence of online sites such as Vrbo, Airbnb, booking.com, etc. This Rider has provisions which are similar to commercial contracts involving the sale of investment properties. The Rider addresses only rental agreements which are entered into after the Effective Date. Any existing rental agreements providing for occupancy after closing are governed by Paragraph 6 (b) of the contract. The check the box option either prohibits or allows the seller to enter into short term rentals after the Effective Date. If allowed, a second check the box option requires either that the buyer must approve the leases or provides that no approval is necessary. If the property is managed by a property management company, the last section of the Rider provides for delivery of a copy of any written agreement following which the buyer may cancel the contract within 5 days following delivery.

EE. RIDER EE—PROPERTY ASSESSED CLEAN ENERGY (PACE) DISCLOSURE:

As stated in the Rider, PACE loans are available in participating cities and counties to finance improvements which are energy efficient, energy renewable or which enhance wind resistance. This is one of those Riders which must be delivered to a buyer at the time of contract if a PACE loan exists. PACE loans are repaid in annual installments over a period of up to 20 years through the collection of real property taxes. The loan amortization is added to the tax bill. The tax bill will disclose whether a PACE loan exists. These loans have encountered deserved criticism. With a zero down payment and no appraisal required, PACE loans have been promoted by aggressive contractors and telemarketers. Some homeowners realize, too late, that they can't afford the increased tax bill. Many counties and municipalities have declined to participate in the program.

FF. RIDER FF—CREDIT RELATED TO BUYER’S BROKER COMPENSATION

GG. RIDER GG—SELLER’S AGREEMENT WITH RESPECT TO BUYER’S BROKER COMPENSATION

These Riders are the result of multiple lawsuits brought against the National Association of Realtors (NAR). Litigation involved allegations of artificially inflated commission rates and anti-trust violations. A settlement in 2024 brought about NAR rule changes. The rules apply to all member Realtors. The two primary rule changes were: (1) offers of compensation to buyer-agents in Multiple Listing Services (MLS) are prohibited and (2) buyer agents must now enter into written brokerage agreements with their buyer clients specifying the amount of compensation and how it is to be paid.

Historically, MLS listings accessible by buyer agents included offers of compensation to buyer agents. This is now prohibited. However, listing brokers may still communicate offers of compensation by means other than the MLS system. A seller may agree to pay all or part of the buyer broker’s compensation. A buyer may submit a purchase offer conditioned upon the seller paying all or a portion of the buyer-agent’s compensation.

Rider FF recognizes the new NAR rules by providing for a seller payment or buyer credit. In those situations where the seller has agreed to pay all or a portion of the buyer-agent’s commission this Rider should be used to evidence the agreement.

In those instances where no prior agreement regarding the buyer-agent’s compensation exists at the time a purchase offer is made, Rider GG can be used to impose a condition that such an agreement be reached within a short period of time, failing which the buyer may cancel the contract.