



**CONSTRUCTION AND SALE CONTRACT
FOR RESIDENTIAL PROPERTY**

Plain English Form published by and for the exclusive use of the Rochester Home Builders' Association, Inc., the Greater Rochester Association of REALTORS®, Inc., the Monroe County Bar Association and those County Bar Associations that have approved its use.

COMMISSIONS OR FEES FOR THE REAL ESTATE SERVICES TO BE PROVIDED ARE NEGOTIABLE BETWEEN REALTOR® AND CLIENT.

When signed, this document becomes a binding contract. Buyer and Seller should consult their own attorney.

TO: _____ ("Seller") FROM: _____ ("Buyer")

Buyer contracts to purchase from Seller the property described below (the "Property") which includes a house ("Dwelling") built or to-be-built on the Property by Seller on the following terms:

1. Property Description. Property known as _____ (Street Address), being Lot No. _____ in Subdivision _____ located in the County of _____, Town City Village of _____, State of New York, including the Dwelling and any other improvements and all rights which the Seller has in or with the Property. Approximate Lot Size _____.

2. Construction. Seller shall construct upon the Property the Dwelling and any other improvements as shown on the Plans and Specifications agreed upon and initialed by the parties and made a part hereof. All construction must be completed by the Closing Date, as defined below, in accordance with the Plans and Specifications and must conform with the terms of the warranty of Seller delivered pursuant to Paragraph 25 below. Any material changes to the Plans and/or Specifications must have the prior written consent of the Buyer. All final selection for materials, colors and styles must be made within _____ days of Buyer releasing all contingencies, or Seller shall have the right, but not the obligation, to make those selections for the Buyer. All change orders must be in writing and signed by both parties and will be paid for [] when made or [] at closing. Seller shall have the right to determine the grading and elevation of the lot to fit the general pattern of development. Seller shall obtain all permits, certificates and licenses necessary for the performance of the work hereunder, and shall comply with all applicable zoning and building codes, approvals and other relevant statutes, ordinances, codes or regulations.

3.A. Price and Payment: The purchase price is _____ Dollars \$ _____. Buyer shall pay the purchase price as follows:

- [] (i) Upon execution of this Contract by both Seller and Buyer, Buyer will deposit an initial advance of \$ _____ with Seller.
- [] (ii) Upon removal of all contingencies, Buyer will deposit \$ _____ with Seller.
- [] (iii) Upon completion of _____, Buyer will deposit \$ _____ with Seller.
- [] (iv) Upon completion of _____, Buyer will deposit \$ _____ with Seller.
- [] (v) Upon completion of _____, Buyer will deposit \$ _____ with Seller.
- [] (vi) Upon completion of _____, Buyer will deposit \$ _____ with Seller.

Any and all deposits set forth in this Paragraph 3 shall be collectively defined as the "Deposit" or "Deposits."

[] (vii) At closing, the balance of the purchase price shall be paid by certified check or official bank draft.

YOU, AS THE PURCHASER OF THIS RESIDENCE, MAY REQUIRE THE RECIPIENT OR CONTRACTOR TO DEPOSIT THE INITIAL ADVANCE MADE BY YOU IN AN ESCROW ACCOUNT. IN LIEU OF SUCH DEPOSIT, THE RECIPIENT OR CONTRACTOR MAY POST A BOND OR CONTRACT OF INDEMNITY WITH YOU GUARANTEEING THE RETURN OF SUCH ADVANCE.

B. Initial Advance (check one).

- (i) Buyer is aware of the initial advance provisions of Section 71-a.3 of the New York Lien Law and does not require Seller to place the initial advance in an escrow account or post a bond or contract of indemnity for the initial advance. It is understood and agreed by the parties, however, that Seller will use the initial advance only for the purpose of construction of the Dwelling and for no other purpose.

or

- (ii) Buyer does require Seller to place the initial advance in an escrow account or post a bond or contract of indemnity for the initial advance.

C. Subsequent Deposits. The parties agree that all Deposits subsequent to the initial advance shall be used by the Seller only for the purpose of construction of the Dwelling and for no other purpose.

Seller's Initials _____

Buyer's Initials _____

4. Contingencies. Buyer makes this contract ("Contract") subject to the following contingencies. If any of these contingencies is not satisfied by the dates specified (the "Contingency Deadline Dates"), then either Buyer or Seller may cancel this Contract by written notice to the other, provided that the applicable contingency has not otherwise been satisfied after the applicable Contingency Deadline Date and prior to any date on which this Contract is cancelled, and Buyer's Deposit shall be returned. (Check and complete applicable provisions.)

- (a) **Mortgage Contingency.** This Contract is subject to Buyer obtaining and accepting a _____ mortgage loan commitment in an amount not to exceed \$ _____ at an interest rate not to exceed _____%, for a term of _____ years. Buyer shall immediately apply for this loan and shall have until _____, 20____ to obtain and accept a written mortgage commitment. The conditions of any such mortgage commitment shall not be deemed contingencies of this Contract but shall be the sole responsibility of Buyer. Acceptance of a written mortgage commitment by the Buyer shall be deemed a waiver and satisfaction of this contingency.
- (b) **Sale Contract Contingency.** This Contract is subject to Buyer obtaining a contract for the sale of Buyer's existing property located at _____ no later than _____, 20____. Unless and until Buyer has removed this sale contingency in writing, if Seller receives another acceptable purchase offer, Seller may notify Buyer in writing that Seller wants to accept the other offer and Buyer will then have _____ days to remove this sale contingency by written notice to Seller. If Buyer does not remove this sale contingency after receiving notice from Seller, Buyer's rights under this Contract shall end, and Seller shall be free to accept the other purchase offer and Buyer's Deposit shall be returned. If Buyer removes this contingency, Paragraph 4(a) above prevents the sale of Buyer's existing property from being a condition of this Contract.
- (c) **Transfer of Title Contingency.** This Contract is subject to the transfer of title to Buyer's existing property located at _____ no later than _____, 20____. Buyer represents that Buyer has entered into a contract for sale of Buyer's existing property which is now subject to the following contingencies: None; Mortgage; Assumption of Mortgage; Sale of Property; Transfer of Title; Attorney Approval; and/or Other _____. Unless and until Buyer has obtained a contract for sale of Buyer's existing property which is not subject to any unsatisfied contingencies, and has so notified the Seller in writing, if Seller receives another acceptable purchase offer, Seller may notify Buyer in writing that Seller wants to accept the other offer and Buyer will then have _____ days to remove this transfer of title contingency by written notice to the Seller. If Buyer does not remove this transfer of title contingency after receiving notice from Seller, Buyer's rights under this Contract shall end, and Seller shall be free to accept the other purchase offer and the Deposit shall be returned. If this contingency is removed by Buyer, then, pursuant to Paragraph 4(a) above, a transfer of title contingency contained in Buyer's mortgage commitment shall not be deemed a contingency of this Contract but shall be the sole responsibility of the Buyer.
- (d) **Attorney Approval.** This Contract is subject to the written approval of attorneys for Buyer and Seller within _____ calendar days, *excluding Sundays and public holidays*, from date of acceptance (the "Approval Period"). If either attorney (i) does not provide written approval within the Approval Period or (ii) makes written objection to or conditionally approves (collectively, the Objections) the Contract within the Approval Period and the Objection is not cured by written approval by both attorneys and all of the parties within the Approval Period, then (A) either Buyer or Seller may cancel this Contract by written notice to the other and any deposit shall be returned to the Buyer or (B) the approving attorney may notify the other party (with a copy to any attorney listed below) in writing that no approval has been received and that the noticed party has five (5) calendar days, *inclusive of Sundays and public holidays*, from receipt of the notice (Grace Period) to provide written attorney approval or disapproval of the Contract. The approving attorney shall provide to the noticed party (with a copy to any attorney listed below) a copy of the approving attorney's approval letter, whether conditional or not, along with the written notice of the Grace Period. If written attorney approval or disapproval is not provided to the approving attorney within the Grace Period, this Attorney Approval contingency shall be deemed waived by the noticed party and any conditions in the approving attorney's approval letter shall be deemed accepted by the noticed party.
- (e) **Waiver of Attorney Approval.** This Contract is not subject to the Buyer's Seller's attorney approval.
- (f) **Other Contingency(s).** _____.

5. Pre-Closing Inspection by Lender. Seller will order the final inspection with Buyer's mortgage lender. Seller shall not be responsible for any inspection fees unless the initial inspection is not satisfactory to the Buyer's mortgage lender in which case the Seller will pay for any subsequent inspections by Buyer's mortgage lender.

6. Closing Date and Place. Closing shall take place at the _____ County Clerk's Office or at the offices of Buyer's lender on or before _____ days after all contingencies are released in writing and all final selections for materials, colors and styles where required pursuant to the Plans and Specifications have been made ("Closing Date"). Seller shall not, however, be responsible for any delay in commencement or completion of construction resulting from strikes, labor difficulties, government restrictions on the sale of materials, fire, weather, acts of God or any other event beyond control of Seller. In the event of any such delay, the time of closing shall be extended equal to the time of delay.

7. Reimbursement Obligations. Provided Seller has complied with all of Seller's contractual obligations herein, in the event the Buyer fails to close within _____ days after the Closing Date, then the Buyer shall reimburse the Seller \$ _____ per day until closing. Provided Buyer has complied with all of Buyer's contractual obligations herein, in the event the Seller fails to close within _____ days after the Closing Date, then the Seller shall reimburse the Buyer \$ _____ per day until closing. This remedy is in addition to any other remedies the parties may have.

8. Possession of Property. Buyer shall have possession of the Property at closing, in broom-clean condition, with all keys to the Property delivered to Buyer at closing.

9. Title and Related Documents. Seller shall deliver:

- A. At least 15 days prior to the Closing Date, to Buyer or Buyer's attorney, (i) a draft of the proposed deed and (ii) at Seller's expense, an abstract of title, fully guaranteed tax and U.S. Court searches, all dated or re-dated after the date of this Contract with a local tax certificate for Village or City taxes, if any (all of which shall be continued to and including the day of closing at Seller's expense);
- B. At least 15 days prior to the Closing Date, to Buyer or Buyer's attorney, an instrument survey map dated after the date of this Contract, certified and prepared to meet the standards and requirements of Buyer's mortgage lender and the Monroe County Bar Association. Property will be staked (yes no) at corners and angles; and
- C. At the closing, to Buyer, a properly signed and notarized, (i) Warranty Deed with lien covenant (or Executor's, Administrator's or Trustee's Deed, if Seller holds title as such), (ii) carbon monoxide detector and smoke alarm affidavits, (iii) documents required by law, and (iv) documents required by Buyer's lender, provided there is no cost or liability to Seller.

10. Marketability of Title. Seller shall convey good marketable title to the Property in fee simple, free and clear of all liens and encumbrances. However, Buyer agrees to accept title to the Property subject to: (a) restrictive covenants of record common to the tract or subdivision of which the Property is a part, provided these covenants have not been violated or the time for objection to any violation has expired, (b) public utility easements within 10 feet of lot lines which do not interfere with existing improvements or the Dwelling or any other proposed improvements to be constructed on the Property, and (c) except for waterfront properties, fences encroaching less than one foot onto the Property provided the fence placement does not impair access to the Property from a right of way or cause the Property to be in violation of any existing restrictive covenant, easement, or agreement of record, or of any building, zoning or subdivision code.

11. Objections to Title. If Buyer raises a valid written objection to the marketability of the title to the Property, then Seller may cancel this Contract upon written notice to Buyer, and the Deposit shall be returned to Buyer. However, if Seller: (i) is able to cure the title objection on or before the closing or (ii) is able to insure the title objection and Buyer is willing to accept insurable title, then this Contract shall continue, subject to the Seller curing the title objection and/or providing insurable title, at Seller's expense. If Seller fails to cure the title objection on or before the closing or if Buyer is unwilling to accept insurable title, then Buyer may cancel this Contract upon written notice to Seller and the Deposit shall be returned to Buyer.

12. Seller's Representations. Seller represents and warrants to Buyer (which representations and warranties shall survive closing) at the time of the execution of this Contract that the Property is:

- (a) in a Federally regulated wetland. yes no unknown
- (b) in a State regulated wetland. yes no unknown
- (c) in a Federally designated flood plain. yes no unknown
- (d) in a limited development district. yes no unknown
- (e) in a historical preservation district. yes no unknown
- (f) in an agricultural district. yes no unknown
- (g) subject to restrictive covenants. yes no unknown (If yes, Buyer acknowledges receipt of a copy of such restrictive covenants which are attached hereto and made a part hereof.)

13. Closing and Other Costs and Adjustments. Closing and other costs shall be paid as follows:

- (a) real property transfer tax Seller Buyer (estimated to be \$ _____)
- (b) additional transfer tax (under Section 1402-a of the Tax Law) Seller Buyer (if applicable, on sales exceeding \$1,000,000, estimated to be \$ _____)
- (c) instrument survey map Seller Buyer (estimated to be \$ _____)
- (d) staking the lot Seller Buyer (except stakes marking the improvements prior to construction will be provided by the Seller at the Seller's expense)
- (e) water meter Seller Buyer (estimated to be \$ _____)
- (f) recreation fee Seller Buyer (estimated to be \$ _____)
- (g) sewer district fee Seller Buyer (estimated to be \$ _____)
- (h) other: _____ Seller Buyer (estimated to be \$ _____)

Buyer will pay for recording the deed and mortgage and the mortgage tax. Excluding delinquent items, interest and penalties, the following will be prorated and adjusted between Seller and Buyer as of closing: taxes, other assessments and municipal charges computed on a fiscal year basis; common charges or assessments; fuel oil; propane; water; pure water and sewer charges.

14. Zoning/Building Code Compliance. Seller represents that the Property and improvements constructed thereon are and will be at the time of closing in compliance with all zoning and building codes, approvals and other relevant statutes, ordinances, codes or regulations. This representation shall survive closing. Seller shall deliver an unconditional Certificate of Occupancy at closing, or if an agreement is entered into pursuant to Paragraph 19, Seller shall deliver a conditional Certificate of Occupancy at closing and an unconditional Certificate of Occupancy (or a letter from the appropriate municipal authority releasing all conditions) at the time of completion of all items set forth in Paragraph 19.

15. Risk of Loss. Risk of loss or damage to the Property by fire or other casualty until transfer of title shall be assumed by Seller. If damage to the Property by fire or such other casualty occurs prior to transfer, either party may cancel this Contract without any further

liability to the other and Buyer's Deposit shall be returned. If Buyer does not cancel but elects to close, then Seller shall transfer to Buyer any insurance proceeds, or Seller's claim to insurance proceeds payable for such damage.

16. Condition of Property. Buyer and/or Buyer's agents shall have the right, after reasonable notice to Seller, to inspect the Property from time to time during construction and within 48 hours before the time of closing. Buyer assumes the risk of damage to person or property when Buyer and/or Buyer's agents visit the Property, and Buyer indemnifies, defends and holds Seller harmless from all actions, claims and damages of any kind whatsoever arising out of Buyer's visit to the Property except to the extent such actions, claims and damages are due to Seller's negligence or that of Seller's agents.

17. Radon. (Check (a) or (b).)

(a) Buyer does *not* reserve the right to test the Property for radon prior to closing.

(b) Buyer does reserve the right to test the Property for radon prior to closing upon substantial completion of the improvements on the Property, such test to be completed at Buyer's expense. If the radon test results evidence radon levels of 4.0 picacuries/liter or more in any of the Property, Seller agrees, at Seller's expense, to remediate same prior to closing by a certified radon contractor in accordance with the EPA's requirements and recommended guidelines so as to achieve EPA recommended levels (less than 4.0 p/l) and to cause the Property to be retested prior to closing by an independent laboratory to confirm that radon levels have been remediated below 4.0 picacuries/liter in the entire Property. Written evidence of all radon test results and remediation documentation shall be delivered to Buyer by Seller prior to closing.

18. Services. Seller represents that the Property is or will be serviced by: Cable, Electric, Fuel Oil, Gas (Natural), Propane, Public Storm and Sanitary Sewers, Public Water, Septic System, Telephone, Well, Other _____.

19. Escrows. If any item(s) remain incomplete as of the closing and the amount to complete an individual item is \$ _____ or more or if the aggregate amount to complete all of the item(s) is \$ _____ or more, then the Seller's attorney shall hold an escrow in an amount necessary to complete such item(s) pursuant to a written escrow agreement between the parties and their attorneys which will list all of the item(s) needed to be completed, the estimated dollar amount to complete each item, and the date by which each item will be completed. The escrow will be released to Seller on an item by item basis upon Buyer's written approval that the item of work has been completed according to the (i) Plans and Specifications and (ii) the terms of any express limited warranty of Seller delivered pursuant to Paragraph 25(a) or (b) below or of New York General Business Law Section 777-a if Paragraph 25(c) below applies. Buyer's written approval shall not be unreasonably withheld. If an item of work is not completed by the time period provided, the Buyer may have the work done, and the escrow for that item will be delivered to the Buyer. If the amount to complete an individual item is less than \$ _____ or if the aggregate amount to complete all of the item(s) is less than \$ _____, there will be no escrow, and the Seller will complete the item(s) within a reasonable amount of time determined by the parties pursuant to a written agreement. The escrow will be for incomplete item(s) that are in addition to any escrow required by the Buyer's lender. Seller agrees to fund any reasonable escrow established by the Buyer's lender. The parties agree to use the escrow agreement form recommended by the Greater Rochester Association of REALTORS®, Inc., the Monroe County Bar Association and the Rochester Home Builders' Association, Inc., unless Buyer's mortgage lender requires that a different escrow agreement form be used.

20. Real Estate Broker.

(a) The parties agree that _____ brought about this purchase and sale.

(b) It is understood and agreed by Buyer and Seller that no broker brought about this purchase and sale.

21. Responsibility of Persons Under This Contract; Assignability. If more than one person signs this Contract as Buyer, each person and any party who takes over that person's legal position will be responsible for keeping the promises made by Buyer in this Contract. If more than one person signs this Contract as Seller, each person or any party who takes over that person's legal position, will be fully responsible for keeping the promises made by Seller. However, this Contract is personal to the parties and may not be assigned by either without the other's consent. Seller represents to Buyer that Seller owns the Property and has the authority to sell the Property. Buyer represents to Seller that Buyer has the authority to purchase the Property.

22. Entire Contract; Miscellaneous. This Contract with the addenda listed below which are incorporated by reference when signed by both Buyer and Seller will be the record of the complete agreement between the Buyer and Seller concerning the purchase and sale of the Property. No oral agreements or promises will be binding. If any provision of this Contract is rendered invalid or unenforceable, it shall not affect the validity or enforceability of the remaining provisions. This Contract shall be construed, enforced and interpreted under the laws of the State of New York, without regard to principles of conflicts of laws.

23. Notices. Notices under this Contract shall be in writing and deemed delivered upon receipt. Delivery of notices under this Contract shall be made by personal delivery, overnight courier, first class mail, or by fax, provided that the original of the faxed notice shall also be mailed by first class prepaid mail within one calendar day, excluding Saturdays, Sundays and public holidays, following the date of the fax transmission.

If delivery is made by personal delivery, the notice(s) delivered shall be deemed received on the date delivered. If delivery is made by overnight courier or first class mail, the notice(s) delivered shall be deemed received one calendar day, excluding Saturdays, Sundays and public holidays, following the date upon which the notice(s) are deposited with the overnight courier service with delivery charges prepaid or charged to sender's account or with the postal service with required postage affixed. If delivery is made by fax, the notice(s) transmitted

shall be deemed received on the date the sender receives confirmation from the recipient's equipment that the entire transmission has been received, provided the required mailing is completed.

Any notices relating to this Contract may be given by the attorneys for the parties.

24. Arbitration. Except as may otherwise be provided in Paragraph 25 below, if any claim, dispute, or other matter in question arises out of or relates to the Contract, or the breach thereof, the parties agree first to try to settle the dispute by mediation administered by the American Arbitration Association under its Home Construction Mediation Procedures. If a party fails to respond to a written request for mediation within thirty (30) days after service of such request or fails to participate in any scheduled mediation conference, that party shall be deemed to have waived its right to mediate the issues in dispute. If mediation does not result in settlement of the dispute within thirty (30) days after the initial mediation conference or if a party has waived its right to mediate the issues in dispute, then any unresolved claim, dispute or other matter in question arising out of or related to the Contract, or the breach thereof, shall be settled by binding arbitration administered by the American Arbitration Association under its Home Construction Arbitration Rules in effect at the time of the arbitration. The demand for mediation and/or arbitration, as applicable, shall be filed in writing with the other party to the Contract and with the American Arbitration Association. In no event shall the demand for mediation and/or arbitration, as applicable, be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Seller and Buyer agree that the fees and expenses of mediation and/or arbitration, as applicable, shall be paid in accordance with the American Arbitration Association's Home Construction Mediation Procedures and Home Construction Arbitration Rules, as applicable.

25. Warranties. Seller shall deliver to Buyer at closing all manufacturer's warranties relating to the appliances installed. The Dwelling shall be covered by the following warranty (Check (a), (b) or (c)):

- (a) Rochester Home Builders' Association, Inc. Limited Warranty and Construction Performance Guidelines in effect at the time of the execution of this Contract (collectively, "Warranty Documents") with Seller's maximum total aggregate liability limited to _____% of the Contract price of the Property for the first year of warranty coverage, and _____% in years 2-6 of warranty coverage, which Warranty Documents shall be delivered to Buyer at closing. Buyer acknowledges receipt and review of a copy of the Warranty Documents prior to the execution of this Contract. The parties shall endeavor to resolve any claim, dispute or other matter in question arising out of or related to the Warranty Documents by mediation as provided in the Warranty Documents, and any claims, disputes and other matters in question arising out of or related to the Warranty Documents that are not resolved by mediation shall be decided by binding arbitration in accordance with Paragraph 24 above.
- (b) Limited Warranty: _____ Buyer acknowledges receipt and review of a copy of the Seller's Limited Warranty prior to the execution of this Contract.
- (c) Statutory implied warranty under NY General Business Law §777-a.

IF (a) OR (b) ABOVE IS CHECKED, THE SELLER MAKES NO HOUSING MERCHANT IMPLIED WARRANTY OR ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE CONTRACT OR THE DWELLING CONSTRUCTED HEREUNDER, AND ANY AND ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED, EXCEPT AS PROVIDED IN THE LIMITED WARRANTY. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FACE OF THE LIMITED WARRANTY.

26. Addenda. The following Addenda are incorporated into this Contract:

- Agricultural District/Farming Disclosure
- All Parties Agreement (FHA/VA)
- Building Plans and Specifications
- Electric Availability
- Personal Property
- Plot Plan
- Restrictive Covenants
- Uncapped Natural Gas Well Disclosure
- Utility Surcharge
- Wayne County Disclosure Notice

Other: _____

Dated: _____ BUYER _____

Witness: _____ BUYER _____

Dated: _____ SELLER _____

RHBA Membership # _____

Witness: _____ By _____

Title _____

ADMINISTRATIVE INFORMATION

Property Address: _____ MLS# _____

Seller: _____

Buyer: _____

Address: _____

Address: _____

_____ Zip: _____

_____ Zip: _____

E-Mail: _____

E-Mail: _____

Phone: (H) _____ (W) _____

Phone: (H) _____ (W) _____

Attorney: _____

Attorney: _____

Address: _____

Address: _____

_____ Zip: _____

_____ Zip: _____

E-Mail: _____

E-Mail: _____

Phone: _____ Fax: _____

Phone: _____ Fax: _____

Listing Broker: _____

Selling Broker: _____

Address: _____

Address: _____

_____ Zip: _____

_____ Zip: _____

E-Mail: _____

E-Mail: _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

Listing Agent: _____

Selling Agent: _____

E-Mail: _____

E-Mail: _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

ID# _____

ID# _____