

# NEW CONSTRUCTION CONTRACT (VERSION 2)

Premises:

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Sales Price:

\$

Purchaser:

Seller:

Address:

Address:

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**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, a New York corporation having an office at \_\_\_\_\_, ("Seller") and \_\_\_\_\_, residing at \_\_\_\_\_ ("Purchaser").

- 1. PREMISES.** The Seller agrees to sell and the Purchaser agrees to purchase all that parcel or piece of land, with the buildings and improvements thereon or to be constructed thereon, situate and being in the County of \_\_\_\_\_, Town of \_\_\_\_\_, designated Lot No. \_\_\_\_\_ on the subdivision plan entitled "\_\_\_\_\_" which said subdivision plan and map was filed in the Office of the Clerk of \_\_\_\_\_ County on \_\_\_\_\_ as Map No. \_\_\_\_\_ (the "Premises/Parcel").
- 2. DWELLING AND STRUCTURES.** The Seller agrees to construct, build and erect on the Parcel a \_\_\_\_\_ - family residence, substantially in accordance with (the model house erected on Lot No. \_\_\_\_\_, Block No. \_\_\_\_\_) (the approved building plans prepared by \_\_\_\_\_, dated \_\_\_\_\_, a copy of which have been given to Purchaser who has initialed same as evidence of Purchaser's approval and consent to the proposed structure) (the "Residence"). Following are the changes, modifications, additions and/or deletions to the foregoing:
- 3. INGRESS AND EGRESS.** The Parcel shall be conveyed with an easement for ingress and egress over the street or roadway shown on the subdivision map to the nearest public highway, road or street, but nevertheless reserving unto Seller the fee title thereto and all franchise rights therein and the right to dedicate the said streets on said subdivision map to the proper governmental agency having jurisdiction, as well as all drainage easements shown on the subdivision map for granting to the municipality. In the event that the streets have not been dedicated to the governmental agency at the time of closing, Seller will provide ingress and egress to the nearest public road.
- 4. SUBSTITUTION OF MATERIALS.** In the event that the Seller is unable to procure or purchase the materials called for in the building plans or as contained in the model house, which are to be contained in the Residence and Seller's inability is due to shortages, work stoppage, manufacturer's delays and other like causes, Seller may substitute other and different materials in the place thereof and Purchaser hereby expressly agrees to accept such substitution provided that said substitution is acceptable to the lending institution, if any, and to the local municipality and further, that the said substitutions are reasonable and of comparable quality.
- 5. PURCHASE PRICE.** The Purchase Price is \_\_\_\_\_ (\$ \_\_\_\_\_) DOLLARS, payable as follows: \_\_\_\_\_ (\$ \_\_\_\_\_) DOLLARS on the execution of this Contract subject to collection, the receipt of which is hereby acknowledged ("Contract Deposit"); \_\_\_\_\_ (\$ \_\_\_\_\_) DOLLARS, in cash, bank or verified check at the time of the delivery of the deed.
- 6. MORTGAGE CONTINGENCY.** This Contract is subject to the Purchaser obtaining, at their own cost and expense, a mortgage commitment from a lending institution in the sum of \$ \_\_\_\_\_ at the prevailing rate of interest and term within \_\_\_\_\_ ( \_\_\_\_\_) days from the date that a fully executed copy of this Contract is delivered to Purchaser's attorney. Purchaser shall make prompt application for said mortgage commitment and shall cooperate fully with the lending institution. Purchaser shall notify Seller's attorney of the name and address of the lending institution to which application was made together with the amount of the mortgage

applied for. In the event that the lending institution declines to make the mortgage loan applied for, Purchaser shall have five (5) days to notify Seller's attorney, in writing, of the declination of mortgage application and upon doing so, this Contract shall be deemed null and void and any sums deposited with Seller under the terms of this Contract shall be returned to Purchaser except for such amounts for extras which were approved by Purchaser and installed by Seller. Should Purchaser fail to so notify Seller of the declination of the mortgage application within the aforesaid five (5) day period, then, in such event, this Contract shall be deemed to be an all cash transaction, the Mortgage Contingency shall be of no force and effect and the parties hereto shall proceed to closing. Notwithstanding anything herein contained to the contrary, Seller and Purchaser may extend the time in which to obtain a mortgage commitment but only by the terms of a writing signed by the parties hereto.

Seller shall have the option, in the event of the declination of the mortgage application by the lending institution, to grant Purchaser a mortgage for the applied mortgage amount at the rate of interest of (        %) per centum per annum for a term of        years.

7. TITLE. Said Premises are sold subject to covenants, easements and restrictions of record and any easements that must be given to facilitate municipal services and/or public utilities. Seller shall convey such title as any reputable New York title insurance company will insure. Seller shall have the option to supply a New York State title insurance company willing to insure the contemplated transaction, the cost of which shall be borne by Purchaser in the event that Purchaser's title company is unwilling to insure the transaction. In the event that telephone, utility and/or drainage easements are not of record at the time this Contract is executed, said easements may be given at any time and thereafter recorded, provided, however, that the said easements do not interfere with the use and enjoyment of the Residence. Purchaser agrees to execute any and all instruments for the granting and recording of the easements. This provision shall survive the delivery of the deed. The deed shall contain a metes and bounds or other description satisfactory to the lending institution or title insurance company.
8. CLOSING COSTS. In the event that Seller has obtained a building loan mortgage for the construction of the Residence, the costs incurred in closing the building loan mortgage shall be borne by Purchaser for which Purchaser shall reimburse Seller, at the closing hereof, to cover all costs and expenses in connection with the building loan mortgage, recording fees, mortgage tax, interest, title insurance, bank fees, lender attorney fees, inspection fees, application fees and commitment fees. The reimbursement of these fees shall be paid to Seller for distribution to the proper parties for payment or to be retained by Seller if Seller had paid same. The foregoing shall be paid to Seller even if Purchaser does not assume the building loan mortgage.

Purchaser hereby acknowledges that the disbursements referred to hereinabove do not include any sum or sums that the lender may require for deposit in escrow account for payment of future taxes, assessments and/or private mortgage insurance.

Seller shall provide to Purchaser a certified survey, without staking, which shall be certified to Purchaser, the lending institution and the title company. The cost for this survey is \$        which sum shall be paid by Purchaser to Seller at closing.

9. INABILITY TO CONVEY TITLE. Should Seller, for any reason whatsoever, except for a willful default, be unable to convey and transfer title to the Premises to the Purchaser in accordance with the terms of this Contract, Seller's sole liability shall be limited to the refund of all moneys paid on account of this Contract by Purchaser, in which event, this Contract shall be null and void and the parties shall have no further liability, obligation and/or responsibility to the other.
10. SIGNS. Purchaser, for himself, successors and assigns, does hereby covenant and agree that for a period of        years from the date of closing or until such time as the Seller has conveyed title to all the lots on said subdivision map, whichever event shall first occur, Purchaser will not place any sign or signs upon any part of the Premises which advertises or announces that the Premises is for resale.
11. APPROVALS. At or prior to closing, Seller shall deliver a Certificate of Occupancy for all the structures on the Parcel and within        weeks after closing, the Board of Fire Underwriters Certificate.

12. SUBORDINATION. This Contract shall be subject and subordinate to the building loan mortgage recorded against the Parcel, if any.
13. ADJUSTMENTS. Fuel oil, if any, taxes, water/sewer charges are to be apportioned at closing in accordance with local custom. If the closing of title occurs before new tax bills are issued and the new amounts cannot be ascertained, the apportionment of taxes shall be based on one hundred fifteen (115%) per cent of the prior year's tax as shown on the tax bill for the prior year.
14. DEED. The Deed shall be a Bargain and Sale Deed with Covenants Against Grantor's Acts, shall be in recordable form and shall contain the covenant required by Section 13 of the Lien Law of the State of New York. Seller may pay and discharge any and all liens and encumbrances against the Premises from the proceeds of sale at closing.
15. RISK OF LOSS. The risk of loss or damage to the Premises by fire or any other cause shall be that of the Seller until delivery of the Deed pursuant to the terms of this Contract.
16. CLOSING. The Deed shall be delivered to Purchaser at the office of the Seller's attorney, or at the office designated by the lender on or about \_\_\_\_\_, 20\_\_\_\_. In the event that the Seller has completed the Residence and is ready to close pursuant to the terms of this Contract, Purchaser agrees, should Purchaser's lender be ready to close, to accept title on \_\_\_\_\_ (\_\_\_\_) days notice to Purchaser's attorney.
17. BROKER. The parties agree that they have not dealt with any broker concerning the sale or purchase of the Premises except \_\_\_\_\_ and that Seller shall pay the commission pursuant to separate agreement. The parties hereto agree to hold harmless and indemnify the other in the event that they have dealt with another broker and a claim is made as a result thereof. This provision shall survive the delivery of the deed.
18. OCCUPANCY. Purchaser shall not enter into occupancy or use or move or store property in the Premises prior to closing without the prior written consent of the Seller. A breach of this covenant by Purchaser shall constitute a default under this Contract without further act on the part of or notice from Seller, and Seller shall have the right to commence legal proceedings to which the Seller is entitled or summary proceedings for the eviction of Purchaser from the Premises, the costs of which shall be borne by Purchaser including reasonable attorneys' fees. Purchaser hereby expressly waives any and all defenses to such an action and/or proceeding.
19. WELLS. If required by the subdivision regulations or by any municipality, Seller, at Seller's sole cost and expense, shall provide a well up to \_\_\_\_\_ (\_\_\_\_) feet in depth with \_\_\_\_\_ (\_\_\_\_) feet of casing and an adequate pump to handle same. If it is necessary to exceed the specifics of the foregoing, Seller will do so and charge Purchaser as follows: \$ \_\_\_\_\_ per foot up to \_\_\_\_\_ (\_\_\_\_) feet which price includes the pump, wire and additional footage. A depth of more than \_\_\_\_\_ (\_\_\_\_) feet, the Purchaser will be responsible for \$ \_\_\_\_\_ per foot and the additional cost of the next size pump. If necessitated by ground conditions, additional steel casing in excess of \_\_\_\_\_ feet, the cost shall be \$ \_\_\_\_\_ per foot. In the event that the well does not produce potable water, the Seller shall drill additional wells at the same cost and expense to Purchaser.
20. SODDING; GRADING. No part of the Premises shall be sodded. The lot shall be graded a reasonable distance in front of the Residence, a reasonable distance along the sides of the Residence and a distance of \_\_\_\_\_ (\_\_\_\_) feet from the rear of the Residence. Seller reserves the right to determine elevation of the foundation and streets to conform with topographical conditions and to reverse the plan layout or layout of the model house and to determine the location of the Residence on the lot. "Reasonable distance" shall be determined solely by Seller. Seller will not furnish nor plant any shrubs, bushes, flowers or trees. Any washouts and/or erosions occurring after the date of closing are not the responsibility of Seller.
21. TOPSOIL. Seller reserves the right to remove all topsoil stored on the Premises but Seller shall comply with all municipal laws and regulations as to the amount of topsoil needed to be left on the Premises. This paragraph shall survive delivery of the deed.

22. DEDICATION OF ROADS. Until such time as the appropriate governmental agency accepts the dedication of the roadways and/or sidewalks, if any, Purchaser shall not do or cause to be done the depositing of rubbish, garbage and/or trash upon the roadways and/or sidewalks of the development in which the Premises is situated. This paragraph shall survive delivery of the deed.
23. EXTRAS. The Seller shall make the additions to the building plans or plan of the model house set forth on Schedule A hereto. The sum of (\$ ) DOLLARS shall be paid upon the signing of this Contract and the sum of (\$ ) DOLLARS shall be paid at the time of installation of the extras.
24. UNFINISHED ITEMS. In the event that the Residence shall not be fully completed on or before closing, the same shall not be deemed an objection to closing provided the lending institution is willing to close and fund the mortgage commitment. The Residence shall be deemed complete upon the issuance of a Certificate of Occupancy. If any items or work or supply of materials are then incomplete, the Seller agrees to give and the Purchaser agrees to accept a written statement setting forth the items that need completion or repair ("Punch List"). Seller shall further provide a statement setting forth the date by which the Punch List is to be completed. The Punch List and written statement shall survive the delivery of the deed. At closing, there will not be an escrow fund deposited by Seller with regard to the Punch List.
25. CONTRACT DEPOSIT. The Purchaser may require the Seller to deposit the Contract Deposit in an escrow account. In lieu of such deposit, Seller may post a bond guaranteeing the return of the Contract Deposit.
26. INCREASE IN PURCHASE PRICE. This Contract is conditioned upon Seller's ability to complete the construction of the Residence at existing cost of materials and at the existing labor scale of wages. In the event that there is an increase in the cost of materials and/or in the labor scale of wages prior to the closing of title hereunder, Seller reserves the right to increase the sales price of the Residence in an amount to cover the said increases by giving written notice of such increase to Purchaser at the address set forth herein. Should Purchaser fail to notify Seller within ten (10) days after receipt of said notice of Purchaser's consent to the increase in price, then, at the expiration of said ten (10) day period, this Contract shall be deemed terminated, cancelled and of no force and effect and Seller shall return to Purchaser all sums of money paid on account hereof, without interest, except for the approved extras already installed.
27. ADDITIONAL EXPENSES. If conditions warrant and call for extraordinary excavation, rock removal, blasting, tree and/or stump removal, additional fill or similar work, Seller shall obtain a work order from Purchaser for same prior to incurring such expense, the cost of which shall be borne by Purchaser.

In the event that the municipality having jurisdiction over the construction of the Residence requires changes not contemplated by Seller and Purchaser at the time of the execution of this Contract, then in such event, the Purchaser agrees to bear the additional cost of such changes.

28. REQUIRED CHANGES. Should the Federal, State or local government require any changes in construction regarding insulation standards other than those standards in effect at the time of the execution of this Contract, Purchaser agrees to pay for any additional cost in connection therewith.

As per FTC Trade Regulation Rule, Seller has provided to Purchaser the insulation standards that will be used in the construction of the Residence and the Purchaser hereby expressly acknowledges receipt of same.

29. GUARANTY. Notwithstanding the provisions of Paragraph 29 hereof, if Purchaser agrees to release the Contract Deposit to Seller, the President of Seller, by signing this Contract, personally guarantees the return of the Contract Deposit in the event that the Contract Deposit is to be returned to Purchaser under the terms of this Contract.
30. PROPOSED CHANGES. Any proposed changes to this Contract must be made on a separate rider. Any deletions of any term, provision or condition of this Contract shall be deemed a counter-offer and Seller will them be permitted to renegotiate the sales price.

31. DELAY IN CLOSING. In the event that the purchaser fails to take title to the Premises within fifteen (15) days after the issuance of the Permanent Certificate of Occupancy, Purchaser shall pay to Seller the sum of \$ \_\_\_\_\_ per day for each and every day from the date that the Permanent Certificate of Occupancy was issued to and including the date of closing.
32. WARRANTIES AND GUARANTEES. The Seller makes no housing merchant implied warrant or any other warranties, express or implied, in connection with this Contract or the construction of the Residence and all such warranties are hereby excluded, except as provided in the Limited Warranty annexed hereto. The express terms, conditions and provisions of the Limited Warranty are incorporated in this Contract as if fully set forth at length and there are no other warranties.

The Purchaser hereby acknowledges receipt of a written copy of the terms of the Limited Warranty and Purchaser hereby affirmatively states that Purchaser has received such copy and reviewed same before executing this Contract.

Seller warrants that the Residence will meet or exceed the standards of workmanship and materials relative to the industry now existing in \_\_\_\_\_ New York.

The Limited Warranty specifically excludes those items set forth in the Limited Warranty documents and further excludes the Seller's responsibility for the following: (i) nail pops and ridging on sheet rock surfaces; (ii) sticking of doors due to weather; (iii) warpage of doors and closet shelves less than ½"; (iv) adjustments of bifold doors; (v) bath tile grouting; (vi) slight separation in the joint of tiled floors; (vii) slight separation between the wall base or base molding and floors; (viii) normal settlement or deflection and any consequential damage resulting therefrom; (ix) normal noises from plumbing, heating, fans, vents and ducts; (x) partial or total death of or damage to any plantings provided by Seller or existing prior to construction; (xi) nonstructural or settlement cracks in walls, foundation, walks, terraces, patios, retaining walls, curbs or spalling of concrete walks and terraces; (xii) nonalignment of kitchen cabinets; and/or (xiii) moisture and/or condensation in basements and/or crawl spaces.

Seller will not be responsible, subsequent to the closing of title, for paint touch-ups, repair of dented appliances, repair of chips, scratches, breaks or other blemishes in windows, sliding glass doors, screens, mirrors, electric fixtures and globes, interior painted surfaces, sinks, tubs, basins, kitchen cabinets and counter tops, vanity tops and cabinets, medicine cabinets, ceramic tile floor and base and marble saddles, resilient floor tile, carpeting, kitchen appliances, air conditioning units, dryer vents, woodwork and doors, wrought iron, rubbish enclosures, other similar items, replacement of fluorescent light ballasts or any other lights or light bulbs, maintenance due to normal wear and tear. Seller's warranty excludes those items that are a result of purchaser's negligence or willful acts.

33. WAIVER OF JURY TRIAL. In the event of institution of legal proceedings or litigation amongst the parties hereto arising out of the terms, conditions and provisions of this Contract, each of the parties hereto expressly waive their respective right to a trial by jury. In the event that the warranty given hereunder contains a provision for the submission of the dispute to arbitration, both parties hereto shall be so bound. This paragraph shall survive delivery of the deed.
34. BANK ESCROWS. Purchaser acknowledges that Purchaser has no right, title or interest in and to or privity with the escrow, if any, held by the lending institution for Punch List items.
35. RELEASE. Notwithstanding anything contained herein to the contrary, it is specifically understood and agreed that the delivery by Seller and acceptance of the deed by Purchaser shall be deemed to be full compliance by the Seller of all the terms of the Contract by it to be performed, and as a release by the Purchaser of any and all terms of this Contract, of any and all rights, obligations, claims or causes of actions against the Seller. Purchaser acknowledges that none of the provisions of this Contract survive delivery and acceptance of the deed except for those which expressly state otherwise. No other promise, representation, agreement or obligation on the part of the Seller, its agents, employees or representatives shall be binding or survive the delivery and acceptance of the deed except if it is in writing signed by Seller and expressly states that it survives delivery and acceptance of the deed.

- 36. PURCHASER'S DEFAULT. In the event of a default on the part of Purchaser under the terms, conditions and/or provisions of this Contract, this Contract shall be deemed to be cancelled and terminated without any further act on the part of the Seller to be performed, and the Purchaser agrees that all amounts paid on account of this Contract to Seller shall be retained by Seller as liquidated damages. This paragraph shall survive delivery of the deed.
- 37. PARTIES BOUND. The terms, provisions and conditions of this Contract shall be binding upon the parties hereto and their respective heirs, assigns, executors, administrators and successors.
- 38. ENTIRE AGREEMENT. The parties hereto acknowledge that this Contract incorporates all prior understandings, agreements and representations made one to the other or by their respective agents, servants or employees, whether orally or in writing.

**IN WITNESS WHEREOF**, the parties have executed this Contract as of the day and year first written above.

PURCHASER:

SELLER:

\_\_\_\_\_

\_\_\_\_\_

Tax I.D. No.:

Tax I.D. No.:

\_\_\_\_\_

Tax I.D. No.:

PERSONAL GUARANTY PURSUANT TO  
PARAGRAPH 29 OF THIS CONTRACT

\_\_\_\_\_

by \_\_\_\_\_, Esq, in an IOLA account at \_\_\_\_\_ (bank) located at \_\_\_\_\_ .  
*The Contract Deposit, if required to be held in escrow pursuant to the terms of the Contract, shall be held*

**SCHEDULE A**

**ADDITIONS**

Description

Cost

**TOTAL COST: \$ \_\_\_\_\_**