

# CONTRACT OF SALE-NEW CONSTRUCTION

(Plain English Document)

AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, between \_\_\_\_\_, a domestic corporation organized and existing under the laws of the State of New York, having a place of business at \_\_\_\_\_

(“Seller”), and \_\_\_\_\_, residing at \_\_\_\_\_ (“Purchaser”).

## 1. PREMISES TO BE SOLD

The Seller agrees to sell and the Purchaser agrees to buy all that plot or parcel of land with the buildings and improvements thereon situated or to be constructed and erected thereon, situate, lying and being in the \_\_\_\_\_, Lot \_\_\_\_\_ on a certain subdivision plan entitled “\_\_\_\_\_” which was filed in the Office of the Clerk of \_\_\_\_\_ County on \_\_\_\_\_ as Map No. \_\_\_\_\_ (the “Premises”).

## 2. IMPROVEMENTS

The Seller agrees to construct and erect on the Premises a \_\_\_\_\_-family residence, substantially in accordance with the (model house situate on Block No. \_\_\_\_\_, Lot No. \_\_\_\_\_, with the changes and/or additions set forth on Rider “I” hereto) plans and specifications exhibited to Purchaser and on which Purchaser has placed (his) (her) (their) initials and of which a copy has been given to Purchaser.

## 3. INABILITY TO OBTAIN MATERIALS

In the event that the Seller is unable to obtain certain materials as (are contained in the model house) (set forth in the specifications set forth on the building plans) to be included in the improvement to be erected hereunder, due to manufacturer’s shortages or inability to obtain such materials through no fault of Seller, Seller may substitute other materials in their place and stead provided Purchaser agrees to such substitution and further provided that said substitution will be acceptable to Purchaser’s lending institution and the local municipal agencies having jurisdiction over the construction of the improvement and further provided that the substitutions are reasonable and of least equal value.

## 4. PURCHASE PRICE

The Purchase Price is \_\_\_\_\_ (\$ \_\_\_\_\_) DOLLARS payable as follows:

Upon signing this Contract, by check, subject to collection, the receipt of which is hereby acknowledged (\$ \_\_\_\_\_) (“Contract Deposit”)

At closing, upon the delivery and receipt of the Deed, by certified or bank check, the sum of (\$ \_\_\_\_\_).

## 5. MORTGAGE CONTINGENCY

This Contract is subject to the Purchaser obtaining at Purchaser’s sole cost and expense, a mortgage commitment in the amount of \_\_\_\_\_ at the prevailing rate of interest and for the prevailing term of years from a recognized lending institution within \_\_\_\_\_ ( \_\_\_\_\_ ) days from the date Purchaser’s attorney receives a fully executed copy of this Contract of Sale (the “Contingency Period”). In the event that Purchaser does not obtain a mortgage commitment for the amount and in the time period set forth above, Purchaser shall have the option (a) to continue with the purchase of the Premises, notwithstanding the failure to obtain the commitment, upon giving Seller’s attorney notice of Purchaser’s intention to so continue within five (5) days from receipt by Purchaser of the lender’s denial or within five (5) days from the expiration of the Contingency Period or, (b) to cancel this Contract upon giving Seller’s attorney notice of Purchaser’s intention to cancel within five (5) days from receipt by Purchaser of the lender’s denial or within five (5) days from the expiration of the Contingency Period. Should Purchaser elect to cancel this Contract, then in such event, this Contract shall be null and void, of no force and effect and any sums paid by Purchaser hereunder shall be returned to Purchaser.

## **6. Closing Costs**

- A. The cost and disbursements incurred by Seller in closing the building loan mortgage shall be borne solely by the Purchaser for which Purchaser shall pay to Seller at the closing of title to cover all fees, costs and interests in connection therewith, recording fees, mortgage tax, title insurance, interest, lender's attorney's fees, inspection fees, application fees and bank commitment fees. These fees and charges are not to be deemed all conclusive but only as an estimate and shall be finalized at the closing of title.
- B. Purchaser agrees to make immediate application to a lending Institute for said mortgage and shall comply with all requests made by the lending institution for documents, financial records etc. within a reasonable period of time.
- C. Purchaser understands that Purchaser's lending institution may require an escrow deposit for the payment of future taxes and/or private mortgage insurance.
- D. Seller shall provide to Purchaser a certified plot plan, no staking, which shall be certified to the lending institution, the title company and the Purchaser. The charge for the certified plot plan shall be borne solely by Purchaser and Purchaser shall reimburse Seller upon the production by Seller of a paid receipt for same.

## **7. MORTGAGE APPLICATION DENIAL**

It is understood and agreed by Purchaser and Seller that if for any reason, after diligent, honest and timely application by Purchase to a lending institution, the lending institution or the FHA or VA shall reject Purchaser's application, then this Contract shall become null and void and Seller shall return the Contract Deposit to Purchaser less the amount(s) for any extras approved by Purchaser in writing and already installed at Purchaser's request. In the event that Purchaser is denied a mortgage by the lending institution, FHA or VA, Seller shall have the option of granting Purchaser a mortgage upon the same terms and conditions as applied for to the lending institution.

## **8. TITLE**

The Premises are sold subject to covenants, easements and restrictions of record and any other easement(s) that must be given for municipal services and/or public utilities. Seller shall convey such title as any reputable title insurance company authorized to do business in the State of New York shall insure. In the event that the Purchaser's title insurance company refuses to insure title, Seller shall have the option of providing a policy of title insurance from a licensed New York State title insurance company, the cost of which shall be borne by Purchaser. If drainage, telephone and/or utility easements are not now of record, the same may be given and recorded at any time, provided that such easements do not interfere with the occupancy and/or use of the improvements and this provision shall survive delivery of the deed. Purchaser shall cooperate with Seller and execute any and all documents necessary to record these easements.

## **9. PROHIBITION AGAINST SIGNS**

Purchaser, his successors and assigns, do hereby covenant and agree that for a period of \_\_\_\_\_ years after the closing of title to the Premises, or until the Seller has conveyed title to all parcels in the subdivision, whichever first occurs, Purchaser shall not place any sign or signs on or upon the Premises and/or improvements advertising same for resale.

## **10. INABILITY TO CONVEY**

If for any reason whatsoever, except for Seller's willful default hereunder, Seller is unable to convey title to Purchaser pursuant to the terms, conditions and provisions of this Contract, Seller's sole liability is to return the Contract Deposit and upon such return, this Contract shall be null and void and the parties shall have no further obligations to the other.

## **11. TAX APPORTIONMENT**

If closing of title occurs at a time before new tax bills are issued by the taxing authority and the new amount of taxes cannot be ascertained, the apportionment of taxes shall be based upon the last issued and available tax bills.

## **12. MUNICIPAL APPROVALS**

At closing, Seller shall deliver to Purchaser a valid Permanent Certificate of Occupancy for the improvements and shall also deliver the Board of Fire Underwriters Certificate.

**13. CONTRACT SUBORDINATION**

This Contract is subject and subordinate to the lien of Seller's Building Loan Mortgage.

**14. APPORTIONMENTS AT CLOSING**

The following are to be apportioned at closing based on a thirty (30) day month and three hundred sixty (360) day year and in accordance with local customs: taxes, fuel oil, water/sewer charges.

**15. FORM OF DEED**

Seller shall deliver to Purchaser at closing a Bargain and Sale Deed With Covenants Against Grantor's Acts in recordable form, which shall include the Section 13 Lien Law covenant. Seller may utilize the proceeds of the sale at closing to pay and discharge any lien or encumbrance against the Premises.

**16. RISK OF LOSS**

The risk of loss or damage to the Premises by fire or any other cause is assumed by the Seller until the delivery of the deed at closing.

**17. REAL ESTATE BROKER**

The parties hereto agree that they have not dealt with any broker in connection with this transaction except \_\_\_\_\_ and that the said broker's commission shall be paid by Seller. The parties hereto agree to indemnify and hold the other harmless if there shall be a default under this Paragraph 17. This Paragraph 17 shall survive delivery of the deed.

**18. OCCUPANCY PRIOR TO CLOSING**

Absent prior written consent of the Seller, Purchaser shall not enter into occupancy of the Premises or move and/or store any personal property in and/or on the Premises. Should Purchaser breach this provision contain in this Paragraph 18, the same shall be deemed and shall constitute a default under the Contract without any further act on the part of, or notice from Seller and Seller shall have the right to commence summary proceedings or other remedies pursuant to law, to evict Purchaser from the Premises. In any such proceeding, Purchaser hereby agrees to waive any and all defenses and offsets Purchaser may have against Seller. The costs and disbursements of such an action, including reasonable attorneys' fees shall be borne by Purchaser.

**19. GRADING**

The Premises shall not be sodded. The plot shall be graded a reasonable distance (as solely determined by Seller) in front of and along the side of the structure and for a distance of \_\_\_\_\_ feet behind the structure. Seller reserves the right to determine elevation of streets and foundations so as to conform to topographical conditions and the requirements of the municipalities and to reverse the plan layout of the model house and to determine the location of the structure on the plot. Seller shall not furnish or plant shrubs, bushes, plants, trees or flowers.

**20. WATER**

If required by the subdivision regulations of the municipality, Seller shall provide a well up to \_\_\_\_\_ feet in depth with \_\_\_\_\_ feet of casing and an adequate pump to handle same at Seller's cost and expense. In the event that it is necessary to exceed the foregoing, the Seller will do so and charge the Purchaser as follows: depth in excess of the foregoing, the Purchaser will be responsible for \$ \_\_\_\_\_ per foot and the additional cost of the next size pump. If because of ground conditions, addition steel casing is required in excess of the foregoing, Purchaser shall be responsible for \$ \_\_\_\_\_ per foot for each additional foot. In the event that the well does not produce potable water, Seller shall drill additional wells based upon the same costs and expenses as heretofore set forth in this paragraph 20.