

Jointly prepared by the Real Property Section of the New York State Bar Association, the New York State Land Title Association, the Committee on Real Property Law of the Association of the Bar of the City of New York and the Committee on Real Property Law of the New York County Lawyers' Association.

WARNING: NO REPRESENTATION IS MADE THAT THIS FORM OF CONTRACT FOR THE SALE AND PURCHASE OF REAL ESTATE COMPLIES WITH SECTION 5-702 OF THE GENERAL OBLIGATIONS LAW ("PLAIN LANGUAGE").

CONSULT YOUR LAWYER BEFORE SIGNING THIS AGREEMENT

NOTE: FIRE AND CASUALTY LOSSES AND CONDEMNATION.

This contract form does not provide for what happens in the event of fire, or other casualty loss or condemnation before the title closing. Unless different provision is made in this contract, Section 5-1311 of the General Obligations Law will apply. One part of that law makes a Purchaser responsible for fire and casualty loss upon taking possession of the Premises before the title closing.

Residential Contract of Sale

Contract of Sale made as of _____, 2008 BETWEEN _____

Address: _____, hereinafter called "Seller" and

Address: _____, hereinafter called "Purchaser".

The parties hereby agree as follows:

1. **Premises.** Seller shall sell and convey and Purchaser shall purchase the property, together with all buildings and improvements thereon (collectively the "Premises"), more fully described on a separate page marked "Schedule A", annexed hereto and made a part hereof and also known as:

Street Address:

Tax Map Designation:

Dist.: Sect. Block: Lot:

Together with Seller's ownership and rights, if any, to land lying in the bed of any street or highway, opened or proposed, adjoining the Premises to the center line thereof, including any right of Seller to any unpaid award by reason of change of grade of any street or highway. Seller shall deliver at no additional cost to Purchaser, at Closing (as hereinafter defined), or thereafter, on demand, any documents that Purchaser may reasonably require for the conveyance of such title and the assignment and collection of such award or damages.

2. **Personal Property.** This sale also includes all fixtures and articles of personal property now attached or appurtenant to the Premises, unless specifically excluded below. Seller represents and warrants that at Closing they will be paid for and owned by Seller, free and clear of all liens and encumbrances, except any existing mortgage to which this sale may be subject. They include, but are not limited to, plumbing, heating, lighting and cooking fixtures, bathroom and kitchen cabinets, mantels, door mirrors, switch plates and door hardware, venetian blinds, window treatments, shades, screens, awnings, storm windows, storm doors, window boxes, mail box, TV aerials, weather vane, flagpole, pumps, shrubbery, fencing, outdoor statuary, tool shed, dishwasher, washing machine, clothes dryer, garbage disposal unit, range, oven, refrigerator, freezer, air conditioning equipment and installations, wall to wall carpeting and built-ins not excluded below (inapplicable/nonexistent items do not apply)

ALL AS PRESENTLY EXISTS ON THE PREMISES

Excluded from this sale are furniture and household furnishings and

3. **Purchase Price.** The purchase price is \$ _____

payable as follows:

- (a) on the signing of this contract, by Purchaser's check payable to the Escrowee (as hereinafter defined), subject to collection, the receipt of which is hereby acknowledged, to be held in escrow pursuant to paragraph 6 of this contract (the "Downpayment"): \$ _____
- (b) balance at Closing in accordance with paragraph 7: \$ _____

~~4. Existing Mortgage~~

~~5. Purchase Money Mortgage~~

6. **Downpayment in Escrow.** (a) Seller's attorney ("Escrowee") shall hold the Downpayment for Seller's account in escrow in a segregated Attorney's IOLA bank account until Closing or sooner termination of this contract and shall pay over or apply the Downpayment in accordance with the terms of this paragraph. Escrowee **shall not** hold the down payment in an interest-bearing account for the benefit of the parties. If interest is held for the benefit of the parties, it shall be paid to the party entitled to the Downpayment and the party receiving the interest shall pay any income taxes thereon. If interest is not held for the benefit of the parties, the Downpayment shall be placed in an IOLA account or as otherwise permitted or required by law. The Social Security or Federal Identification numbers of the parties shall be furnished to Escrowee upon request. At Closing, the Downpayment shall be paid by Escrowee to Seller. If for any reason Closing does not occur and either party gives Notice (as defined in paragraph 25) to Escrowee demanding payment of the Downpayment, escrowee shall give prompt Notice to the other party of such demand. If Escrowee does not receive Notice of objection from such other party to the proposed payment within 10 business days after the giving of such Notice, Escrowee is hereby authorized and directed to make such payment. If Escrowee does receive such Notice of objection within such 10 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by Notice from the parties to this contract or a final, non-appealable judgement, order or decree of a court. However, Escrowee shall have the right at any time to deposit the Downpayment and the interest thereon with the clerk of a court in the county in which the Premises are located and shall give Notice of such deposit to Seller and Purchaser. Upon such deposit or other disbursement in accordance with the terms of this paragraph, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

(b) The parties acknowledge that although Escrowee is holding the Downpayment for Seller's account, for all other purposes Escrowee is acting solely as a stakeholder at their request and for their convenience and that Escrowee shall not be liable to either party for any act or omission on its part unless taken or suffered in bad faith or in willful disregard of this contract or involving gross negligence on the part of Escrowee. Seller and Purchaser jointly and severally agree to defend, indemnify and hold Escrowee harmless from and against all costs, claims and expenses (including reasonable attorneys' fees) incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith or in willful disregard of this contract or involving gross negligence on the part of Escrowee.

(c) Escrowee may act or refrain from acting in respect of any matter referred to herein in full reliance upon and with the advice of counsel which may be selected by it (including any member of its firm) and shall be fully protected in so acting or refraining from action upon the advice of such counsel.

(d) Escrowee acknowledges receipt of the Downpayment by check subject to collection and Escrowee's agreement to the provisions of this paragraph by signing in the place indicated on the signature page of this contract.

(e) Escrowee or any member of its firm shall be permitted to act as counsel for Seller in any dispute as to the disbursement of the Downpayment or any other dispute between the parties whether or not Escrowee is in possession of the Downpayment and continues to act as Escrowee.

7. **Acceptable Funds.** All money payable under this contract, unless otherwise specified, shall be paid by:

- (a) Cash, but not over \$1,000.00;
- (b) Good certified check of Purchaser drawn on or official check issued by any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York, unendorsed and payable to the order of Seller, or as Seller may otherwise direct upon not less than 1 business day notice to Purchaser;
- (c) As to money, other than the purchase price payable to Seller at Closing, uncertified check of Purchaser up to the amount of **\$500.00**; and
- (d) As otherwise agreed to in writing by Seller or Seller's attorney.

8. **Mortgage Contingency.** The obligations of Purchaser hereunder are conditioned upon issuance on or within **30** days (the "Commitment Date") of a written commitment from any Institutional Lender pursuant to which such Institutional Lender agrees to make a first mortgage loan, other than a VA, FHA or other governmentally insured loan, to Purchaser, at Purchaser's sole cost and expense, of \$ _____ or such lesser sum as Purchaser shall be willing to accept, at the prevailing fixed rate of interest not to exceed **the prevailing interest rate** or initial adjustable rate of interest not to exceed **the prevailing interest rate** for a term of at least **30** years and on other customary commitment terms, whether or not conditional upon any factors other than an appraisal satisfactory to the Institutional Lender. Purchaser shall (a) make prompt application to an Institutional Lender for such mortgage loan, (b) furnish accurate and complete information regarding Purchaser and members of Purchaser's family, as required, (c) pay all fees, points and charges required in connection with such application and loan, (d) pursue such application with diligence, (e) cooperate in good faith with such Institutional Lender to obtain such commitment and (f) promptly give Notice to Seller of the name and address of each Institutional Lender to which Purchaser has made such application. Purchaser shall comply with all requirements of such commitment (or of any other commitment accepted by Purchaser) and shall furnish Seller with a copy thereof promptly after receipt thereof. If such commitment is not issued on or before the Commitment Date, then, unless Purchaser has accepted a commitment that does not comply with the requirements set forth above, either party may cancel this contract by giving notice to the other party, **however, purchasers cancellation shall be conditioned upon proof of compliance with 8 (a)-(f) above**, in which case this contract shall be deemed cancelled and thereafter neither party shall have any further rights against, or obligations or liabilities to, the other by reason of this contract, except that the Downpayment shall be promptly refunded to purchaser. ~~If Purchaser fails to give notice of cancellation, within 5 days after the Commitment Date, or if Purchaser shall accept a commitment that does not comply with the terms set forth above, then Purchaser shall be deemed to have waived Purchaser's right to cancel this contract and to receive a refund of the Downpayment by reason of the contingency contained in this paragraph.~~

9. **Permitted Exceptions.** The Premises are sold and shall be conveyed subject to:

- (a) Zoning and subdivision laws and regulations, and landmark, historic or wetlands designation, provided that they are not violated by the existing buildings and improvements erected on the property or their use;
- (b) Consents for the erection of any structures on, under or above any streets on which the Premises abut;
- (c) Encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway;
- (d) Real estate taxes that are a lien, but are not yet due and payable; and
- (e) The other matters, if any, including a survey exception, set forth in a Rider attached.

10. **Government Violations and Orders.** (a) Seller shall comply with all notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued as of the date hereof by any governmental department having authority as to lands, housing, buildings, fire, health, environmental and labor conditions affecting the Premises. The Premises shall be conveyed free of them at Closing. Seller shall furnish Purchaser with any authorizations necessary to make the searches that could disclose these matters.

(b) All obligations affecting the premises pursuant to the Administrative Code of the City of New York incurred prior to Closing and payable in money shall be discharged by Seller at or prior to Closing.

11. **Seller's Representations.** (a) Seller represents and warrants to Purchaser that:

- (i) The Premises abut or have a right of access to a public road;
- (ii) Seller is the sole owner of the Premises and has the full right, power and authority to sell, convey and transfer the same in accordance with the terms of this contract;
- (iii) Seller is not a "foreign person", as that term is defined for purposes of the Foreign Investment in Real Property Tax Act, Internal Revenue Code ("IRC") Section 1445, as amended, and the regulations promulgated thereunder (collectively "FIRPTA");
- (iv) ~~The Premises are not affected by any exemptions or abatements of taxes; and~~
- (v) Seller has been known by no other name for the past ten years, except

(b) Seller covenants and warrants that all of the representations and warranties set forth in this contract shall be true and correct at Closing.

(c) Except as otherwise expressly set forth in this contract, none of Seller's covenants, representations, warranties or other obligations contained in this contract shall survive Closing.

12. **Condition of Property.** Purchaser acknowledges and represents that Purchaser is fully aware of the physical condition and state of repair of the Premises and of all other property included in this sale, based on Purchaser's own inspection and investigation thereof, and that Purchaser is entering into this contract based solely upon such inspection and investigation and not upon any information, data, statements or representations, written or oral, as to the physical condition, state of repair, use, cost of operation or any other matter related to the Premises or the other property included in the sale, given or made by Seller or its representatives, and shall accept the same "as is" in their present condition and state of repair, subject to reasonable use, wear, tear and natural deterioration between the date hereof and the date of Closing (except as otherwise set forth in paragraph 16(f), without any reduction in the purchase price or claim of any kind for any change in such condition by reason thereof subsequent to the date of this contract. Purchaser and its authorized representatives shall have the right, at reasonable times and upon reasonable notice (by telephone or otherwise) to Seller, to inspect the Premises before Closing.

13. **Insurable Title.** Seller shall give and Purchaser shall accept such title as **any reputable title insurance company**

shall be willing to approve and insure in accordance with its standard form of title policy approved by the New York State Insurance Department, subject only to the matters provided for in this contract.

14. **Closing, Deed and Title.** (a) "Closing" means the settlement of the obligations of Seller and Purchaser to each other under this contract, including the payment of the purchase price to Seller, and the delivery to Purchaser of a Bargain and sale deed with covenants against grantor's acts deed in proper statutory short form for record, duly executed and acknowledged, so as to convey to Purchaser fee simple title to the Premises, free of all encumbrances, except as otherwise herein stated. The deed shall contain a covenant by Seller as required by subd. 5 of Section 13 of the Lien Law.

(b) If Seller is a corporation, it shall deliver to the Purchaser at the time of Closing (i) a resolution of its Board of Directors authorizing the sale and delivery of the deed, and (ii) a certificate by the Secretary or Assistant Secretary of the corporation certifying such resolution and setting forth facts showing that the transfer is in conformity with the requirements of Section 909 of the Business Corporation Law. The deed in such case shall contain a recital sufficient to establish compliance with that Section.

15. **Closing Date and Place.** Closing shall take place at the office of Peter J. Dunn, Esq., **or the Purchaser's lending institution**

at 12:00 o'clock on or about _____, 2008 or, upon reasonable notice (by telephone or otherwise).

16. **Conditions to Closing.** This contract and Purchaser's obligation to purchase the Premises are also subject to and conditioned upon the fulfillment of the following conditions precedent:

(a) The accuracy, as of the date of Closing, of the representations and warranties of Seller made in this contract.

(b) **That there exists, or will exist at closing** valid and subsisting Certificate(s) of Occupancy or other required certificate(s) of compliance, or evidence that none was required, covering the building(s) and all of the other improvements, **except sheds, decks, finished basements, above ground pools, or awnings**, located on the property, authorizing their use as a **single** family dwelling at the date of Closing.

(c) **Intentionally deleted**

(d) The delivery by Seller to Purchaser of a certification stating that Seller is not a foreign person, which certification shall be in the form then required by FIRPTA. If Seller fails to deliver the aforesaid certification or if Purchaser is not entitled under FIRPTA to rely on such certification, Purchaser shall deduct and withhold from the purchase price a sum equal to 10% thereof (or any lesser amount permitted by law) and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.

(e) The delivery of the Premises and all building(s) and improvements comprising a part thereof in broom clean condition, vacant and free of leases or tenancies, together with keys to the Premises.

(f) All plumbing (including water supply and septic systems, if any), heating and air conditioning, if any, electrical and mechanical systems, equipment and machinery in the building(s) located on the property and all appliances which are included in this sale being in working order as of the date of Closing.

(g) If the Premises are a one or two family house, delivery by the parties at Closing of affidavits in compliance with state and local law requirements to the effect that there is installed in the Premises a smoke detecting alarm device or devices.

(h) The delivery by the parties of any other affidavits required as a condition of recording the deed.

17. **Deed Transfer and Recording Taxes.** At Closing, certified or official bank checks payable to the order of the appropriate State, City or County officer in the amount of any applicable transfer and/or recording tax payable by reason of the delivery or recording of the deed or mortgage, if any, shall be delivered by the party required by law or by this contract to pay such transfer and/or recording tax, together with any required tax returns duly executed and sworn to, and such party shall cause any such checks and returns to be delivered to the appropriate officer promptly after Closing. The obligation to pay any additional tax or deficiency and any interest or penalties thereon shall survive Closing. **All other filing fees in connection with filing the deed and RP-5217, other than New York State Real Property Transfer Tax, to be paid by the purchaser(s).**

18. Apportionments and Other Adjustments; Water Meter and Installment Assessments.

(a) To the extent applicable, the following shall be apportioned as of midnight of the day before the day of Closing:

(i) taxes, water charges and sewer rents, on the basis of **the lien period** for which assessed; (ii) fuel; (iii) interest on the existing mortgage; (iv) premiums on existing transferable insurance policies and renewals of those expiring prior to Closing; (v) vault charges; (vi) rents as and when collected.

(b) If Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the tax rate for the immediately preceding fiscal period applied to the latest assessed valuation.

(c) If there is a water meter on the Premises, Seller shall furnish a reading to a date not more than 30 days before Closing and the unfixed meter charge and sewer rent, if any, shall be apportioned on the basis of such last reading.

(d) If at the date of Closing the Premises are affected by an assessment which is or may become payable in annual installments, and the first installment is then a lien, or has been paid, then for the purposes of this contract all the unpaid installments shall be considered due and shall be paid by Seller at or prior to Closing.

(e) Any errors or omissions in computing apportionments or other adjustments at Closing shall be corrected within a reasonable time following Closing. This subparagraph shall survive Closing.

19. Allowance for Unpaid Taxes, etc. Seller has the option to credit Purchaser as an adjustment to the purchase price with the amount of any unpaid taxes, assessments, water charges and sewer rents, together with any interest and penalties thereon to a date not less than five business days after Closing, provided that official bills therefor computed to said date are produced at Closing.

20. Use of Purchase Price to Remove Encumbrances. If at Closing, there are other liens or encumbrances that Seller is obliged to pay or discharge. Seller may use any portion of the cash balance of the purchase price to pay or discharge them, provided Seller shall simultaneously deliver to Purchaser at Closing instruments in recordable form and sufficient to satisfy such liens or encumbrances of record, together with the cost of recording or filing said instruments. As an alternative Seller may deposit sufficient monies with the title insurance company employed by Purchaser acceptable to and required by it to assure their discharge, but only if the title insurance company will insure Purchaser's title clear of the matters or insure against their enforcement out of the Premises and will insure Purchaser's Institutional Lender clear of such matters. Upon notice (by telephone or otherwise), given not less than 3 business days before Closing, Purchaser shall provide separate certified or official banks checks as requested to assist in clearing up these matters.

21. Title Examination, Seller's Inability to Convey; Limitations of Liability. (a) Purchaser shall order an examination of title in respect of the Premises from a title company licensed or authorized to issue title insurance by the New York State Insurance Department or any agent for such title company promptly after the execution of this contract or, ~~if this contract is subject to the mortgage contingency set forth in paragraph 8, after a mortgage commitment has been accepted by Purchaser.~~ Purchaser shall cause a copy of the title report and of any additions thereto to be delivered to the attorney(s) for Seller promptly after receipt thereof.

(b)(i) If at the date of Closing Seller is unable to transfer title to Purchaser in accordance with this contract, or Purchaser has other valid grounds for refusing to close, whether by reason of liens, encumbrances or other objections to title or otherwise (herein collectively called "Defects"), other than those subject to which Purchaser is obligated to accept title hereunder of which Purchaser may have waived and other than those which Seller has herein expressly agreed to remove, remedy or discharge and if Purchaser shall be unwilling to waive the same and to close title without abatement of the purchase price, then, except as hereinafter set forth, Seller shall have the right, at Seller's sole election, either to take such action as Seller may deem advisable to remove, remedy, discharge or comply with such Defects or to cancel this contract;

(ii) if Seller elects to take action to remove, remedy or comply with such Defects, Seller shall be entitled from time to time, upon Notice to Purchaser, to adjourn the date for Closing hereunder for a period or periods not exceeding 60 days in the aggregate (but not extending beyond the date upon which Purchaser's mortgage commitment, if any, shall expire), and the date for Closing shall be adjourned to a date specified by Seller not beyond such period. If for any reason whatsoever, Seller shall not have succeeded in removing, remedying or complying with such Defects at the expiration of such adjournment(s), and if Purchaser shall still be unwilling to waive the same and to close title without abatement of the purchase price, then, either party may cancel this contract by Notice to the other given within 10 days after such adjourned date; (iii) notwithstanding the foregoing, the existing mortgage (unless this sale is subject to the same) and any matter created by Seller after the date hereof shall be released, discharged or otherwise cured by Seller at or prior to Closing.

(c) If this contract is cancelled pursuant to its terms, other than as a result of Purchaser's default, this contract shall terminate and come to an end, and neither party shall have any further rights, obligations or liabilities against or to the other hereunder or otherwise, except that: (i) Seller shall promptly refund or cause the Escrowee to refund the Downpayment to Purchaser and, unless cancelled as a result of Purchaser's default or pursuant to paragraph 8, to reimburse Purchaser for the net cost of examination of title, including any appropriate additional charges related thereto, and the net cost, if actually paid or incurred by Purchaser, for updating the existing survey of the Premises or of a new survey, and (ii) the obligations under paragraph 27 shall survive the termination of this contract.

22. Affidavit as to Judgments, Bankruptcies, etc. If a title examination discloses judgments, bankruptcies or other returns against persons having names the same as or similar to that of Seller, Seller shall deliver an affidavit at closing showing that they are not against Seller.

23. Defaults and Remedies. (a) If purchaser defaults hereunder, Seller's sole remedy shall be to receive and retain the Downpayment as liquidated damages, it being agreed that Seller's damages in case of Purchaser's default might be impossible to ascertain and that the Down-payment constitutes a fair and reasonable amount of damages under the circumstances and is not a penalty.

(b) If Seller Defaults hereunder, Purchaser shall have such remedies as Purchaser shall be entitled to at law or in equity, including, but not limited to, specific performance.

24. Purchaser's Lien. All money paid on account of this contract, and the reasonable expenses of examination of title to the Premises and of any survey and survey inspection charges, are hereby made liens on the Premises, but such liens shall not continue after default by Purchaser under this contract.

25. Notices. Any notice or other communication ("Notice") shall be in writing and either (a) sent by either of the parties hereto or by their respective attorneys who are hereby authorized to do so on their behalf or by the Escrowee, by registered or certified mail, postage prepaid, or

(b) delivered in person or by overnight courier, with receipt acknowledged, to the respective addresses given in this contract for the party and the Escrowee, to whom the Notice is to be given, or to such other address as such party or Escrowee shall hereafter designate by Notice given to the other party or parties and the Escrowee pursuant to this paragraph. Each Notice mailed shall be deemed given on the third business day following the date of mailing the same, except that any notice to Escrowee shall be deemed given only upon receipt by Escrowee and each Notice delivered in person or by overnight courier shall be deemed given when delivered.

26. No Assignment. This contract may not be assigned by Purchaser without the prior written consent of Seller in each instance and any purported assignment(s) made without such consent shall be void.

27. Broker.

Seller and Purchaser each represents and warrants to the other that it has not dealt with any broker in connection with this sale other than

("Broker") and Seller shall pay Broker any commission earned pursuant to a separate agreement between Seller and Broker. Seller and Purchaser shall indemnify and defend each other against any costs, claims and expenses, including reasonable attorneys' fees, arising out of the breach on their respective parts of any representation or agreement contained in this paragraph. The provisions of this paragraph shall survive Closing or, if Closing does not occur, the termination of this contract.

28. Miscellaneous. (a) All prior understandings, agreements, representations and warranties, oral or written, between Seller and Purchaser are merged in this contract; it completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this contract.

(b) Neither this contract nor any provision thereof may be waived, changed or cancelled except in writing. This contract shall also apply to and bind the heirs, distributees, legal representatives, successors and permitted assigns of the respective parties. The parties hereby authorize their respective attorneys to agree in writing to any changes in dates and time periods provided for in this contract.

(c) Any singular word or term herein shall also be read as in the plural and the neuter shall include the masculine and feminine gender, whenever the sense of this contract may require it.

(d) The captions in this contract are for convenience of reference only and in no way define, limit or describe the scope of this contract and shall not be considered in the interpretation of this contract or any provision hereof.

(e) This contract shall not be binding or effective until duly executed and delivered by Seller and Purchaser.

(f) Seller and Purchaser shall comply with IRC reporting requirements, if applicable. This subparagraph shall survive Closing.

(g) Each party shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonable other in order to carry out the intent and purpose of this contract. This subparagraph shall survive Closing.

(h) This contract is intended for the exclusive benefit of the parties hereto and, except as otherwise expressly provided for herein, shall not be for the benefit of, and shall not create any rights in, or be enforceable by, any other person.

Continued on the Rider to Contract annexed hereto and made part hereof:

Seller

Purchaser

Seller

Purchaser

Rider to Contract

29. All representations contained in paragraphs 16(e) and 16 (f) shall be extended to the time of delivery of the Premises hereunder.
30. The Premises shall be delivered vacant and broom clean at the closing of title, or within five (5) days thereafter upon deposit of \$ 2,500.00 in escrow with the attorney for Seller to assure possession. If possession is not so delivered, Seller shall \$150.00 per day thereafter as liquidated damages. THIS CLAUSE SHALL NOT SURVIVE THE DELIVERY OF POSSESSION OF PREMISES. The Seller's attorney is hereby authorized to release the balance of the escrow fund to the Seller on the third business day after possession is delivered to the Purchaser, unless written notice of any claim to the same is received by the Seller's attorney before that time. It is understood that no landlord/tenant relationship is intended to be created by this provision. Adjustments to include per diem on purchasers mortgage, unless this contract is not subject to the purchaser obtaining a mortgage.
31. In addition to the permitted exceptions contained in paragraph 9 above, the Premises are sold subject to:
- (a) any state of facts an accurate survey may show, provided the title is not rendered unmarketable;
 - (b) covenants, restrictions, reservations, utility easements and agreements, if any, of record, insofar as the same may now be in full force of effect, provided the same are not violated by the present structure or the present use of the Premises;
 - (c) party walls and party wall agreements of record, if any;
 - (d) variations between record lines (or encroachments) and the following: (i) fences; (ii) retaining walls; (iii) hedges; (iv) bay windows; (v) copings; (vi); tax map; and (vii) fire escapes, all provided the same does not render title uninsurable.
32. In furtherance of paragraph "21" hereof, in the event any covenants, easements, restrictions or agreements of record are violated, the Purchaser shall nonetheless be obligated to accept title as provided for in this Contract provided a reputable title insurance company will insure against enforcement of such covenants, easements, restrictions or agreements of record or, in the alternative, will insure that the improvements or any part thereof will not be required to be demolished as a result of any such covenant, easement, restriction or agreement of record. Nothing contained in this Contract shall be deemed as requiring Seller to bring an action or proceeding or incur any expense in order to render title marketable. In the event the Town or other municipality requires a new survey in order for Seller to cure any alleged defect, Purchaser agrees to provide said survey at their own cost and expense.
33. Purchaser shall have ten (10) days from the execution of this contract within which to have a termite ("termite" shall include all wood destroying insects) inspection performed at Purchaser's own cost and expense. If active termites or damage (except for minor damage) from active infestation are discovered, Seller shall have the option of curing the termite condition and repairing the damage at Seller's own cost and expense, in which event the Purchaser agrees to consummate this transaction, or Seller may terminate this contract by refunding the sums paid hereunder by the Purchaser and all rights and liabilities of the parties herein shall thereby cease, or the Purchaser may treat the condition at Purchaser's own cost and expense. Seller's attorney must be furnished with a copy of any such report within fourteen (14) days from the execution of this contract.
34. Notwithstanding anything contained in paragraph 16(f) of the standard contract above:
- (a) the Seller's maximum liability for the repair or replacement of any appliance shall not exceed \$250.00 per appliance; and
 - (b) Sellers shall not be responsible for the repair of minor faucet leaks; and
 - (c) the roof shall be free from leaks at the time of closing.
35. Notwithstanding anything contained in paragraph 8 of the standard contract above:
- (a) any conditions contained in a mortgage commitment issued to purchaser requiring the sale and/or closing of title to Purchaser's present residence before the lender will close title to the loan and release the loan proceeds to Purchaser shall be deemed non-existent insofar as the parties hereto are concerned, and said mortgage commitment shall be considered firm and unconditional notwithstanding such condition. Purchaser understands that the inclusion of this provision is of utmost importance to Seller and absent the same Seller would not have entered into this contract. Purchasers further agree to satisfy such outstanding obligations as may be required by the lending institution to be satisfied and to satisfy and pay off any outstanding personal loans or mortgage loans if satisfaction is a condition to the closing of the mortgage or the issuance of a commitment. Failure to comply with the above shall be a material breach of this Agreement. Purchasers agree to take all steps and pay all fees necessary to keep the commitment in full force and effect through the date of closing; and
 - (b) Purchaser shall immediately notify Seller upon receipt of either the commitment or the denial of the application for the commitment and provide Seller with a copy of the commitment or, if denied, a copy of the application and the denial of the application for the commitment. In the event Purchaser fails to obtain a mortgage commitment within the time period set forth herein and elects to cancel this Contract, then Sellers, at their sole discretion, may extend the time for Purchasers to obtain a mortgage commitment for a period not to exceed forty five (45) days.
36. Supplementing paragraph "10" and paragraph "16b" of the printed Contract of Sale, if the Seller's cost to comply with Seller's obligations thereunder, as reasonably estimated, would exceed TWENTY FIVE HUNDRED (\$ 2,500.00) DOLLARS, Seller may give Purchaser notice that Seller shall not comply and, in such event, (i) Seller shall not be required to comply, and (ii) Purchaser may, at Purchaser's option, either cancel this contract, in which case the provisions of Paragraph "21(c)" shall apply, or accept the premises with no reduction in purchase price. In the event the town or other municipality requires a new survey to obtain any necessary certificate of occupancy or certificate of compliance, the purchaser shall bear the cost of said survey.
37. The acceptance of a deed by Purchaser shall be deemed to be full performance and discharge of every agreement and obligation on the part of Seller to be performed pursuant to this agreement, except those which are herein specifically stated to survive delivery of the deed.
38. In the event this contract is subject to Purchaser securing a mortgage, nothing herein shall be implied to obligate Seller to do any work items required by the Federal Housing Administration, Veterans Administration or Purchaser's lending institution. Seller reserves the right to refuse to perform and comply with work requested by the above mentioned agencies.
39. If two or more persons are named as Purchasers herein, each authorizes the other(s) to act as agent and to bind the other person(s) named in the contract in all matters of any kind or nature effecting this agreement or the Premises.

40. To the extent there is an inconsistency between the printed form of this agreement and this rider, it is understood and agreed that the terms and conditions of this rider shall govern and be binding. Each party to this contract hereby designates his or her attorney as his or her attorney in fact for the purposes of making modifications to this agreement, and any such modifications, if agreed to may be made by a writing and transmitted via facsimile transmission and shall be deemed an original signature of the party for the purposes of this contract.
41. All adjustments provided for in this agreement shall be made as of the date of closing or delivery of the Premises from Seller to Purchaser, whichever is later.
42. The submission of this contract for examination and execution by the purchaser does not constitute an offer, option, or reservation, nor shall the conduct of the parties constitute same, and this contract shall become effective as such only upon the actual execution by the Sellers following execution by the Purchaser and delivery of said executed contract to the Attorney for the Purchasers. Prior thereto, Sellers shall have the absolute right to contract with any other person for the sale of the Premises.
43. If the payment made on account of the purchase price at the time of the execution of this agreement be by check and if said check shall fail of collection in due course, Seller, at the option of Seller, may declare this Contract null, void, and of no effect and may pursue its remedies against Purchaser upon said check or in any other manner permitted by law. Purchaser shall have the right to redeem by replacing said check with an official bank tellers check within 3 days together with a \$ 10.00 dollar bank service fee.
44. This agreement contains the entire agreement between the parties and shall not be modified except in writing signed by the Seller and Purchaser. If there are any preliminary agreements, deposits, or binders, the same are hereby merged in and superceded by the written agreement.
45. Purchaser agrees to utilize a lending institution which has closing offices in the county in which the premises are situate.
46. Purchasers represent that they are familiar with the requirements to obtain the mortgage provided herein and they have the necessary annual income and sufficient assets to qualify for same, and that this income level has been maintained for at least the last two (2) years and that no substantial modification thereof is anticipated prior to closing.
47. Purchasers represent that to the best of their knowledge, there is nothing in their credit history which will result in the denial of their mortgage application including, but not limited to, late payments, judgements, mortgage foreclosures, or tax liens, that they have the balance of the funds necessary to complete this transaction, including payment of their closing costs, that they have never filed bankruptcy or been adjudicated bankrupt, that they are U.S. citizens or legal aliens and that any mortgage application made hereunder will so provide.
48. Purchasers understand that the representations and/or agreements made hereunder regarding Purchasers' income, credit, assets and other factors that may affect Purchaser's ability to secure a mortgage loan are material inducements to Seller entering into this contract with Purchasers. Should any such representations and/or agreements made herein prove to be false and should Purchasers' mortgage loan be denied as a result thereof, Purchasers shall be deemed to have defaulted hereunder and Seller shall be entitled to retain the contract down payment as liquidated damages.
49. This Contract shall not be recorded or filed by the Purchaser and any recordation or filing or attempted recordation or filing by Purchaser hereof shall be void and shall constitute a material default by the Purchaser hereunder.
50. In the event of any litigation arising out of this contract, the prevailing party shall be entitled to recover all costs in connection with the litigation, including reasonable attorneys fees.
51. **LEAD-BASED PAINT CLAUSE.** Purchaser shall have ten (10) days from the execution of this contract within which to have a risk assessment or inspection (the "Report") of the Premises for the presence of lead-based paint and/or lead-based paint hazards ("Lead Hazards"). Seller's attorney must be furnished with a copy of the Report within fourteen (14) days from the execution of this contract. Such Report shall be done at the Purchaser's own cost and expense. If Lead Hazards are discovered, Seller shall have the following options:
- A. Seller may cure the Lead Hazards at Seller's own cost and expense, in which event the Purchaser agrees to consummate this transaction. If the Seller will correct the Lead Hazard, the Seller shall furnish the Purchaser with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement; or
 - B. Seller may terminate this contract by refunding the sums paid hereunder by the Purchaser and all rights and liabilities of the parties herein shall thereby cease.
- Notwithstanding the above, the Purchaser may either treat the Lead Hazard at Purchaser's own cost and expense or take the Premises as-is with the existing Lead Hazard. Purchaser may waive his or her rights under this provision at any time. In the event any of the above provisions are not complied with in full, Purchaser waives any rights under this provision. The seller represents that seller has no knowledge of any lead base paint or records pertaining thereto.
52. The Property Condition Disclosure Act requires the Seller, if Residential Real Property, to cause a Disclosure Statement or a copy thereof to be delivered to a buyer or buyer's agent prior to the signing by the buyer of a binding contract of sale. In the event Seller fails to perform the duty prescribed in this article to deliver a disclosure statement prior to the signing by the Buyer of a binding contract of sale, the Buyer shall receive upon the transfer of title a credit of five hundred (\$500.00) dollars against the agreed upon purchase price of the residential real property.

- ~~A duly executed disclosure statement is attached.~~
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A duly executed disclosure statement is not attached. The parties agree that the Seller has elected not to provide same and the Buyer has agreed to accept a \$500.00 credit at the time of transfer of title against the agreed upon purchase price. The Buyer also agrees to make no claim whatsoever based upon failure to provide such disclosure statement. The parties further agree that notwithstanding the terms of this Act, this is an "As Is" sale and the terms and provisions of this contract, to the exclusion of this disclosure statement, shall control.

Seller

Purchaser

Seller

Purchaser

