

**CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY**  
**PART B**  
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# **CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY**

## **PART B**

**Any revisions or modifications to Part B must be made on Part A or by Addenda signed by both the Buyer and the Seller.**

### **1. GENERAL**

1.1 The Seller agrees to sell and the Buyer agrees to buy the Premises upon the terms and conditions set forth herein. If contingencies are checked or marked in Part A by both the Buyer and the Seller, they apply to this Contract and are incorporated herein. If contingencies are not checked or marked in Part A, then reference to them in this Part B shall be disregarded. All defined terms used in this Contract shall have such meanings throughout and in all modifications to this Contract.

1.2 Part B is intended to be identical to the master version recorded December 30, 2010 in the Tompkins County Clerk's Office as Instrument Number 569444-001. The terms of the recorded document shall govern in the event or to the extent any discrepancies exist between this document and the recorded document.

1.3 The Seller and the Buyer agree to cooperate in good faith with the reasonable requests of the other party as may be necessary to consummate the transaction contemplated herein, including but not limited to making the Premises available for inspections during reasonable times and upon reasonable notice.

1.4 This Contract contains the entire agreement between the parties and supersedes any and all other agreements or representations previously made between the parties. This Contract may only be changed or modified by written agreement signed by the parties.

1.5 If the Seller fails to perform any of the Seller's obligations under this Contract, the Buyer may pursue all legal rights and remedies against the Seller, including those available at law or equity. If the Buyer fails to perform any of the Buyer's obligations under this Contract, the Buyer shall forfeit any deposits to the Seller, and the Seller may pursue all legal rights and remedies against the Buyer, including those available at law or equity. The successful litigant party shall be entitled to court costs and reasonable attorney's fees incurred in pursuing or defending such claim. The parties consent to the jurisdiction of any court in the county in which the Premises are located for any action arising out of this Contract.

1.6 No terms of this Contract or any written modifications hereto shall survive the closing except as otherwise specified herein.

1.7 This document may be executed in counterparts, and the original signature of any party to this Contract transmitted by facsimile or electronically shall be treated as an original signature. Any party who submits an original signature electronically or by facsimile shall be estopped from claiming that the submitted signature does not bind the party to this Contract. Electronic signatures shall not be considered valid for the enforceability of this Contract.

## **2. PARTIES**

2.1 The parties to this Contract are the Seller and the Buyer listed in Part A. The term "Seller" and the term "Buyer" shall also mean multiple sellers and buyers, to the extent applicable. Liability for performance shall be joint and several, meaning each individual person or entity signing this Contract is separately liable for the performance of the obligations of this Contract, including the delivery of the deed and payment of the purchase price.

2.2 The party responsible for providing the items or conducting the tests set forth in this Contract shall also be deemed to bear of the responsibility for selecting, coordinating, and paying for same.

2.3 This Contract binds and benefits the Buyer, the Seller, and the Seller's respective executors, administrators, heirs, distributees, personal representatives, successors and assigns.

2.4 This Contract may not be assigned by either party without the written permission of the other party.

## **3. PREMISES**

3.1 The "Premises" conveyed by the Seller to the Buyer shall be defined as the parcel of land identified and described in Part A, together with all recorded rights-of-way and/or easements necessary and appropriate so the Buyer may enjoy the full use of the Premises; together with any and all of the Seller's ownership and rights to the land lying in the bed of any street or highway, open or proposed, adjoining the land to the center line thereof; together with any and all rights to roads, streets, restrictions and covenants common to the tract or subdivision; together with any and all right, title and interest in and to common areas and homeowner's associations; together with any interest in leases appurtenant to the land; together with any and all unpaid awards by reason of taking by condemnation and/or for any damage to the Premises; together with all Improvements and Fixtures described in Section 3.2 and the articles of Miscellaneous Property described in Section 3.3, but only to the extent that said improvements, fixtures and articles of miscellaneous property are located on the Premises on the date Buyer submits its initial offer to the Seller (the "Offer Date") unless otherwise specified in this Contract.

### **3.2. Improvements and Fixtures**

3.2.1 The improvements include, but are not limited to: all buildings, temporary buildings, storage sheds, decks, patios, retaining walls, fences, swimming pools, and other structures and appurtenances.

3.2.2 The fixtures include, but are not limited to: all lighting, electrical, heating, ventilating, and plumbing fixtures; chandeliers; fuel oil tanks and propane gas tanks (if owned by the Seller); all heat generating stoves and units, fireplaces, and built-in fireplace screens; all septic systems, well pumps, water pumps, hot water heaters, water softeners (if owned by the Seller), and water filtration systems (if owned by the Seller); hard-wired electricity generators; radon mitigation systems; all exhaust fans, ceiling fans, ventilators, and built-in air conditioning equipment; all kitchen cabinets and countertops; built-in microwaves, range hoods, in-sink garbage disposal units and dishwashers; bathroom cabinets, recessed mirrors, and countertops; built-in cabinets, shelves and bookcases; all mantels, windows, screen windows, storm windows; all doors, screen

doors, storm doors, door hardware, garage doors, and electronic garage door openers; awnings; all wall-to-wall carpeting and attached carpet runners; all hardwood, laminate, tile and vinyl floor coverings; all smoke detectors and carbon monoxide detectors; all security systems (if owned by Seller), intercom systems, and central vacuuming systems including hoses and attachments; all lead-in wires, television reception aerials, and satellite dishes and all related equipment (if owned by the Seller); all window boxes, mailboxes, weather vanes, flag poles, in-ground or garage and wall-mounted basketball backboards, hoops, and poles; all fencing, electronic animal or pet fencing; all trees, plantings and shrubbery.

*Specifically excluded* from the improvements and fixtures are playground equipment not affixed to the ground in cement or concrete; wall-mounted televisions and speakers; window unit air conditioners; and all frames, mirrors, art, decoration, bookcases and household furniture which are affixed to the Premises with fewer than three (3) screws, bolts, nails or other semi-permanent attachment devices.

*Any items set forth above or otherwise affixed to the Premises, but which are not intended to be conveyed, must be specifically excluded in Part A or in Addenda signed by both parties.*

### **3.3 Miscellaneous Property**

3.3.1 The miscellaneous property includes: all appliances and other items specifically listed in Part A, and all curtain rods, drapery rods, shades, window blinds, and all hardware related thereto; fireplace inserts, free standing fireplace screens and equipment, fireplace grates, and fireplace glass enclosures; sump pumps; all swimming pool equipment; remote control units and equipment for garage door openers and electronic animal or pet fencing; all other motors, transmitters, receivers, controls, system operations keys and codes, remote units and component parts.

3.3.2 The Seller shall also convey operable smoke detector(s) and carbon monoxide detector(s) as required by the laws of the State of New York, whether or not existing on the Premises on the Offer Date.

3.3.3 The Seller shall also deliver at closing any and all access codes and keys to the Premises, but in no event less than one key to each deadbolt and doorknob lock for the primary exterior door of each main residence and dwelling unit.

3.3.4 The sale shall not include items of personal property belonging to tenants.

3.3.5 All appliances and items of miscellaneous property are an integral part of the Premises and have no separate value apart from said Premises.

*3.3.6 Any items set forth above but not intended to be conveyed must be specifically excluded in Part A or in Addenda signed by both parties.*

## **4. PRICE AND PAYMENT**

### **4.1 Purchase Price**

4.1.1 The Buyer agrees to pay to the Seller the purchase price set forth in Part A. At closing, Seller agrees to credit Buyer the amount stated in Part A (if any) as a Seller Concession. The Seller Concession may be used by the Buyer to cover expenses incurred by Buyer in this transaction, including but not limited to: loan origination or discount fees; mortgage application fee; mortgage tax; deed and mortgage recording fees; mortgage title insurance premium; homeowner's/hazard and/or flood insurance premiums; appraisal fee; flood certification fee; document preparation fee; structural and/or radon inspection and testing fees, credit reporting fee; tax service fee; Buyer's and lender's attorney's fee; tax, fuel, and/or common charge prorations; and pre-payable expenses such as prepaid interest and escrow.

4.1.2 Unless the Seller made a representation regarding the acreage or the dimensions of the Premises which the Seller knew or reasonably should have known was false, there shall be no price adjustment to either party in the event any survey should determine a positive or negative deviation from the estimated or advertised acreage or dimensions of the Premises.

4.1.3 If the price set in Part A is specifically established by means such as price per acre, road frontage, water frontage or other measurable index, the Buyer shall disclose this method by specifying minimally acceptable acreage or other index in Part A or in an Addendum signed by both parties. In such case, in the event that any survey determines a negative deviation from the specified minimum, the Buyer may terminate this Contract by written notification to the Seller.

### **4.2 Deposit**

4.2.1 The deposit(s) shall be held in a non-interest bearing escrow account or Interest On Lawyer Account (IOLA) by the escrow agent and at the financial institution identified in Part A. At closing, the deposit(s) shall be delivered to the Seller and applied to the purchase price or the Seller's expenses. In the event this offer is not accepted, or if accepted and subsequently terminated as permitted under the terms of this Contract, the deposit(s) will be delivered to the Buyer.

4.2.2 In the event of any dispute between the parties as to the release of the deposit(s) or to whom the deposit(s) are to be paid, the escrow agent is to retain the deposit(s), and it is agreed the deposit(s) shall be held until the parties execute a written agreement to release the funds, or a court determines the rights to the funds, or as otherwise set forth herein. In such event, either party may commence an action to determine the validity of any and all claims to the deposit(s). The parties consent to the jurisdiction of any court in the county in which the Premises are located for any such action and waive rights to a jury trial in any such action. In the event neither party commences such action within One Hundred Eighty (180) calendar days from the date this Agreement is terminated by written notice to either party, the funds shall be released by the escrow agent to the Buyer, and the escrow agent will have no further obligation to any party with respect to the deposit(s). The escrow agent will not be liable for any amount greater than the actual amount of said deposit to any party in the event that disbursement is not made at the time or is delayed for any reason. Notwithstanding the foregoing, the funds shall be held for so long as an action is pending for the determination of claims to the deposit(s) and the plaintiff in said action has notified the escrow agent in writing of the commencement of said action. The

release of the deposit(s) as set forth herein shall not prejudice the rights of either party to pursue any other actions or proceedings.

#### **4.3     Adjustments**

4.3.1 The Seller and the Buyer will make financial adjustments for prepaid or unpaid charges for taxes, common charges, homeowner's association fees, rents, security deposits, water charges, sewer charges, solid waste fees and fuel oil and kerosene in storage as of the date of closing. Taxes will be adjusted for the remaining days in the fiscal year with the Seller responsible for the day of closing. If the closing occurs before a new tax rate is fixed, the adjustment will be based upon assessed value at the time of closing and the tax rate for the preceding fiscal year.

4.3.2 Fuel oil or kerosene in storage shall be adjusted at the average market price at the time of transfer of possession of the Premises as agreed between the parties or, in the absence of agreement, at the market price on the day of closing as quoted by the retailer who last supplied fuel to the Premises.

4.3.3 There shall be no adjustment for paid-up delay rental, pre-paid rent and signing bonuses for any timber, oil, gas or mineral leases previously executed unless entered into after the Offer Date or if said lease has not been properly disclosed to the Buyer pursuant to the terms of Section 5.5.

#### **4.4     Acceptable Funds**

4.4.1 All money payable under this Contract shall be by cash (not over \$1,000), or by official check payable to the Seller issued by any federally insured depository financial institution having an office in the State of New York, or issued from an escrow account from an attorney currently admitted to practice in the State of New York, or by wire transfer approved by the Seller, or as otherwise reasonably directed by the Seller. The Seller is not required to accept any check not payable directly to Seller.

#### **4.5     Cash Transactions**

4.5.1 If this transaction is not subject to the Financing Contingency set forth in Part A, within three business days of execution of this Contract, the Buyer shall provide the Seller with bank statements or a letter from the Buyer's attorney, accountant, or financial institution, indicating the Buyer has sufficient and accessible funds to close this transaction. If the Buyer fails to provide evidence of sufficient and accessible funds within three business days, the Seller may terminate this Contact by written notification to the Buyer.

### **5. CONTINGENCIES**

#### **5.1     Attorney Approval**

5.1.1 The Attorney for the Seller and the Attorney for the Buyer will each have three (3) business days from the execution of this Contract to declare this Contract null and void. Each party shall be responsible for the timely delivery of this Contract to its own attorney. The failure to notify the other party in writing within said period will constitute an automatic removal of this contingency and will be deemed an approval of this Contract.

## **5.2 Home Inspection**

5.2.1 This Contract is contingent upon the receipt by the Buyer of inspection reports and test results satisfactory to the Buyer with respect to the Premises.

5.2.2 If the Buyer is not satisfied with any of the inspection findings, the Buyer shall specify the unsatisfactory finding(s) in a written notice delivered to the Seller within the time frame set forth in Part A, or this contingency shall be deemed waived. In such notice to the Seller, the Buyer shall either: terminate this Contract; or request the Seller repair or improve the unsatisfactory finding(s) to the satisfaction of the Buyer; or request a reduction in, or concession to, the purchase price. If the Buyer has not terminated this Contract, the Seller shall respond in writing within two (2) business days of receipt of the Buyer's notice and shall either: accept the Buyer's proposal; or make a counterproposal; or notify the Buyer that no repair or price reduction/concession will be made. If the Seller fails to respond in writing within two (2) business days, the Buyer may terminate this Contract by written notification to the Seller. If the Seller makes a counterproposal or declines all repairs and price reductions, the Buyer shall respond in writing within two (2) business days of receipt of the Seller's written response and shall either: accept the Seller's counterproposal; or waive the home inspection contingency; or terminate this Contract. If the Buyer fails to respond in writing within two (2) business days, or if the Buyer chooses to offer an additional counterproposal, the parties may continue to negotiate an agreement regarding the unsatisfactory inspection finding(s), or either party may terminate this Contract by written notification to the other party.

## **5.3 Radon**

5.3.1. This Contract is contingent upon the receipt by the Buyer of an inspection report regarding the presence of radon gas, which report shall state that the presence of radon gas is below four picocuries per liter (4 pCi/L) in the lowest space which could be used by the Buyer as a bedroom, kitchen, dining room, bathroom, play area, family room, den, exercise room, laundry room, or workshop. The Seller shall in no way interfere with or take any action which would alter, affect or manipulate the results of the radon test. If the report indicates presence of radon gas at 4 pCi/L or above, the Buyer shall deliver written notice of the test results to the Seller within the time frame set forth in Part A, or this contingency shall be deemed waived. In such notice to the Seller, the Buyer shall either: terminate this Contract; or request the Seller install a radon mitigation system satisfactory to the Buyer; or request a reduction in, or concession to, the purchase price. If the Buyer has not terminated this Contract, the Seller shall respond in writing within two (2) business days of receipt of the Buyer's notice and shall either: accept the Buyer's proposal; or make a counterproposal; or notify the Buyer that no mitigation system will be constructed and no price reduction/concession will be made. If the Seller fails to respond in writing within two (2) business days, the Buyer may terminate this Contract by written notice to the Seller. If the Seller makes a counterproposal or declines all mitigation systems and price reductions, the Buyer shall respond in writing within two (2) business days of receipt of the Seller's written response and shall either: accept the Seller's counterproposal; or waive the radon contingency; or terminate this Contract. If the Buyer fails to respond in writing within two (2) business days, or if the Buyer chooses to offer an additional counterproposal, the parties may continue to negotiate an agreement regarding the radon mitigation or either party may terminate this Contract by written notification to the other party.

## **5.4     Financing**

5.4.1 This Contract is contingent upon the issuance, on or before the commitment date set forth in Part A, of a written commitment for financing of the type(s) and in the amount(s) set forth in Part A (the “Commitment”). However, a commitment conditioned on the lender’s approval of an appraisal of the Premises, verification of employment, or proof of funds sufficient to close, shall not be deemed a “Commitment” hereunder, unless the parties agree otherwise. The Buyer or lender shall furnish the Seller with a copy of the Commitment, executed by the Buyer, promptly after receipt thereof and the Buyer hereby authorizes the Seller’s attorney to receive a copy of said written commitment. If the Commitment is provided by a private or non-institutional lender, the Buyer shall also provide evidence the Buyer’s lender has sufficient and accessible funds to close this transaction.

5.4.2 The Buyer agrees to apply for financing with at least one lender within three (3) business days of either the delivery of this fully executed Contract to the Buyer or waiver or removal of the inspection contingency contained herein, if applicable, whichever date is later. The Buyer also agrees to furnish to lender accurate and complete information regarding the Buyer and members of the Buyer’s family, as required; pay all fees, points and charges required in connection with such application and loan; pursue such application with diligence; and cooperate in good faith with the Buyer’s lender to obtain a Commitment.

5.4.3 In the event a Commitment is issued by the Buyer’s lender which meets the terms set forth in Part A and the terms applied for, and is conditioned only upon no material adverse change in the Buyer’s financial condition and/or upon any condition already required by this Contract, the Buyer shall accept said Commitment by the date set forth in Part A or remove this contingency.

5.4.4 In the event a Commitment is issued which meets the terms set forth in Part A but is conditioned upon the sale of other assets of the Buyer (if not already required by this Contract), or contains a condition related to the appraisal results, completion of repairs prior to closing, or any condition the Buyer cannot reasonably satisfy, the Buyer may accept or reject the conditional Commitment. If the Buyer rejects the conditional Commitment, the Buyer may terminate this Contract by written notice to the Seller, with a copy of such conditional Commitment. If the Buyer accepts the conditional Commitment, the Buyer accepts the risk that such conditions may not be met. Upon delivery of the conditional Commitment to the Seller, the Seller shall have the option to reject the conditional Commitment and terminate this Contract by written notice to the Buyer. Failure of the Seller to deliver such written notice within three (3) business days of receipt of the conditional Commitment shall be deemed a waiver of the Seller’s right to reject same.

5.4.5 Once the Buyer accepts a Commitment, the Buyer shall be deemed to have waived the Buyer’s right to terminate by reason of this contingency. Furthermore, the Buyer’s obligations hereunder are conditioned only on issuance of a Commitment. Once a Commitment is accepted, the Buyer shall comply with all requirements of the Commitment and is bound under this Contract even if the lender fails or refuses to fund the loan for any reason.

5.4.6 If all lenders to whom applications were made deny such applications in writing prior to the commitment date, the Buyer may terminate this Contract by written notice to the Seller, with a copy of such denials, provided the Buyer has complied with all its obligations under this section. If no Commitment is accepted on or before the Commitment Date, either party may

terminate this Contract by delivering written notice to the other party after the Commitment Date. In the absence of said notice this Contract will continue in full force and effect still subject to this financing contingency.

## **5.5 Oil, Gas, and Mineral Rights Leases**

5.5.1 Within five (5) business days after a fully executed Contract is delivered to the Buyer, the Seller shall deliver to the Buyer a copy of all oil, gas or mineral rights leases currently affecting the Premises. The Buyer's obligations under the Contract are expressly contingent upon the Buyer being satisfied, at the Buyer's sole discretion, with the terms of any such lease. If within five (5) business days after the Buyer's receipt of all such leases and statements, the Buyer is not satisfied with same, the Buyer shall have the right to terminate this Contract by written notice to the Seller by the end of business on such fifth (5<sup>th</sup>) business day. If by such time the Seller has not received from the Buyer such written notice of termination, then this lease review contingency shall be deemed to have been fully satisfied and removed from the Contract, and the Buyer's obligations under this Contract shall no longer be contingent upon the terms of this contingency.

5.5.2 In the event that the Seller fails to disclose the existence of any such lease within five (5) business days after a fully executed Contract is delivered to the Buyer, or if the Seller executes any such lease after the Contract date, the Buyer shall have the right to terminate this Contract by written notice to the Seller. If the Buyer so terminates this Contract after learning of the existence of such a lease, the Seller shall reimburse the Buyer for all out-of-pocket costs associated with the transaction described in this Contract, including but not limited to inspection fees, lender fees, appraisal fees, and attorney fees.

## **6. CONDITIONS PRIOR TO CLOSING**

### **6.1 Water**

6.1.1 In the event the Premises are not connected to a public water system, the Seller will provide a written statement from an Environmental Laboratory Approval Program (ELAP) compliant laboratory stating the water is free of coliform and e-coli bacteria.

### **6.2 Septic**

6.2.1 In the event the Premises are not connected to a public sewer system, the Seller will provide a written statement from a qualified septic system technician authorized to do business in the State of New York or other person acceptable to the Buyer stating the septic tank has been pumped within three months prior to the date of closing, and further stating the septic system appeared to be operating properly. If the Premises are located in a county which requires Health Department or other regulatory approval of the septic system upon transfer of real property, the Seller shall provide same.

### **6.3 Subdivision Approval**

6.3.1 If the Premises constitute only a portion of a current tax parcel or if the Premises had previously been a portion of a larger tax parcel, the Seller shall deliver all necessary documentation to establish the division has or had been approved, if required, in accordance with local and state law. Furthermore, if the Premises constitute only a portion of a current tax parcel, the Seller shall deliver a certificate of apportionment (with memorandum of apportionment prior to closing) from the municipal assessor's office, establishing the percentage of such tax parcel's assessed value to be attributed to the Premises. In lieu of a certificate of apportionment, the parties may agree to establish the percentage by other reasonable method.

## **7. DISCLOSURES**

7.1 The parties agree and acknowledge the Seller has delivered and the Buyer has received the disclosures set forth in Part A, though such disclosures are separate from this Contract and do survive the closing.

## **8. DEED AND RELATED TITLE DOCUMENTS**

### **8.1 Deed**

8.1.1 The Seller shall provide: a warranty deed containing warranties of title and quiet enjoyment and a lien covenant if the Seller is a natural person; a fiduciary deed with lien covenant if the Seller is a fiduciary; a bargain and sale deed with lien covenant and covenant against grantor's acts if the Seller is not a natural person or fiduciary; or a bargain and sale deed with lien covenant and covenant against grantor's acts for so much of the Premises as may be affected by a title defect which is accepted by the Buyer. In addition to the deed, the Seller shall provide a completed Form TP-584, Form RP-5217, an affidavit showing compliance with the Home Equity Theft Protection Act, an affidavit regarding smoke and carbon monoxide detectors, and if appropriate, Form IT-2663.

### **8.2 Abstract**

8.2.1 The Seller shall provide an accurate abstract of title, updated within six (6) months of closing and prepared by a title or abstract company authorized to do business in the State of New York and insured for errors and omissions in the minimum amount of Five Hundred Thousand Dollars (\$500,000) per occurrence, or by a title insurance company authorized to do business in the State of New York, which company maintains statutory loss reserves for abstracts. The abstract shall be made from the records in the office of the County Clerk in which the Premises are located, and shall commence with a warranty deed conveying full fee interest and recorded no sooner than forty (40) years from the date of closing. The Seller shall update the abstract of title through the time of closing including telephone reports and final extensions to include the documents recorded at the closing. The abstract of title shall become the property of the Buyer at the time of closing.

### **8.3 Tax and Other Certificates**

8.3.1 The Seller shall provide: ten year tax certificates generated by the county, city, and/or village in which the Premises are located; tax receipts for all current applicable county, town, village, city and school taxes; and an estoppel certificate covering any common charges or homeowner's association charges.

8.3.2 In the event the Seller is a corporation, the Seller shall also provide for recording a current certificate of good standing to do business in the State of New York, a certificate showing no franchise taxes are owed, and a corporate resolution authorizing the sale, execution and delivery of the deed and related title documents.

8.3.3 In the event the Seller is a limited liability company or limited liability partnership, the Seller shall also provide a copy of the Seller's operating agreement with all amendments, and shall provide for recording a current certificate of good standing to do business in the State of New York showing that all publication requirements have been met, a resolution authorizing the sale, execution and delivery of the deed and related title documents, and a certificate or proof the entity is taxed as a partnership. If the entity is taxed as a corporation, the Seller shall also provide a certificate showing no entity, organization or franchise taxes are owed.

8.3.4 In the event the Seller is a trust, the Seller shall also provide a copy of the trust agreement with all amendments and shall provide for recording a memorandum of trust evidencing the trustee's authority sell the Premises, and to execute and deliver the deed and related title documents.

8.3.5 In the event the Seller is an estate, and if such documents are not already filed in the Surrogate's Court or County Clerk's Office in the county in which the Premises are located, the Seller shall also provide for recording: an original death certificate; release of lien of estate tax; and letters testamentary or letters of administration to the individual identified in this Contract as representing the Seller.

### **8.4 Survey**

8.4.1 The Seller shall provide at least five (5) original survey maps of the Premises dated subsequent to the date of this Contract, prepared and certified in accordance with the Buyer's instructions, by a surveyor holding a current license as required by the State of New York. The surveyor shall monument and stake all corners, and the survey shall show all courses and distances, the location of all buildings, improvements, roads, easements, rights-of-way, fences, driveways, utilities, encroachments, set-back lines and limits, and shall reference a point of beginning tied to the nearest road intersection or other fixed point or monument. The survey shall be in a form acceptable for recording or filing in the office of the County Clerk in which the Premises are located, including a mylar copy if required by that county.

### **8.5 Delivery**

8.5.1 The Seller shall deliver to the Buyer or the attorney for the Buyer the documents listed herein at least fifteen (15) calendar days prior to the closing date set forth in Part A, whether or not any or all contingencies and conditions in the Contract have been satisfied.

## **9. TITLE**

### **9.1 Quality or Marketability of Title**

9.1.1 The Seller must deliver to the Buyer at closing good and marketable title in fee simple to the Premises free and clear of all liens and encumbrances.

9.1.2 The Buyer will accept title to the Premises subject to easements and rights-of-way of record granted to public utilities and municipalities for utility poles, utility lines, electrical lines, media and communication lines, gas lines, water lines, sanitary sewer lines, and drainage provided they do not interfere with the current purpose use and enjoyment of the Premises. The Buyer will also accept title to the Premises subject to governmental laws, regulations and ordinances provided they have not been violated.

9.1.3 The Buyer will also accept title to the Premises subject to private easements and rights-of-way, provided that they do not conflict with the reasonable use of the Premises.

9.1.4 The Buyer will also accept title to the Premises subject to covenants and restrictions typical to the subdivision, provided that they do not conflict with the reasonable use of the Premises and have not been violated, or if their enforcement is barred by law.

### **9.2 Objections to Quality or Marketability of Title**

9.2.1 In the event the Buyer's review of the title materials discloses any defect, lien, encumbrance or condition which renders title to the Premises unmarketable, the Buyer must either accept said title and proceed to Closing, or notify the Seller in writing of any objections to title. Any such written notice shall set forth all title objections and shall request that the Seller cure said objections. The Seller shall diligently pursue cures for all objections, and shall notify the Buyer in writing when objections have been removed. If the Seller has not delivered title curatives or notice that all objections have been or will be removed at or prior to the target or approximate Closing Date, the Buyer may terminate this Contract by written notification to the Seller.

9.2.2 If, after making diligent efforts to cure all objections, the Seller is unable to cure one or more objections to title, the Seller shall notify the Buyer of same. The Buyer shall respond in writing within two (2) business days of receipt of the Seller's notice and shall either: proceed to Closing; or terminate the Contract. If the Buyer fails to respond after two (2) business days, either party may terminate this Contract by written notification to the other party.

9.2.3 In the event the Seller cannot timely cure defects, but either party can obtain an Owner's or Fee title insurance policy reasonably and adequately insuring the uncured title defect in the amount of the purchase price naming the Buyer as insured, and including all endorsements necessary to cover the title defect, a market value rider, and a covenant by the title insurance company to re-issue the policy to future owners with the same coverage covering the title defect, and at no additional cost or obligation to the Buyer, then the Buyer may, at the Buyer's option, accept said policy and title to the Premises.

### **9.3 Title Curatives**

9.3.1 In the event the Seller is not able to provide an original satisfaction at closing for recording in the county clerk's office for any open or outstanding mortgage or other lien held by an institutional lender to be paid from the sale proceeds, the Seller shall obtain and record said satisfaction no later than thirty (30) days after closing, and this provision shall survive the closing. If the Premises are encumbered by a mortgage or lien held by a mortgagee other than an institutional lender, the Seller will deliver by closing an original mortgage discharge or lien termination signed by the mortgagee.

### **9.4 Shared Driveways or Private Roadways**

9.4.1 In the event the Buyer's review of the title materials discloses any feature of the Premises is shared or used in common with the owner(s) of other property (such as a shared or common driveway or private roadway) for which no prior agreement exists of record, or which prior agreement is not adequate to the Buyer, then the Buyer may declare the title to the Premises is unmarketable. Any shared use agreement furnish by the Seller at Closing for recording in the applicable county clerk's office shall be executed by all shared users thereof, shall set forth the terms of use of such feature used in common, and must be approved by the Buyer.

### **9.5 Encroachments**

9.5.1 In the event the Buyer's review of the title materials discloses any encroachment of any improvements across any boundary line of the Premises, easement line or right-of-way line, and for which no prior agreement exists of record to address such encroachment, or which prior agreement is not adequate to the Buyer, the Seller shall furnish for recording at Closing in the applicable county clerk's office an encroachment agreement. Such agreement shall set forth the terms of continuation of such encroachment and must be approved by the Buyer. Alternatively to providing such encroachment agreement, the Seller may, at the Seller's option and expense, legally remove such encroachment, and verify such removal by providing an updated survey map showing that such encroachment has been removed. Notwithstanding the terms of this section, the Seller shall not remove any improvement intended to be conveyed with the Premises.

### **9.6 Tax Deeds**

9.6.1 The Buyer may declare that the title to the Premises is unmarketable if the title is based on a tax deed.

### **9.7 Indian Land Claims**

9.7.1 The Buyer may not declare the title to the Premises is unmarketable based on any claims made under any Native American, Indigenous People or Indian land claims or lawsuits.

### **9.8 Oil and Gas Leases**

9.8.1 Unless the Seller has complied with Section 5.5, the Buyer may declare the title to the Premises unmarketable if it is reasonably determined by the Buyer that there is an oil and gas lease affecting the Premises, unless the lease was disclosed in Part A and any of the following are true: (1) the Premises have been fully released from the lease by recorded instrument signed by the lessee (a mere release of surface rights shall not be sufficient for purposes of this

exception); (2) the lease has been terminated of record by the lessee; or (3) the landowner has cancelled the lease in accordance with New York General Obligations Law Section 15-304.

## **10. CONDITION, RISK OF LOSS AND INSPECTIONS**

### **10.1 Condition**

10.1.1 The Seller will deliver the Premises to the Buyer vacant and free of all tenants or occupants, and free and clear of debris and personal property, and in broom clean condition, including the attic, basement, garage, barns, sheds, storage buildings, outbuildings and grounds, with all mechanical systems, appliances, fixtures, and their respective components functioning properly as designed. The Seller will also maintain the Premises to the date of closing, including the landscaping, trees and shrubs, in substantially the same condition, reasonable wear and tear excepted, as of the time of the home inspection or, in the absence of a home inspection, the time of the Buyer's initial offer. The Seller shall also perform ordinary lawn maintenance, landscape maintenance and snow removal until the date of closing.

10.1.2 If there is any material adverse change in such condition to the Premises, the Seller, at the Seller's sole cost and expense, shall return such feature of the Premises to a condition at least as good as it was at the time of the home inspection or, in the absence of a home inspection, the time of the Buyer's initial offer.

### **10.2 Risk of Loss**

10.2.1 The risk of loss or damage to the Premises by fire or other causes shall remain with the Seller until closing.

### **10.3 Inspection**

10.3.1. The Buyer shall have the right to inspect the Premises prior to closing at a reasonable time and upon reasonable notice for the purpose of establishing the condition of the Premises being delivered at closing.

## **11. CLOSING**

### **11.1 Closing**

11.1.1 Closing means the settlement of the Seller's and the Buyer's obligations to each other under this Contract, including the delivery of the Premises, transfer and delivery of title thereto, and payment and receipt of the Purchase Price.

### **11.2 Documents**

11.2.1 The Seller will deliver to the Buyer at Closing and upon payment of the purchase price the appropriate executed deed as set forth herein, together with all appropriately executed documents required by the clerk of the county in which the Premises are located, certification to inform the Buyer whether or not withholding is required pursuant to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), and all other appropriately executed documents reasonably required by the Buyer or the lending institution for the Buyer. In addition, the Seller shall deliver all estimated capital gains taxes (if required by the clerk of the county in which the

Premises are located), applicable transfer taxes, and applicable recording fees including the filing of the Form TP-584 and any miscellaneous documents necessary and appropriate for the Seller to deliver good and marketable title. The Buyer shall specifically assume financial responsibility for the recording of the deed, survey, equalization and assessment documentation, and all fees and taxes associated with the Buyer's financing, except as may be permitted by Seller Concession set forth in Part A.

### **11.3 Place**

11.3.1 The closing shall take place in the county in which the Premises are located. Priority shall be given to the office of the attorney for the mortgage lending institution, next to the office of the attorney for the Seller, next for the office of the attorney for the Buyer, and next in the office of the county clerk in which the Premises are located.

### **11.4 Date**

11.4.1 The closing shall take place on or before the target or approximate Closing Date set forth in Part A.

### **11.5 Time of Essence Notice**

11.5.1 At any time after the target or approximate Closing Date set forth in Part A either party may notify the other party of the urgency of the need to close and declare time is of the essence. The notice shall specify a time and place for closing during business days and hours at least fifteen business days from receipt of said notice. In the event the other party is not prepared to close at the time, place and date set forth in said notice, the notifying party shall have no obligation to complete the transaction and may terminate this Contract. For purposes of this section, termination of this Contract shall have no effect on the ability of the terminating party to exercise all otherwise available legal rights and remedies.

## **12. POSSESSION**

12.1.1 The Seller shall deliver possession of the Premises to the Buyer at Closing.

## **13. REAL ESTATE BROKER**

13.1.1 The parties represent the real estate agent(s) listed in Part A helped bring about this Contract.

13.1.2 The Seller shall pay the commission due to the real estate broker(s) pursuant to the listing agreement, but in no event later than the closing. The fee shall be paid in cash, bank or certified check, or attorney escrow account check. At closing, the real estate agent may apply the deposit to the amount due. The real estate agent will refund any overpayment at closing.

13.1.3 In the event no brokers are listed in Part A, the parties agree no broker helped bring about this transaction, neither party shall be liable for the fees or commissions incurred by the other party occasioned by this Contract, and each party will indemnify the other for any such fees or commissions claimed to be due in connection with this transaction.

## **14. OTHER WARRANTIES AND REPRESENTATIONS**

14.1.1 The Seller represents and warrants that, at or prior to closing, the Premises will be free and clear of all liens and encumbrances, except any assumed mortgages. The Seller represents and warrants to the Buyer the Seller has the exclusive right, power and authority to sell, convey and transfer the Premises in accordance with the terms of this Contract.

14.1.2 The Seller represents and warrants to the Buyer that to the best of the Seller's knowledge, the Premises are free of toxic or hazardous substances as those terms are defined under any federal, state or local environmental laws, rules or regulations.

14.1.3 The Seller represents and warrants to the Buyer that to the best of the Seller's knowledge, the Premises and any improvements thereon are in full compliance with restrictive covenants and all statutes, ordinances, regulations, and/or other administrative enactments including but not limited to Building Codes and Zoning Ordinances for the present use and that neither the Seller nor the Seller's agent has received notice or has any knowledge of any violation thereof.

14.1.4 The Seller represents and warrants to the Buyer that, to the best of the Seller's knowledge, there is no pending or threatened litigation concerning the Premises.

14.1.5 The Seller will promptly notify the Buyer if the Seller becomes more than two months in arrears on any obligations to make mortgage loan payments or if the Seller is notified the Premises are subject to a foreclosure proceeding or tax sale.

14.1.6 The Seller shall not do anything, or fail to do anything, between the Contract date and the Closing Date which would affect any of the foregoing representations or which would detrimentally affect the marketability of the Premises.

## **15. NOTICES**

15.1.1 Any notice or notification required to be given under the terms of this Contract must be in writing and must be signed by the party giving notice, or by the lawyer or authorized agent of said party. The notice must be personally delivered, mailed (via first class mail or overnight courier), transmitted by facsimile, or by electronic mail (e-mail) to the other party at the address of the party set forth in Part A or to the attorney or authorized agent of said party. Each notice delivered in person or by overnight courier shall be deemed given when delivered. Each notice transmitted by facsimile or electronic mail prior to 5:00 pm EST on any business day, shall be deemed given on the day of transmission; each notice transmitted by facsimile or electronic mail on a non-business day or after 5:00 pm EST, shall be deemed given on the next business day. Each notice delivered by first class mail shall be deemed given on the third business day following the date of mailing. A business day shall terminate at 5:00 pm Eastern Standard Time and shall exclude Saturdays, Sundays, and federal holidays.