

Contract of Sale for Office,
Commercial and Multi-Family
Residential Premises – A Commentary

Use of Printed Forms

Printed forms are commonly used in real estate transactions. When properly handled, they can significantly speed up drafting and negotiation by providing a familiar framework and standardized language. We should not have to “reinvent the wheel” for every transaction. The Committee on Real Property Law has prepared the form Contract of Sale for Office, Commercial and Multi-Family Residential Premises in the hopes of providing a standardized framework for sales of commercial buildings and multi-family residential properties.

General Description

The 2007 form of Contract of Sale is an updated version of the form contract previously drafted by the Committee on Real Property Law and published by Blumberg & Co. as Form 154. The updated form attempts to provide comprehensive coverage of the bulk of the provisions common to most sales of commercial real estate, including office, commercial, and multi-family residential buildings. The form should help prevent omissions and allow concentration on the unique aspects of the transaction. However, it will have to be modified to fit the individual transaction. The parties may, of course, add a rider modifying the printed form.

It is customary in New York for the seller's attorney to prepare the contract of sale. The committee strove for a balance between the interests of the seller and the purchaser which would require the seller to be reasonably forthcoming but not go so far as to discourage use of the form by sellers' attorneys.

The basic elements of the transaction are covered in the form. The seller is required to make various representations concerning the status of tenancies and other matters, and the seller's obligations between contract signing and closing are spelled out. The representations are not exhaustive, but in a seller's market the seller may want to curtail its representations. In a buyer's market, the buyer may negotiate for an expanded list of representations. A detailed list of closing obligations is included, which should serve as a checklist for both attorneys.

The comprehensiveness of the coverage should be a help to purchasers' attorneys who lack extensive experience in these transactions. The organization of the material allows for easy modification and cross-referencing.

Special Features

To simplify use of the contract as a printed form, most of the substantive information is set out in the contract schedules. For example, the purchase price is detailed in Schedule C, and variable information is, for the most part, inserted in Schedule D (such as the name of the purchaser's title company, the date and place of the closing, the name of the broker, the maximum amount which the seller must spend to cure violations, and the seller's maximum expense to cure title defects).

Major Changes in Form

The 2007 form effected a number of changes in the contract including the following:

1. Addition of language clearly providing for the assignment of the seller's mortgage to the purchaser's bank. Section 2.04.
2. Modification of description of any purchase money mortgage to include non-recourse carveouts. Section 2.05(c).
3. Modification of escrow provision to (a) identify the location of the bank in which the escrow deposit will be held, and (b) exculpate the escrow agent from liability for loss of the contract deposit caused by the insolvency of the bank in which the escrow deposit is held. Section 2.06.
4. Expansion of the representations concerning leases to cover occupancies. Section 4.03.
5. Addition of language requiring compliance with the New York City Displaced Service Workers Act, and expansion of representations concerning union affiliation. Section 4.07.
6. Addition of purchaser's due diligence period. Section 17.
7. Modified provisions relating to survival of Seller's representations, including provision for a minimum threshold of liability and a cap on liability. Section 4.25.
8. Modified purchase money mortgage provisions.

9. Addition of definition of “institutional lender.” Section 18.10.
10. Modification of the casualty clause. Section 8.
11. Modification of some of the existing representations, and addition of new representations. Section 4.
12. Addition of Patriot Act certifications. Section 4.21 and 5.02.

A more detailed description of the specific contract provisions is set out below.

Section 1. Sale of Premises and Acceptable Title

Section 1 contains the basic sentence that “Seller shall sell and Purchaser shall purchase.” The premises are described in some detail, all in one place. The description of the premises has been expanded in the new form. Title is to be fee simple, subject only to listed permitted exceptions and matters insured against by the purchaser’s title insurance company.

Sections 2.01 and 2.02. Purchase Price and Acceptable Funds

Section 2.01 refers to Schedule C for the total purchase price. Schedule C breaks down the purchase price into its component parts, consisting of the downpayment, the closing checks (or wire transfer), the portion of the purchase price attributable to any Existing Mortgages and the portion of the purchase price paid through execution and delivery of a purchase money note and mortgage. Section 2.02 describes the criteria for acceptable checks. Certified or official bank checks are required, except that seller may, at its election, require the closing funds

to be paid by wire transfer. The form contract does not permit the balance of the purchase price to be paid with an attorney escrow check that is not a certified check or an official bank check. Seller's counsel should be aware that (a) many banks today refuse to issue certified checks, although they will issue official bank checks, and (b) certified checks are not entirely secure in that a bank that has issued a certified check will honor a stop payment order issued by the purchaser. Personal checks are permitted up to the amount of \$2,500, in order to facilitate payment of apportionments calculated at or just prior to the closing.

Section 2.03. Existing Mortgages

Section 2.03 provides that if the purchase price is to be paid in part by taking title subject to Existing Mortgages, and if required principal payments are made between the contract signing and the closing, the amounts allocated to the Existing Mortgage and the cash portion of the purchase price shall be appropriately adjusted at closing to reflect payments of principal. The wording is intended to ensure that the full purchase price is paid, notwithstanding any reduction in the principal amount of the Existing Mortgage during the contract period.

The term "Existing Mortgage" is intended to encompass only those mortgages specifically designated as Existing Mortgages on Schedule C.

The seller and the purchaser must furnish information and cooperate to obtain any required consent to purchaser's acquisition of the property subject to an existing mortgage, but neither is required to make any payment to obtain such

consent. The purchaser is not required to accept changes in the terms of the Existing Mortgages.

Section 2.04. Assignment of Seller's Mortgage

Even if the purchaser is not paying a portion of the purchase price by taking the property subject to an Existing Mortgage, the purchaser will usually want the seller to arrange to have its mortgage assigned to the purchaser's lender, in order to save mortgage tax to the extent of the principal amount of the seller's mortgage. Since the purchaser benefits from the assignment, the purchaser must pay all costs. The seller's attorney may want to consider negotiating a split of the mortgage tax savings, in which event the form must be modified.

Section 2.05 Purchase Money Mortgage

Section 2.05(a) refers the parties to Schedule K for the form of purchase money mortgage and note. The contract form thus requires the parties to fully negotiate the forms of the purchase money loan documents prior to execution of the contract. The City Bar's website includes sample purchase money mortgage and note forms drafted by the Committee on Real Property Law of the New York City Bar.

Section 2.05(b) provides that the purchase money mortgage shall be subordinate to the Existing Mortgage (as it may be extended, modified, consolidated or replaced), provided that (i) the interest rate of the Existing Mortgage is not increased over an agreed amount and (ii) if the principal amount of the Existing Mortgage is increased, the increase will be used to reduce the principal due on the

purchase money mortgage. If the purchaser is not taking title subject to an Existing Mortgage, but is both borrowing money from a lender and giving the seller a purchase money mortgage (an unlikely event), Section 2.05(b) will have to be modified to provide for the subordination of the Purchase Money Mortgage to the purchaser's new mortgage.

Section 2.05(c) sets out certain provisions to be included in the Purchase Money Mortgage. Since the form of the Purchase Money Mortgage is to be attached to the contract (Section 2.05(a)), Section 2.05(c) is not an essential provision. It was included in the form contract largely to serve as a partial checklist of issues that should be dealt with in the Purchase Money Mortgage. The drafter should be sure that the provisions included in Section 2.05(c) conform to the provisions of the form mortgage attached to the contract, or should delete Section 2.05(c) entirely. The provisions highlighted in Section 2.05(c) include the following:

- a. The mortgagor has the right to prepay without penalty at any time after the end of the fiscal year of the mortgagee in which the closing occurs (or a specified prepayment date), thus preserving to the seller the benefits of an installment sale over at least two years. If prepayment is to be prohibited for a longer period or is not to be prohibited at all, the appropriate insert should be made in Schedule D.
- b. The mortgagor is not personally liable on the purchase money note, and recourse for nonpayment is limited to the mortgaged property; except for

certain customarily accepted carveouts. If the purchase money mortgage is intended to be recourse, subsection (c)(ii) should be deleted.

- c. Subsection (c)(iii) is intended to effect compliance with Real Property Law § 274-a, which requires non-institutional lenders to provide estoppel certificates upon the borrower's request.

Additional provisions should be set forth in a rider or in the attached mortgage form. Possible additions might include: (i) a provision that a default or commencement of a foreclosure proceeding under a prior mortgage would be a default under the purchase money mortgage; (ii) a right of the mortgagee to cure defaults under prior mortgages and add the cost to the amount secured by the purchase money mortgage (subject to review of mortgage tax consequences with the title company); (iii) a prohibition of additional mortgages without consent of the purchase money mortgagee; (iv) a requirement of monthly escrow deposits for real property taxes and insurance premiums to the extent such payments are not required by any first mortgage; (v) imposition of an agreed charge for late payments, and (vi) a due on sale/transfer clause.

Section 2.06. Escrow of Downpayment

The escrow agent (called the "Escrowee" in the contract) is usually the seller's attorney. The duties of the escrow agent are set forth in some detail. The downpayment is required to be deposited in an interest-bearing account, and the interest follows the downpayment. If title closes, the interest is paid to the seller and is not credited against the purchase price. If the closing does not occur, the

escrowee is authorized to disburse the escrowed funds upon demand of one party if the other party does not object within ten (10) business days after notice. The liability of the escrowee is limited to bad faith, willful disregard of the contract or gross negligence, and a provision has been added expressly exculpating the escrow agent from liability for lost interest if the Downpayment is withdrawn prior to the date interest is posted or for loss caused by the bankruptcy of the depository bank. The escrowee is indemnified by the parties. The escrowee acknowledges its agreement to Section 2.06 by signing the contract on the signature page.

Section 3. The Closing

The scheduled date, time and place of the closing are to be inserted in Schedule D.

Section 4. Representations and Warranties of Seller

Section 4 contains the representations and warranties of the seller. Section 4.01 confirms the purchaser's normal expectation that the seller is the sole owner of the premises and therefore the proper party with whom to contract. If this is not the case, the seller must say so. Section 4.01 has been expanded to include representations that the *seller* has not granted any purchase option, right of first refusal or right of first offer. The purchaser might seek to negotiate a broader representation that the seller has no knowledge of any such right, but the committee felt that the seller's representation on this front should be limited to the seller's acts.

Section 4.02 states that no notice of default has been received concerning the Existing Mortgages and that the seller has delivered a true copy of the Existing Mortgages to the purchaser. It does not contain a representation that the Existing Mortgages will not be due on sale, since the documents should speak for themselves.

If the purchaser is buying a tenanted property in reliance on the cash flow to be generated by the existing tenants or on projected cash flow to be generated by new tenants upon the reletting of space subject to expiring leases, Section 4.03 is the heart of the contract. Section 4.03 includes disclosure as to leases, licenses, and written occupancy agreements affecting the premises, which are collectively defined as the “Leases.” The seller represents that the rent schedule information (see discussion under “Schedules”) is accurate and there are no Leases other than those listed on the rent schedule. The seller additionally represents that, except as shown in the rent schedule: the leases are in effect and have not been amended; there are no renewal rights, extension options, or expansion options; no tenant has an option to buy; the rents are current and there are no arrearages in excess of one month; no tenant is entitled to a rent concession or abatement for any period following the closing; the seller has sent no notices of default (which default remains uncured); no action against the seller by any tenant is presently pending (except with respect to claims covered by insurance); and there are no security deposits other than those set forth in the rent schedule. The 2007 form adds the following new representations: that (a) true copies of the leases have been delivered

to purchaser (if seller has concern about the completeness of seller's files or has lost signed copies, seller may want to modify this representation to a "substantial" compliance standard); (b) the tenants are in actual possession (this representation is not normally requested or given for multi-family residential premises); to seller's actual knowledge, seller has performed its obligations under the leases and there is no notice of default outstanding; to seller's actual knowledge there is no bankruptcy proceeding pending against any tenant; and no leasing commissions are due or owing with respect to any of the leases. As to the last representation, because commissions may be paid in installments that may extend to the post-closing period and because commissions may become due with respect to future lease renewals, buyer may want to expand this representation to cover commissions that will become payable in the future. On the other hand, since the purchaser generally has no liability under the common law of New York State for future commissions (as of 2007), the seller may object to including such a representation. Both parties, however, should consider the possibility that commissions will become payable after the closing date.

If there are a great many tenants or if there is a seller's market, the seller may be unwilling to make such precise representations, particularly with respect to commercial leases. For example, the seller may refuse to make any representations at all concerning the leases, requiring the buyer to rely on its own review of the lease files and on estoppel certificates obtained from tenants; or it may insist on qualifying its representations.

For commercial buildings, purchasers should consider negotiating for representations by seller that it has performed all “landlord’s work” required to be performed under the Leases and has paid all construction allowances owed tenants. If the seller will not make such representations, such issues can be covered through the estoppel certificates. Possible purchaser additions to the list of seller lease representations are numerous, especially in a purchaser’s market.

Because the parties initial the leases, the seller is relieved of the consequences of a misrepresentation if the initialed lease provides information contrary to the seller’s contract representation.

Sections 4.04 and 4.05 concern rent stabilization and rent control and are applicable only to New York City properties.

Sections 4.06, 4.07 and 4.08 provide for attachment of schedules listing insurance policies, employees and service contracts, if any. Section 4.07 has been updated to cover 3 basic situations: (a) buildings whose employees are unionized, (b) buildings whose employees are not unionized and that are in New York City (and therefore potentially covered by the Displaced Building Service Workers Act, N.Y.C. Admin. Code Sec. 22-505 *et seq*) (“DBSWA”), and (c) buildings whose employees are not unionized and that are not covered by the DBSWA. DBSWA covers non-union buildings in New York City, other than (a) *residential* New York City buildings of less than 50 units, (b) commercial New York City office, institutional, or retail buildings of less than 100,000 square feet, and (c) New York City buildings in which the City of New York and/or any governmental entity (the

head or majority of members of which are appointed by one or more officers of the City of New York) occupies 50% or more of the rentable square footage). If the DBSWA applies, the purchaser is required to continue to employ the building's employees for a period of ninety (90) days. With respect to unionized buildings, sellers and purchasers should note that although the seller may have made all contributions required through the date of closing, retroactive assessments may be assessed under the Taft-Hartley Act against the seller if it is subsequently determined that a union's pension plan is underfunded. The seller can avoid such liability by having such potential obligations bonded.

With respect to Section 4.08, the parties should be aware that because service contracts are often informally drawn or provide for "automatic" renewal, it is sometimes difficult to determine whether they are transferable or terminable. In New York, General Obligations Law § 5-903 makes most automatic renewal clauses unenforceable if the contractor fails to give appropriate advance notice of the renewal provision. The contract assumes that the service contracts will be assigned to the purchaser at the closing (see Section 10.01(f)).

Section 4.09 provides that the copy of the certificate of occupancy attached to the contract in Schedule J is a true copy and has not been amended or superceded. However, the seller makes no representation as to compliance therewith. This is an example of a situation where an issue is raised in the form contract, but protection for the purchaser has not been provided. The purchaser's attorney should carefully explain to his or her client the risks of failure to have

valid certificates of occupancy for all of the premises as constructed and used as of the closing date and the risks of failure to comply with any existing certificate.

Those consequences include the possible need to amend the certificate of occupancy, which may impose on the building owner the burden of upgrading the building to comply with current code requirements and the risk that a tenant with a non-conforming use may have the right to withhold rent or abandon the space.

Requirements of lenders for such certificates should be anticipated. In a municipality, such as New York City, where certificates of occupancy are easily accessible on-line, the seller's attorney may elect to eliminate this representation from the contract. Outside New York City the provision for optional initialing of certificates of operation should be deleted if inapplicable.

The assessed valuation and real estate taxes are referred to in Section 4.10 and are to be inserted in Schedule D. Section 4.11 assumes that each residential apartment contains a range and refrigerator owned by the seller. Other personal property may be listed on a schedule, which is optional. All personal property is represented to be free of liens other than Existing Mortgages (Section 4.12).

Section 4.13 is a representation that the building's incinerators and boilers are being operated in accordance with law. The purchaser wants such a representation because if the applicable permits have not been obtained by the seller, sooner or later the purchaser will have to obtain such permits and possibly have to replace or alter such equipment to obtain the permits. The purchaser may

want to expand the representation to include building air conditioning equipment, which in New York City often requires an equipment use permit. Note again, however, that the seller in a seller's market may be unwilling to give the buyer such representations and require the buyer to rely on its own due diligence. This would be an especially appropriate position to take if the purchaser has been given a due diligence period.

The seller represents in Section 4.14 that there are no assessments payable in annual installments that are liens. If there are assessments which will survive the closing, Section 12 of the contract provides for apportionment of such assessments. Section 4.14 is another example of a representation that a seller, particularly in New York City, may want to delete, since the purchaser can obtain the information on-line from the City.

Section 4.15 provides that seller is not a foreign person. If the seller is a non-resident alien, Section 2.07 of the contract will control.

In Section 4.19, the seller represents that the premises constitute one tax lot. If all or part of the property is erroneously included in another taxpayer's tax lot, the purchaser will be unable to obtain financing and the property will be subject to foreclosure if the other taxpayer defaults in paying taxes. Accordingly, the purchaser would generally require the seller to correct the tax lot description as a condition to closing.

Section 4.21 contains the seller's Patriot Act representation and Section 5.01(f) contains the purchaser's Patriot Act representation. The parties

should not rely solely on the representations contained in the contract to assure Patriot Act compliance, but should each, as a matter of course, check the Treasury Department's list of Specifically Designated National and Blocked Persons to determine if the other party is a prohibited person.

A representation has been added that, to seller's knowledge, there are no underground fuel tanks at the property. The purchaser should not rely entirely on the seller's representation, which is only intended to flush out information within the seller's actual knowledge, but should independently evaluate the need for an environmental review of the property. It is not uncommon for a seller to refuse to make any environmental representations or, at a minimum, to limit such representations to the seller's actual knowledge. The seller will, of course, always have liability to government agencies having jurisdiction if the property was contaminated or if contaminants were released from the property during the period that the seller owned the property. But the seller will generally resist giving the purchaser surviving environmental representations that create an independent obligation to the purchaser, because the purchaser's instinct will be to find other parties to share the cost of any environmental remediation.

Section 4.25 provides for the survival of some of the seller's representations for a limited period of time, and survival is generally limited to those items that the purchaser cannot independently verify before the closing date. To the extent that the purchaser becomes aware, at the closing date, that seller's representations are incorrect, the purchaser is precluded from making a claim for

such misrepresentations. The survival of the seller's representations is often one of the most hotly negotiated contract issues. In a seller's market, the seller may be unwilling to permit survival of any of the representations or may only agree to a shortened survival period of six (6) months or less. Where the seller does agree to survival of representations, there is typically a floor and a cap. The floor is to prevent litigation over minor matters. The cap is to limit the seller's exposure. The floor and the cap are highly negotiable.

The penultimate paragraph of Section 4.25 limits the phrase "to seller's knowledge" to the actual knowledge of an identified person. If the seller is a "mom and pop" entity, the limitation may not be appropriate. But if the seller is a larger enterprise with many employees, it is prudent for the seller to identify a single person whose knowledge is attributable to seller. The buyer should ask the questions necessary to assure it that the identified person has the requisite knowledge.

Section 5. Acknowledgments of Purchaser

In Section 5.01 the purchaser acknowledges that it has inspected the premises or has had opportunity to inspect the premises, and will accept them "as is," subject to Section 7 (violations), Section 8.01 (destruction, damage or condemnation), and Section 9.04 (replacement of personal property), and subject to reasonable use, wear, tear and natural deterioration between the contract signing and the closing. In Section 5.02 the purchaser acknowledges that it is not relying on any representations not expressly set forth in the contract. If the purchaser is

relying on the seller for any information that is not included in the form contract representations, the purchaser should consider expanding the list of seller representations.

Section 6. Seller's Obligations as to Leases

Section 6 sets out the seller's obligations as to leases between the contract signing and the closing. This is one of the most important sections of the contract, because it deals with an essential part of the business transaction. The form assumes that the purchaser is relying on the current rent roll and, accordingly, provides in Section 6.01 that the seller may not, without the purchaser's prior written consent, amend, renew or extend any existing lease, grant a lease to an occupant who does not have a lease, consent to an assignment or subletting, or terminate a lease or tenancy (except for the tenant's default). The purchaser is required to be reasonable in granting or withholding its consent, a provision that a purchaser may want to delete or modify in appropriate circumstances.

Section 6.02 deals with new leases. Before entering into a new lease, the seller is required to notify the purchaser of the identity of the proposed tenant, together with (a) either a copy of the proposed lease or a summary of its terms and (b) a description of any brokerage commission payable. This information should contain all the business terms of the proposed deal. If the purchaser objects, the seller may not enter into the lease, but the purchaser must pay the seller at the closing the benefit of his or her bargain: the proposed rent less the seller's reletting expenses, prorated over the term of the lease and apportioned as of the closing date.

The time for the purchaser to act is limited to seven (7) business days after receipt of purchaser's notice. If the purchaser does not object, the seller may enter into the proposed lease and the prorated reletting expenses are to be apportioned at the closing. Where the contract period is short or the purchaser wants a vacant building, the purchaser may insist on the right to disapprove new leases without paying the seller for its lost income.

Under Section 6.03 the purchaser agrees to accept vacancies not wrongfully caused by the seller. The seller is prohibited from granting rent concessions for periods following the closing. Purchasers sometimes seek to include a provision in this section that would prohibit the seller from applying the security deposit against unpaid obligations of a tenant unless the tenant has vacated the premises, thus protecting the purchaser from inheriting a situation in which a delinquent tenant is in possession with no security or a depleted security deposit.

Section 7. Building Code Violations

Section 7.01 requires the seller to remove violations of law, including violations of building codes and fire codes, which were issued prior to the contract date and municipal liens which attached prior to the closing. The purchaser may want to expand this to violations issued prior to the closing, but New York sellers customarily refuse to accept this change for fear that the purchaser's inquiries may lead to new violations being placed on the premises between the contract signing and the closing. Outside New York City the appropriate code references should be substituted. If the seller fails to comply, it must pay the purchaser at the closing

the reasonably estimated unpaid cost of removal or compliance, but the purchaser is required to accept title subject to such violations and liens unless its institutional lender reasonably objects or, in the case of a multiple dwelling, if the violation would cause rent to be unrecoverable or to be grounds for allowing tenants to withhold rent. Outside New York City the latter clauses should be deleted or the appropriate statutory references should be substituted. Both parties should note that there is no mechanism provided to resolve a dispute as to the “reasonably estimated” cost.

Section 7.02 allows the seller to cancel the contract if the reasonably estimated cost of compliance with Section 7.01 would exceed the amount specified in Schedule D.

Section 7.03 expressly permits the seller not to comply with violations for which a tenant is responsible. However, the purchaser is not required to accept tenant violations if its institutional lender objects.

Outside New York City this entire section should be carefully examined in the light of local custom.

Section 8. Destruction, Damage, Condemnation

The New York version of the Uniform Vendor and Purchaser Risk Act provides that the risk of loss between the date of the contract and the closing will be on the seller unless purchaser has taken possession of the property. The Committee believes that incorporating the statute by reference is not adequate for either party. Accordingly, Section 8 contains the following formula: if the damage does not (a)

exceed an amount negotiated by the parties, as determined by an engineer selected by seller and reasonably satisfactory to purchaser, (b) adversely affect the lobby, building-wide systems or common areas and the continued operation of the undamaged portion of the building, and (c) give rise to rent abatement or termination rights of tenants under leases covering more than a specified portion (to be negotiated by the parties) of the rentable square feet, purchaser may not terminate the contract because of the damages, but seller will assign to purchaser seller's interest in the insurance proceeds (less any amounts spent by seller to comply with law, to safeguard the premises or for emergency repairs). Before agreeing to this provision, the purchaser needs to determine the size of the insurance policy's deductible.

If the damage (i) exceeds the amount negotiated by the parties or (ii) affects the lobby, building-wide systems or common areas or the continued operation of the building, or (iii) gives rise to rent abatement or termination rights of tenants under leases covering more than the portion of rentable square feet negotiated by the parties, purchaser may elect to terminate the contract.

Section 8 also covers condemnation by providing that purchaser may terminate the contract or elect to close title and receive an assignment of seller's right to the condemnation award, if a condemnation proceeding is instituted that affects all or any part of the property. The Committee does not propose a formula for determining when a taking is substantial or insubstantial because in New York City, partial takings are rare although not unheard of (especially with respect to

subway construction). Outside New York City and perhaps even in boroughs other than Manhattan, the parties may want to define what constitutes a substantial taking, bearing in mind that a taking of all or any part of a building is usually (unless the purchaser intends to demolish) deemed substantial, and that a taking of a portion of the land may be substantial or insubstantial depending on whether parking is critical to the use of the premises, how much land is taken (and possibly its location), and the purchaser's plans for future development of the property.

Section 9. Seller's Covenants

Section 9 contains the usual affirmative and negative covenants of the seller covering the period between the contract signing and the closing (in addition to those relating to leases set out in Section 6). Section 9.01 provides that if purchaser is acquiring subject to an Existing Mortgage, the seller may not amend or prepay the mortgage and must make the required payments. Section 9.02 prohibits the seller from modifying existing service contracts or entering into new ones, unless they are terminable without penalty on no more than thirty (30) days' notice. In appropriate cases the purchaser may want to delete the last clause to make the prohibition absolute or may even allow the seller more freedom. Section 9.03 requires the seller to maintain the insurance referred to in Schedule G until the closing. This is particularly critical if the purchaser is investing significant sums in its due diligence and pre-closing activities, because the purchaser will want assurance that if there is a casualty, there will be available sufficient insurance

proceeds for restoration (this assumes, of course, that the purchaser has reviewed and approved the property's insurance program).

Section 9.04 prohibits removal of personal property unless replaced by similar items of at least equal quality. If there are unique items involved, the purchaser may want to modify the clause. Section 9.05 prohibits settlement of real estate tax protests for periods which may affect the purchaser without the reasonable consent of the purchaser. Section 9.06 requires the seller to give the purchaser reasonable access to the premises, the leases and other documents before the closing. Section 9.07 obligates the seller to operate the premises in substantially the same manner as on the date of the contract. The purchaser should consider whether other covenants would be appropriate.

Section 10. Seller's Closing Obligations

Section 10 lists the usual documents to be delivered by the seller at the closing, including deed, leases, a check or credit for the security deposits or an assignment of security deposits, etc. Outside New York City: the description of the deed in Section 10.01(a) must be modified to provide for the customary form.

In addition, seller is obligated to deliver estoppel letters from the building's tenants in the form of Schedule F. The seller's attorney will prepare the form of estoppel certificate attached to the contract. Estoppel certificates are generally only required with respect to commercial tenants, and not with respect to tenants of multi-family residences. Whether estoppel letters will be required from 100% of the commercial tenants is negotiable, but the purchaser should ensure that

estoppels are obtained from the key commercial tenants (whose names will be listed in subparagraph (r)).

Section 10.01(k) should be modified to conform to local custom as to payment of transfer taxes and, if the city or county imposes a transfer tax on the purchaser as the primary obligor, to provide for purchaser payment of any transfer taxes imposed by statute on the purchaser as the primary obligor.

One of the closing documents to be delivered by seller is an assignment of all Leases, which must include an indemnification by seller of claims by tenants with respect to any failure by seller to perform its obligations under the Leases prior to the Closing Date. Not all sellers will be willing to give such an indemnity.

Section 10 essentially provides a list of the documents to be provided by the seller at the closing. The list will vary with the circumstances, and the purchaser may want to add to the list. Common additions might include a requirement that seller deliver a bill of sale for personal property, and mortgagee approvals of any new leases if purchaser is acquiring the property subject to Existing Mortgages.

Section 10.02 requires Seller to notify unions with contracts affecting the premises of the sale and the name and address of the purchaser. Seller's failure to do so will result in continuation of liability under the union contracts after the Closing Date through the date the union receives notice.

Section 11. Purchaser's Closing Obligations

Section 11 requires the purchaser to, among other things, deliver at the Closing the required checks in payment of the purchase price; the purchase money note and mortgage, if any; an indemnification agreement as to the transferred security deposits; an indemnification agreement with respect to obligations under union contracts; an agreement assuming the seller's obligations under the tenant leases and related subordination, non-disturbance, and attornment agreements, an agreement assuming seller's obligations for brokerage commissions with respect to leases made prior to closing if such brokerage obligations are disclosed in Schedule E; and a certificate confirming the continued accuracy of seller's representations (subject to the survival limitations set out in Section 5 of the contract). The purchaser is also required to sign transfer tax returns.

If the seller is assigning Service Contracts to the purchaser, the seller should add to the list of purchaser documents an assumption of the seller's obligations under the Service Contracts.

Section 12. Apportionments

Section 12.01 provides for apportionment as of the close of business of the day prior to the closing (in other words, the purchaser is treated as owner of the property on the day of closing) of prepaid rents and additional rents, other revenues, interest on Existing Mortgages if purchaser is acquiring the premises subject to such mortgage(s), real estate taxes, water charges, sewer rents, wages and benefits

of continuing employees, fuel (at the current price), charges under transferred service contracts, administrative charges on tenant security deposits, dues to rent stabilization associations if the property is residential and subject to rent regulation, reletting expenses, and senior citizen exemptions. The reference in subsection (g) to administrative charges on security deposits should be deleted if inapplicable. Outside New York City: (i) the description of taxes and other charges in subsection 12.01(c) should be modified as appropriate; and (ii) the reference in subsection (h) to dues to rent stabilization associations should be deleted.

The seller should consider whether leasing commissions, construction allowances, or other prepaid expenses should be added to the list of apportioned expenses.

Section 12 provides for temporary apportionment of taxes if the tax rate has not been fixed before the closing, with recomputation after it has been fixed. Installments of special assessments allocable to the period after the closing are the purchaser's expense. If an assessment is listed on Schedule D, Section 12.01(k) calls for apportionment.

The obligation to correct errors in computation survives the closing.

Section 12.02 requires rent arrears received after the closing to be applied in the following order of priority: (i) to the month preceding the closing month; (ii) to the closing month; (iii) to the months following the closing month; and (iv) to the other months preceding the closing month. This provision is subject to negotiation. Purchasers sometimes omit the fourth category on the grounds that

the seller had its opportunity to collect and should not benefit from the purchaser's success in collection after the closing and that the purchaser's obligation should be discharged after collection of one month's arrears. Reasonable expenses of collection are deductible. Obviously, this obligation survives the closing.

Section 12.03, which is not applicable to residential property, covers percentage rent, escalation charges and other charges, some of which will usually become due after the closing for periods prior to the closing. Again, reasonable expenses of collection are deductible and the obligation survives the closing.

Section 13: Objections to Title and Seller's Obligations

Section 13.01 requires the purchaser to promptly order an examination of title and furnish a copy of the title report to the seller's attorney upon receipt. It does not require the purchaser to specify its objections or otherwise waive them. Some sellers will require a waiver if the purchaser fails to raise objections within a specified period. The Committee elected not to follow that route because it was felt to unfairly penalize purchasers whose attorneys fail to give notice of objections. However, if there is a long contract period, the seller may insist on such a provision. The seller is entitled to reasonable adjournments of up to sixty (60) days to cure defects, except that the time period is shortened if purchaser's loan commitment expires earlier.

Section 13.02 provides that if the seller is unable to convey title in accordance with the contract, the purchaser may accept title nevertheless, without

credit against the monies payable at the closing. If the purchaser does not elect to close, it may terminate the contract, in which event the sole liability of the seller is to refund the downpayment, without interest, and pay purchaser's costs of title examination and survey. The seller is not permitted to refuse to pay off mortgages or other liens, of which seller has actual knowledge, which can be satisfied or discharged by payment of a sum certain (other than Existing Mortgages, which are permitted exceptions).

Section 13.03 allows the seller to use the purchase price to pay taxes, liens and encumbrances if the seller provides official bills showing the amount due, and requires the purchaser to provide separate checks for such payment upon reasonable request made in advance. If the charges, liens or encumbrances impair title, the seller may deposit funds or other assurances with the purchaser's title insurance company to pay such charges, liens and encumbrances. The purchaser must accept such insurance, in lieu of discharge of such charges, liens and encumbrances at closing, unless its institutional lender reasonably objects.

Section 13.04 provides that the seller's sole remedy for the purchaser's default is to retain the downpayment as liquidated damages. Section 13.05 gives purchaser the right to specific performance or damages if seller *willfully* defaults. In a seller's market, the seller is likely to limit the purchaser's remedy on a seller default to recovery of its downpayment. Sellers take this position in order to prevent a defaulting buyer from initiating frivolous litigation to tie up the property by claiming a seller default. Such a position, of course, effectively prevents a

legitimate buyer from obtaining a remedy for a seller default. The form attempts to bridge the gap by allowing the purchaser to obtain either specific performance or damages if the seller *willfully* defaults. Section 13.05 should be read in conjunction with Section 13.07, which provides that if the purchaser has grounds for refusing to close (for example, by reason of seller's default), the seller's sole liability is to refund the downpayment and to reimburse the purchaser for the cost of updating the existing survey (or the cost of a new survey) and departmental searches. The seller's liability is similarly limited if either seller or purchaser terminate the contract for reasons permitted by the contract pursuant to a provision that specifically refers to Section 13.07.

Section 13.06 grants the purchaser a vendee's lien against the premises for the amount of the downpayment.

Section 14. Broker

Section 14 contains mutual representations and indemnities by the seller and the purchaser that either (i) the broker identified in the contract brought about the sale or (ii) no broker is entitled to commission. The party responsible to pay the commission is designated. These obligations survive the closing.

Seller's counsel should note that sellers are sometimes reluctant to give such a representation because of the number of cold calls received by the seller that can't be tracked. In such a situation the seller is truly relying on the purchaser to identify the brokers with whom the purchaser has dealt, and the seller will limit

its obligation to an indemnification of the purchaser for claims made by brokers with whom the seller, but not the buyer, has dealt.

Section 15. Notices

Section 15 provides for notices to be delivered personally or sent by prepaid certified mail, nationally recognized overnight courier, or facsimile transmission, addressed as set forth in Schedule D.

Section 15.01 also authorizes the attorneys to give notices on behalf of their clients. Although the Committee elected to permit notices to be given by facsimile transmission, some attorneys eliminate fax transmissions as a mode of notice because of concerns that faxes will become lost in inter-office mail.

Section 16. Limitation on Survival of Representations, etc.

Section 16 provides that no representations, warranties, covenants or other obligations of the seller shall survive the closing, except as otherwise provided (see Sections 4 and 5).

Section 17: Due Diligence Period

The Committee elected to include a due diligence clause in the model contract, although in some markets at some times, inclusion of a due diligence period is not customary. The number of days in which the purchaser must complete its due diligence investigation must be inserted in Section 17.01. Section 17.02 provides that the purchaser must give notice of termination on or before the last day of the due diligence period. The scope of the due diligence will depend on the nature and location of the property. For example, multi-tenant residential property

in New York City requires significant due diligence to determine if the tenants are paying legal rents. Local Law 11 compliance (façade inspection) is also a significant issue in New York City. Suburban and rural properties tend to generate greater concerns about environmental contamination than New York City properties.

In giving notice of termination, purchaser's attorney must take into account the notice periods set out in Section 15. The length of the due diligence period will depend on the size and use of the property, the nature of the property, and the availability of environmental investigators and engineers. Purchasers should note that all institutional lenders require environmental and engineering reports from their approved list of consultants.

In the model form, the purchaser's right to terminate is limited to those instances in which the environmental and/or engineering inspections are unsatisfactory to the purchaser. It is not unusual to see a due diligence clause give the purchaser a right to terminate if the purchaser is dissatisfied with any matter relating to the property, but the Committee elected to limit the purchaser's due diligence right to engineering and environmental matters. The seller is required to cooperate with Purchaser's due diligence inspection, but the purchaser does not have the right to conduct a Phase II environmental investigation without the consent of seller. Phase II investigations generally involve invasive testing and are rarely obtained absent specific environmental concerns. The purchaser is required to deliver copies of all reports to the seller. Sellers should be aware that if an environmental investigation discloses any contamination, all parties with

knowledge (including the consultant who performed the environmental testing) are required to report the contamination to the appropriate authorities.

Under Section 17.04 the Purchaser indemnifies the seller from all loss caused by the due diligence inspection. The indemnity only covers damage caused by the inspection itself, and not environmental liabilities arising from the disclosure of the existence of environmental contamination.

Section 17 makes time of the essence with respect to purchaser's actions. Accordingly, the purchaser must terminate within the prescribed time period.

Section 18. Miscellaneous

Section 18 contains the usual miscellaneous provisions. Assignment by the purchaser is prohibited. If either seller or purchaser is involved in a Section 1031 like-kind exchange, Section 18.01(b) will become applicable. If the purchaser intends to form a new entity to take title, the purchaser should request a modification to Section 18.01(a) to permit assignment of the contract to an entity controlled by purchaser.

Schedules

The description of the premises (Schedule A) is to be attached separately, preferably by photocopying the title insurance policy description and adding the tax map designation (to eliminate typographical errors and proofreading). The title insurance description rather than the deed description

should be used because the title company has insured only the title policy description.

Schedule B lists the usual permitted exceptions. Paragraph 1 assumes a continuation of the present use by the purchaser. Paragraph 6 requires acceptance of out-of-date or irrelevant liens on personalty. The existing survey should be described at the end of Paragraph 10. Additional permitted exceptions from the seller's title insurance policy should be added, beginning with a new Paragraph 11.

Schedule C sets out the purchase price.

Schedule D is to be filled in as applicable. Any additional schedules or riders should be referred to in the body of the contract.

Schedule E, the Rent Schedule, is to be attached. A format was not prescribed because this schedule will often be prepared by the managing agent, perhaps from a computer print-out, or by the seller. Ideally, it should contain all the material terms of the leases and tenancies, such as the names of each tenant, annual base rentals, security deposits, renewal options (sometimes), termination options, and rights of first refusal to lease or buy.

Acknowledgement

The Committee thanks Karl Holtzschue, former chair of the Committee, for providing the Committee with a copy of his commentary to the original form of contract (published in the New York Law Journal), which served as the framework for this commentary, and also gives special thanks to William Jay

Lippman, former Chair of the Committee, for initiating the project and spearheading its completion, and to JoAnn Whitehorn, Lowell Willinger, Linda Myles and Eugene Caiola for their continuing, diligent and intelligent contributions.

Submitted By:

Committee on Real Property Law

Nancy Connery, Chair
William Lippman, Former Chair
Eugene Caiola, Secretary

CONTRACT OF SALE – OFFICE, COMMERCIAL AND MULTI-FAMILY RESIDENTIAL PREMISES. This form was originally prepared by the Committee on Real Property Law of the Association of the Bar of the City of New York. This form may have been altered by the user and any such alterations may not be apparent. To view or download the original unaltered text of this form and an introduction to this form, visit the Real Estate Forms site at the Reports/Publications/Forms link at www.nycbar.org.

Contract of Sale – Office, Commercial and Multi-Family Residential Premises

Between

_____ (“**Seller**”)

and

_____ (“**Purchaser**”)

dated _____

Premises:

Street Address: _____
City or Town: _____
County: _____
State: New York

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Contract of Sale -- Office, Commercial and Multi-Family Residential Premises

CONTRACT OF SALE (“Contract”) dated _____ between
_____ (“Seller”) and _____
 (“Purchaser”).

Seller and Purchaser hereby covenant and agree as follows:

Section 1. Sale of Premises and Acceptable Title

§1.01. Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, at the price and upon the terms and conditions set forth in this contract: (a) the parcel of land more particularly described in Schedule A attached hereto (“Land”); (b) all buildings and improvements situated on the Land (collectively, “Building”); (c) all right, title and interest of Seller, if any, in and to the land lying in the bed of any street or highway in front of or adjoining the Land to the center line thereof and to any unpaid award for any taking by condemnation or any damage to the Land by reason of a change of grade of any street or highway; and (d) the appurtenances and all the estate and rights of Seller in and to the Land and Building (collectively, the “Premises”). For purposes of this contract, “appurtenances” shall include all right, title and interest of Seller, if any, in and to (i) streets, easements, rights-of-way and vehicle parking rights used in connection with the Premises; (ii) any strips or gores of land between the Land and abutting or adjacent properties; (iii) the leases, licenses and occupancy agreements for space in the Building, and all guarantees thereof, as shown on Schedule E attached hereto and any leases entered into by Seller between the date of this contract and the Closing (as hereinafter defined); (iv) the Service Contracts (as hereinafter defined); (v) plans, specifications, architectural and engineering drawings, prints, surveys, soil and substrata studies relating to the Premises in Seller’s possession, whether or not stored, managed or contained on computer software or hardware; (vi) all operating manuals and books, data and records regarding the Premises and its component systems in Seller’s possession; (vii) all licenses, permits, certificates of occupancy and other approvals issued by any state, federal or local authority relating to the use, maintenance or operation of the Premises or the fixtures, machinery or equipment included in this sale to the extent that they may be transferred or assigned; (viii) all warranties or guaranties, if any, applicable to the Premises, to the extent such warranties or guaranties are assignable; (ix) all tradenames, trademarks, servicemarks, logos, copyrights and good will relating to or used in connection with the operation of the Premises and (x) air rights and development rights. This sale also includes all trade fixtures and all equipment, machinery, materials, supplies and other personal property attached or appurtenant to the Building or located at and used in the operation or maintenance of the Land or Building to the extent same are owned by Seller or any affiliate of Seller (the “Personal Property”). The street address of the Premises is set forth on Schedule D attached hereto.

§1.02. Seller shall convey and Purchaser shall accept fee simple title to the Premises in accordance with the terms of this contract, subject only to: (a) the matters set forth in Schedule B attached hereto (collectively, “Permitted Exceptions”); and (b) such

other matters as the title insurer specified in Schedule D attached hereto (or if none is so specified, then any title insurer licensed to do business by the State of New York) shall be willing to omit as exceptions to coverage or to except with insurance against collection out of or enforcement against the Premises.

Section 2. Purchase Price, Acceptable Funds, Existing Mortgages, Purchase Money Mortgage, Escrow of Downpayment and Foreign Persons

§2.01. Purchaser shall pay Seller the purchase price (“Purchase Price”) set forth in Schedule C attached hereto, subject to the terms and conditions of this contract. Seller and Purchaser acknowledge that no portion of the Purchase Price is allocated to the Personal Property, if any, transferred pursuant to this contract.

§2.02. Except for the Downpayment (hereinafter defined), all monies payable under this contract, unless otherwise specified in this contract, shall be paid by (a) certified checks of Purchaser or any person making a loan to Purchaser drawn on any bank or trust company having a banking office in the City of New York and which is a member of the New York Clearing House Association or (b) official bank checks drawn by any such banking institution, except that uncertified checks of Purchaser payable to the order of Seller up to the amount of \$2,500 shall be acceptable for sums payable to Seller at the Closing, or (c) with respect to the portion of the Purchase Price payable at the Closing, at Seller’s election, by wire transfer of immediately available federal funds to an account designated by Seller not less than three business days prior to the Closing.

§2.03. (a) If Schedule C provides for the acceptance of title by Purchaser subject to one or more existing mortgages (collectively, “Existing Mortgage(s)”), the amounts specified in Schedule C with reference thereto may be approximate and the following shall apply:

(i) If at the Closing the aggregate principal amount of the Existing Mortgage(s), as reduced by payments required thereunder prior to the Closing, is less than the aggregate amount of the Existing Mortgage(s) as specified in Schedule C, the difference shall be added to the monies payable by Purchaser at the Closing, unless otherwise expressly provided herein.

(ii) If any of the documents constituting the Existing Mortgage(s) or the note(s) secured thereby prohibits or restricts the conveyance of the Premises or any part thereof without the prior consent of the holder or holders thereof (“Mortgagee(s)”) or confers upon the Mortgagee(s) the right to accelerate payment of the indebtedness or to change the terms of the Existing Mortgage(s) if a conveyance is made without consent of the Mortgagee(s), Seller shall notify such Mortgagee(s) of the proposed conveyance to Purchaser within 10 days after execution and delivery of this contract, requesting the consent of such Mortgagee(s) thereto. Seller and Purchaser shall furnish the Mortgagee(s) with such information as may reasonably be required in connection with such request and shall otherwise cooperate with such Mortgagee(s) and with each other in an effort expeditiously to procure such consent, but neither shall be obligated to make any payment to obtain such consent. If such Mortgagee(s) shall fail or refuse to grant such consent in

writing on or before the closing date specified in Schedule D or shall require as a condition of the granting of such consent (i) that additional consideration be paid to the Mortgagee(s) and neither Seller nor Purchaser is willing to pay such additional consideration or (ii) that the terms of the Existing Mortgage(s) be changed and Purchaser is unwilling to accept such change(s), then unless Seller and Purchaser mutually agree to extend such date or otherwise modify the terms of this contract, either Purchaser or Seller may terminate this contract by notice given to the other party within five business days after notice of such Mortgagee's decision. If either Purchaser or Seller terminates this contract pursuant to this §2.03(b), such termination shall be subject to the provisions of §13.07.

§2.04. Even if Schedule C does not provide for the acceptance of title by Purchaser subject to one or more Existing Mortgages, Seller shall, upon request of Purchaser, use commercially reasonable efforts to cause the holder(s) of the existing mortgage(s) encumbering the Premises to assign it (them) to Purchaser's lender at Closing, and to deliver to Purchaser's lender the original mortgage(s) and the original promissory note(s) secured thereby and Purchaser shall pay any and all costs in connection therewith. The amount paid by Purchaser (or its lender) to the holder(s) of such existing mortgage(s) as payment for the assignment of such mortgage(s) shall be deemed a payment on account of the Purchase Price.

§2.05. (a) If Schedule C provides for payment of a portion of the Purchase Price by execution and delivery to Seller of a note secured by a purchase money mortgage ("Purchase Money Mortgage"), such note and Purchase Money Mortgage shall be substantially in the forms attached hereto as Schedule K. At the Closing, Purchaser shall pay the mortgage recording tax and recording fees therefor, the filing fees for any financing statements delivered in connection therewith and the fees of Seller's attorney for preparing the note and Purchase Money Mortgage (to the extent such attorneys' fees do not exceed \$_____).

(b) If Schedule C provides for the acceptance of title by Purchaser subject to Existing Mortgage(s) prior in lien to the Purchase Money Mortgage, the Purchase Money Mortgage shall provide that it is subject and subordinate to the lien(s) of the Existing Mortgage(s) and shall be subject and subordinate to any extensions, modifications, renewals, consolidations, substitutions or replacements thereof (collectively, "Refinancing" or "Refinanced Mortgage"), provided that (i) the rate of interest payable under a Refinanced Mortgage shall not be greater than that specified in Schedule D as the Maximum Interest Rate or, if no Maximum Interest Rate is specified in Schedule D, shall not be greater than the rate of interest that was payable on the refinanced indebtedness immediately prior to such Refinancing, and (ii) if the principal amount of the Refinanced Mortgage plus the principal amount of other Existing Mortgage(s), if any, remaining after placement of a Refinanced Mortgage exceeds the amount of principal owing and unpaid on all mortgages on the Premises superior to the Purchase Money Mortgage immediately prior to the Refinancing, an amount equal to the excess shall be paid at the closing of the Refinancing to the holder of the Purchase Money Mortgage, without prepayment premium or other charge, in reduction of principal payments due thereunder in inverse order of maturity. The Purchase Money Mortgage shall further provide that the holder thereof shall,

on demand and without charge therefor, execute, acknowledge and deliver any agreement or agreements reasonably required by the mortgagor to confirm such subordination.

(c) The Purchase Money Mortgage shall contain the following additional provisions:

(i) “The mortgagor or any owner of the mortgaged premises shall have the right to prepay the entire unpaid indebtedness secured by this mortgage, together with accrued interest, but without penalty, at any time on or after [*insert the day following the last day of the fiscal year of the mortgagee in which the Closing occurs or, if a Prepayment Date is specified in Schedule D, the specified Prepayment Date*], on not less than 10 days’ written notice to the holder hereof.”

(ii) “Notwithstanding anything to the contrary contained herein, the obligation of the mortgagor for the payment of the indebtedness and for the performance of the terms, covenants and conditions contained herein and in the note secured hereby is limited solely to recourse against the property secured by this mortgage, and in no event shall the mortgagor or any principal of the mortgagor, disclosed or undisclosed, be personally liable for any breach of or default under the note or this mortgage or for any deficiency resulting from or through any proceedings to foreclose this mortgage, nor shall any deficiency judgment, money judgment or other personal judgment be sought or entered against the mortgagor or any principal of the mortgagor, disclosed or undisclosed, but the foregoing shall not adversely affect the lien of this mortgage or the mortgagee’s right of foreclosure. Notwithstanding the provisions of this subparagraph (ii), mortgagor shall be personally liable to mortgagee for losses due to:

(A) fraud or intentional or willful misrepresentation;

(B) mortgagor’s misapplication or misappropriation of rents or other income received by mortgagor after the occurrence of an event of default.

(C) mortgagor’s misapplication or misappropriation of tenant security deposits or rents collected more than (1) month in advance;

(D) the misapplication or the misappropriation of insurance proceeds or condemnation awards;

(E) mortgagor’s failure to pay real estate taxes, water charges or sewer rents (except to the extent that sums sufficient to pay such amounts have been deposited in escrow with mortgagee pursuant to the terms hereof) but only to the extent that the mortgaged premises generates sufficient income to pay the same when due;

(F) any act of intentional waste or arson by mortgagor, or any officer, director, member or general partner of mortgagor;

(G) subject to the rights of the holder of any superior mortgage, mortgagor’s failure following any event of default to deliver to mortgagee on demand all rents and other income and books and records relating to the mortgaged premises;

(H) damage to the mortgaged premises arising from the intentional misconduct or gross negligence of mortgagor, or any officer, director, member or general partner of mortgagor.”

(iii) “In addition to performing its obligations under Section 274-a of the Real Property Law, the mortgagee, if other than one of the institutions listed in Section 274-a, agrees that, within 10 days after written request by the mortgagor, but not more than twice during any period of 12 consecutive months, it will execute, acknowledge and deliver without charge a certificate of reduction in recordable form (a) certifying as to (1) the then unpaid principal balance of the indebtedness secured hereby, (2) the maturity date thereof, (3) the rate of interest, (4) the last date to which interest has been paid and (5) the amount of any escrow deposits then held by the mortgagee, and (b) stating, to the actual knowledge of the mortgagee, whether there are any alleged defaults hereunder and, if so, specifying the nature thereof.”

(iv) The additional provisions, if any, specified in a rider hereto.

§2.06. (a) All sums paid on account of the Purchase Price prior to the Closing (collectively, “Downpayment”) shall be paid by good check or checks drawn to the order of and delivered to Seller’s attorney or another escrow agent designated in writing by the parties (“Escrowee”). The Escrowee shall hold the proceeds thereof in escrow in a special bank account at _____ located at _____ (or as otherwise agreed in writing by Seller, Purchaser and Escrowee) until the Closing or sooner termination of this contract and shall pay over or apply such proceeds in accordance with the terms of this section. Escrowee shall hold such proceeds in an interest-bearing account, and such interest shall be paid to the same party entitled to the Downpayment, and the party receiving such interest shall pay any income taxes thereon. Escrowee shall not be responsible for any interest on the Downpayment except as is actually earned, or for the loss of any interest resulting from the withdrawal of the Downpayment prior to the date interest is posted thereon or for any loss caused by the failure, suspension, bankruptcy or dissolution of the institution in which the Downpayment is deposited. The tax identification numbers of the parties are set forth in Schedule D. Each of the parties, upon Escrowee’s request, shall promptly furnish to Escrowee a completed and executed Form W-9, together with such other information as Escrowee shall reasonably require. At the Closing, such proceeds and the interest thereon, if any, shall be paid by Escrowee to Seller. If for any reason the Closing does not occur and either party makes a written demand upon Escrowee for payment of such amount, Escrowee shall give written notice to the other party of such demand. If Escrowee does not receive a written objection from the other party to the proposed payment within 10 business days after the giving of such notice, Escrowee is hereby authorized to make such payment. If Escrowee does receive such written objection within such 10 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by written instructions from the parties to this contract or a final and non-appealable judgment of a court. However, Escrowee shall have the right at any time to deposit the escrowed proceeds and interest thereon, if any, with the clerk of the Supreme Court of the county in which the Premises is located. Escrowee shall give written notice of such deposit to Seller and Purchaser. Upon such deposit Escrowee shall be

relieved and discharged of all further obligations and responsibilities hereunder. If the Downpayment is deposited in a money market account, dividends thereon shall be treated, for purposes of this Section, as interest.

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

(c) Escrowee has acknowledged agreement to these provisions by signing in the place indicated on the signature page of this contract.

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

(e) Escrowee may act or refrain from acting in respect of any matter referred to in this §2.06 in full reliance upon and with the advice of counsel which may be selected by it (including any member of its firm) and shall be fully protected in so acting or refraining from action upon the advice of such counsel.

§2.07. If Seller is a "foreign person", as defined in Internal Revenue Code Section 1445 and regulations issued thereunder (collectively, the "Code Withholding Section"), or if Seller fails to deliver the certification of non-foreign status required under §10.01(k), or if Purchaser is not entitled under the Code Withholding Section to rely on such certification, Purchaser shall deduct and withhold from the Purchase Price a sum equal to ten percent (10%) thereof and shall at Closing remit the withheld amount with Forms 8288 and 8288A (or any successor forms) to the Internal Revenue Service; and if the cash balance of the Purchase Price payable to Seller at the Closing after deduction of net adjustments, apportionments and credits (if any) to be made or allowed in favor of Seller at the Closing as herein provided is less than ten percent (10%) of the Purchase Price, Purchaser shall have the right to terminate this contract. If Purchaser so terminates this contract, such termination shall be subject to the provisions of §13.07. The right of termination provided for in this §2.07 shall be in addition to and not in limitation of any other rights or remedies available to Purchaser under applicable law.

Section 3. The Closing

§3.01. Except as otherwise provided in this contract, the closing of title pursuant to this contract (“Closing”) shall take place on the scheduled date and at the time of closing specified in Schedule D (the actual date of the Closing being herein referred to as “Closing Date”) at the place specified in Schedule D.

Section 4. Representations and Warranties of Seller

Seller represents and warrants to Purchaser as follow:

§4.01. Seller is the sole owner of the Premises and has not granted any option to purchase the Premises or any right of first refusal or right of first offer to purchase the Premises.

§4.02. If the Premises are encumbered by an Existing Mortgage(s), no written notice has been received from the Mortgagee(s) asserting that a default or breach exists thereunder which remains uncured and no such notice shall have been received and remain uncured on the Closing Date. If Schedule C provides for the acceptance of title by Purchaser subject to one or more Existing Mortgages, Seller represents and warrants that Seller has delivered to Purchaser true and complete copies of the Existing Mortgage(s) and the promissory notes secured thereby, and that same have not been modified or amended except as shown in such documents.

§4.03. The information concerning written leases, written licenses and written occupancy agreements (which together with all amendments and modifications thereof are collectively referred to as “Leases”) and any tenancies or occupancies in the Premises not arising out of the Leases (collectively, “Tenancies”; and each, individually, a “Tenancy”) set forth in Schedule E attached hereto (“Rent Schedule”) is accurate as of the date set forth therein or, if no date is set forth therein, as of the date hereof, and there are no Leases or Tenancies of any space in the Premises other than those set forth therein and any subleases or subtenancies. Except as otherwise set forth in the Rent Schedule or elsewhere in this contract:

- (a) all of the Leases are in full force and effect;
- (b) none of the Leases has been modified, amended or extended;
- (c) no renewal or extension options or options for additional space have been granted to tenants, occupants or licensees;
- (d) no tenant, occupant or licensee has an option to purchase the Premises or a right of first refusal or first offer with respect to a sale of the Premises;
- (e) the rents and fees set forth are being collected on a current basis and there are no arrearages in excess of one month;

(f) no tenant, occupant or licensee is entitled to rental concessions or abatements for any period subsequent to the scheduled date of Closing, other than an abatement by reason of a casualty disclosed to Purchaser that occurred after the date of execution and delivery of this contract;

(g) Seller has not sent written notice to any tenant, occupant or licensee claiming that such tenant is in default, which default remains uncured;

(h) no action or proceeding instituted against Seller by any tenant, occupant or licensee of all or part of the Premises is presently pending in any court or other tribunal, except with respect to claims involving personal injury or property damage which are covered by insurance;

(i) there are no security deposits other than those set forth in the Rent Schedule;

(j) the Rent Schedule accurately sets out all security deposits held by Seller with respect to the Leases and Tenancies;

(k) true and complete copies of the Leases have been delivered to Purchaser or its counsel and initialed by representatives of Purchaser and Seller;

(l) the tenants, occupants and licensees under the Leases and Tenancies are in actual possession of the space demised;

(m) to Seller's actual knowledge, Seller has performed all of the landlord's obligations under the Leases and Tenancies;

(n) Seller has received no notice(s) of any default of the landlord under the Leases that remains pending;

(o) to Seller's actual knowledge, no action or proceeding, voluntary or involuntary, is pending against any tenant, licensee or occupant under any bankruptcy or insolvency act; and

(p) no leasing commissions are due or owing with respect to any of the Leases or Tenancies and all leasing commissions have been paid in full with respect to all of the Leases and Tenancies, except to the extent any brokerage agreements may provide for payment of a commission in case of any renewal, extension or expansion of space.

If any Leases which have been exhibited to and initialed by Purchaser or its representative contain provisions that are inconsistent with the foregoing representations and warranties, such representations and warranties shall be deemed modified to the extent necessary to eliminate such inconsistency and to conform such representations and warranties to the provisions of the Leases.

§4.04. If the Premises or any part thereof are subject to the New York City Rent Stabilization Law, Seller is and on the Closing Date will be a member in good standing of

the Real Estate Industry Stabilization Association, the rents shown are not in excess of the maximum collectible rents, and, except as otherwise set forth in the Rent Schedule, no tenants or occupants are entitled to senior citizen exemptions, there are no proceedings with any tenant presently pending before the New York State Division of Housing and Community Renewal in which a tenant has alleged an overcharge of rent or diminution of services or similar grievance, and there are no outstanding orders or judgments of the Conciliation and Appeals Board or the New York State Division of Housing and Community Renewal that have not been complied with by Seller.

§4.05. If the Premises or any part thereof are subject to the New York City Emergency Rent and Rehabilitation Law, the rents shown are not in excess of the maximum collectible rents, and, except as otherwise set forth in the Rent Schedule, no tenants are entitled to exemptions as senior citizens, there are no proceedings presently pending in which a tenant has alleged an overcharge of rent or diminution of services or other grievance, and there are no outstanding orders that have not been complied with by Seller.

§4.06. Schedule G attached hereto lists all insurance policies presently affording coverage with respect to the Premises, and the information contained therein is accurate as of the date set forth therein or, if no date is set forth therein, as of the date hereof.

§4.07. Schedule H attached hereto lists all employees presently employed at the Premises and the compensation payable to each, and the information contained therein is accurate as of the date set forth therein or, if no date is set forth therein, as of the date hereof, and, except as otherwise set forth in such schedule, none of such employees is covered by a union contract and there are no retroactive increases or other accrued and unpaid sums owed to any employee. The employees listed in Schedule H attached hereto are covered by collective bargaining agreements with Locals _____ and _____ (the "Union Contracts"); Schedule H lists the employment classification and union affiliation of each person employed at the Premises that is covered by the Union Contracts; Seller has timely made all contributions required to be made by Seller pursuant to the Union Contracts with respect to Seller's period of ownership of the Premises, including, but not limited to, Seller's obligations with respect to union pension and retirement benefit plans established pursuant to the Taft-Hartley Act, 29 U.S.C. §186 ("Union Retirement Plans"), and Seller shall not, after the date of this contract, enter into any new union contract or modify any existing Union Contract without first obtaining Purchaser's approval, which approval shall not be unreasonably withheld or delayed. If the Premises are located in the City of New York and the employees presently employed at the Premises are not covered by the Union Contracts, Seller and Purchaser shall each comply with the applicable provisions of Section 22-505 of the New York City Administrative Code (the "Displaced Building Service Workers Act"). Seller and Purchaser shall each indemnify and hold harmless the other against any loss, costs, claims, liabilities and expenses it may incur, including reasonable attorneys' fees, by reason of the other party's breach of its obligations under the Union Retirement Plan and the Displaced Building Service Workers Act. The indemnification obligations set forth in this §4.07 shall survive Closing.

§4.08. The schedule of service, maintenance, supply and management contracts (“Service Contracts”) attached hereto as Exhibit I lists all such contracts affecting the Premises, and the information set forth therein is accurate as of the date set forth therein or, if no date is set forth therein, as of the date hereof.

§4.09. The copy of the certificate of occupancy for the Premises attached hereto as Schedule J is a true copy of the original and such certificate has not been amended or superseded, but Seller makes no representation as to compliance with any such certificate.

§4.10. (a) As of the date of this contract: The assessed valuation of the Land and Building and the real estate taxes set forth in Schedule D, if any, are the assessed valuation of the Premises and the real estate taxes payable with respect thereto for the fiscal year(s) indicated in such schedule (subject to any abatements that may become applicable after the date of this contract and any increases or changes in real estate taxes resulting from a retroactive change in the tax rate). Except as otherwise set forth in Schedule D, there are no tax abatements or exemptions affecting the Premises as of the date of this contract.

(b) There are no pending proceedings or appeals to correct or reduce the assessed valuation of the Premises.

§4.11. Except as otherwise set forth in a schedule attached hereto, if any, if the Premises are used for residential purposes, (i) each apartment contains a range and a refrigerator, and all of the ranges and refrigerators and all of the items of personal property (or replacements thereof) listed in such schedule, if any, are and on the Closing Date will be owned by Seller free of liens and encumbrances other than the lien(s) of the Existing Mortgage(s), if any, and (ii) all apartments have been painted within the last three years.

§4.12. The Personal Property, as of the Closing Date, is owned by Seller free of liens and encumbrances other than the lien(s) of the Existing Mortgage(s), if any.

§4.13. To Seller’s knowledge no incinerator, compactor, boiler or other burning equipment on the Premises is being operated in violation of applicable law. If copies of a certificate or certificates of operation therefor have been exhibited to and initialed by Purchaser or its representative, such copies are true copies of the originals.

§4.14. Except as otherwise set forth in Schedule D, to Seller’s knowledge, no assessment payable in annual installments, or any part thereof, has become a lien on the Premises.

§4.15. Seller is not a “foreign person” as defined in the Code Withholding Section.

§4.16. Seller is a _____ that has been duly organized and is in good standing under the laws of the state of its formation.

§4.17. Seller has taken all necessary action to authorize the execution, delivery and performance of this contract and has the power and authority to execute, deliver and perform this contract and consummate the transaction contemplated hereby. The person

signing this contract on behalf of Seller is authorized to do so. Assuming this contract has been duly authorized, executed and delivered by each of the other party(ies) to this contract, this contract and all obligations of Seller hereunder are the legal, valid and binding obligations of Seller, enforceable in accordance with the terms of this contract, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

§4.18. The execution and delivery of this contract and the performance of its obligations hereunder by Seller will not conflict with any provision of any law or regulation to which Seller is subject or any agreement or instrument to which Seller is a party or by which it is bound or any order or decree applicable to Seller or result in the creation or imposition of any lien on any of Seller's assets or property which would materially and adversely affect the ability of Seller to carry out the terms of this contract. Seller has obtained any consent, approval, authorization or order of any court or governmental agency or body required for the execution, delivery or performance by Seller of this contract.

§4.19. The Premises constitute one tax lot.

§4.20. Seller has not received written notice of and has no knowledge of any action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Seller with respect to the Premises which if adversely determined could have a material adverse effect on the Premises or interfere with the consummation of the transaction contemplated by this contract.

§4.21. Seller is not a, and is not acting directly or indirectly for or on behalf of any, person, group, entity or nation named by any Executive Order of the United States Treasury Department as a terrorist, "Specifically Designated National and Blocked Persons," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control and Seller is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

§4.22. To Seller's knowledge, there are no underground fuel storage tanks at the Premises.

§4.23. Seller has received no notice of and has no knowledge of any actual or proposed taking in condemnation of all or any part of the Premises.

§4.24. Seller has been known by no other name for the past ten (10) years except:
_____.

§4.25. The representations and warranties of Seller set forth in §§ 4.03, 4.04, 4.05, 4.07, 4.08, 4.10(b), 4.11, 4.12, 4.13, 4.18, 4.20 and 4.21 as restated as of the Closing shall survive the Closing for a period of [one year] (the "Survival Period"). None of

Seller's other representations or warranties shall survive the Closing. No claim for a misrepresentation or breach of warranty of Seller shall be actionable or payable if the breach in question results from or is based on a condition, state of facts or other matter which was known to Purchaser prior to the Closing. Seller shall have no liability to Purchaser for any misrepresentation or breach of warranty of Seller (a) unless the valid claims for all such misrepresentations or breaches collectively aggregate more than [\$_____] (the "Floor"), in which event the full amount of such valid claims shall be actionable up to the aggregate amount of \$_____, and (b) unless written notice containing a description of the specific nature of such breach shall have been given by Purchaser to Seller prior to the expiration of the Survival Period, if any, and an action shall have been commenced by Purchaser against Seller within the Survival Period, if any. The prevailing party in any litigation arising from a claim under this §4.25 shall be entitled to reimbursement for all legal fees and expenses in connection therewith.

For purposes of this Section, the phrase "to Seller's knowledge" shall mean the actual knowledge of _____ without any special investigation.

Except where limited specifically to the date of this contract or other date, the representations and warranties made by Seller in this contract are made as of the date of execution and delivery of this contract, and except as otherwise set forth in §6.05, shall be deemed restated and shall be true and accurate on the Closing Date.

Section 5. "As Is" Condition, No Representations Not Expressly Set Out in Contract, Representations and Warranties of Purchaser

§5.01. Purchaser acknowledges that:

(a) Purchaser has inspected or has had an opportunity to inspect the Premises, is fully familiar with the physical condition and state of repair thereof, and, subject to the provisions of §7.01, §8.01, §9.04 and Section 7, shall accept the Premises "as is" and in their present condition, subject to reasonable use, wear, tear and natural deterioration between now and the Closing Date, without any reduction in the Purchase Price for any such change in condition. Seller shall not be liable for any latent or patent defects in the Premises.

(b) Before entering into this contract, Purchaser has made such examination of the Premises, the operation, income and expenses thereof and all other matters affecting or relating to this transaction as Purchaser deemed necessary. In entering into this contract, Purchaser has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by Seller or any agent, employee or other representative of Seller or by any broker or any other person representing or purporting to represent Seller, which are not expressly set forth in this contract, whether or not any such representations, warranties or statements were made in writing or verbally.

§5.02. Purchaser represents and warrants to Seller that:

(a) The funds comprising the Purchase Price to be delivered to Seller in accordance with this contract are not derived from any illegal activity.

(b) Purchaser has taken all necessary action to authorize the execution, delivery and performance of this contract and has the power and authority to execute, deliver and perform this contract and the transaction contemplated hereby. The person signing this contract on behalf of Purchaser is authorized to do so. Assuming this contract has been duly authorized, executed and delivered by each of the other party(ies) to this contract, this contract and all obligations of Purchaser hereunder are the legal, valid and binding obligations of Purchaser, enforceable in accordance with the terms of this contract, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) The execution and delivery of this contract and of any note and Purchase Money Mortgage required hereunder and the performance of its obligations hereunder by Purchaser will not conflict with any provision of any law or regulation to which Purchaser is subject or any agreement or instrument to which Purchaser is a party or by which it is bound or any order or decree applicable to Purchaser, and will not result in the creation or imposition of any lien on any of Purchaser's assets or property which would materially and adversely affect the ability of Purchaser to carry out the terms of this contract. Purchaser has obtained any consent, approval, authorization or order of any court or governmental agency or body required for the execution, delivery or performance by Purchaser of this contract.

(d) Purchaser is a _____ that has been duly organized and is in good standing under the laws of the state of its formation.

(e) To Purchaser's knowledge, there is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Purchaser which, if adversely determined, could individually or in the aggregate materially interfere with the consummation of the transaction contemplated by this contract.

(f) Purchaser is not a, and is not acting directly or indirectly for or on behalf of any, person, group, entity or nation named by Executive Order of the United States Treasury Department as a terrorist, "Specifically Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control and Purchaser is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity or nation.

(g) The representations and warranties of Purchaser set forth in this Section 5 are made as of the date of this contract and are restated as of the Closing and shall survive the Closing for a period of [*one year*], except that the representation in §5.02(d) shall not survive the Closing.

For purposes of this §5.02, the phrase "to Purchaser's knowledge" shall mean the actual knowledge of _____ without any special investigation.

Section 6. Seller's Obligations as to Leases

§6.01. Unless otherwise provided in a schedule attached to this contract, Seller shall not, between the date of this contract and the Closing, without Purchaser's prior written consent, which consent shall not be unreasonably withheld or delayed: (a) amend, renew or extend any Lease in any respect, except to the extent required by law or by the express terms of such Lease; (b) grant a written lease to any person or entity occupying space without a Lease (except as required by law); (c) terminate any lease or Tenancy except by reason of a default by the tenant thereunder; (d) consent to the assignment of a Lease or subletting by any tenant except as required by the terms of the applicable Lease or by law or (e) permit anyone to use or occupy any space pursuant to an oral agreement except pursuant to the Tenancies. Seller shall not, without Purchaser's consent (which may be granted or denied at Purchaser's discretion) enter into any lease or other occupancy agreement with any person or entity directly or indirectly affiliated with or related to Seller, Seller's managing agent, or any principal of Seller or Seller's managing agent (a "Related Lease Transaction").

§6.02. Unless otherwise provided in a schedule attached to this contract, Seller shall not, between the date of this contract and the Closing, permit the occupancy of, or enter into any new lease, occupancy agreement or license agreement for, space in the Building which is presently vacant or which may hereafter become vacant, without first giving Purchaser written notice of the identity of the proposed tenant, occupant or licensee, together with (a) either a copy of the proposed lease, occupancy agreement or license agreement, or a summary of the terms thereof in reasonable detail and (b) a statement of the amount of the brokerage commission, if any, payable in connection therewith and the terms of payment thereof.

If (y) Purchaser objects to such proposed lease, occupancy agreement or license agreement and notifies Seller of its objection within seven business days after receipt of Seller's notice, or (z) such lease, occupancy agreement or license agreement constitutes a Related Transaction, Seller shall not enter into the proposed lease, occupancy agreement or license agreement. If clause (y) applies and the prospective tenant, licensee or occupant would have commenced paying rent or a license fee prior to the Closing Date if Purchaser had not objected, Purchaser shall pay to Seller at the Closing, in the manner specified in §2.02, (A) the rent, additional rent and other charges that would have been payable under the proposed lease, occupancy agreement or license agreement from the date on which the tenant's, occupant's or licensee's obligation to pay rent would have commenced if Purchaser had not so objected until the Closing Date, less (B) the Reletting Expenses (hereinafter defined), as amortized over the period commencing on the proposed rent commencement date of such lease or agreement and ending on the proposed expiration date of such lease or agreement and apportioned as of the Closing Date. The "Reletting Expenses" shall equal the amount of the brokerage commission, any construction allowance or other monetary payment to be made to the proposed tenant, occupant or licensee, and the reasonable cost of decoration or other work required to be performed by the landlord under the terms of the proposed lease, occupancy agreement or license agreement to prepare the premises for the tenant's, occupant's or licensee's occupancy.

If Purchaser does not so notify Seller of its objection to a proposed lease, occupancy agreement or license agreement or consents to same and if such lease or agreement does not involve a Related Transaction, Seller shall have the right to enter into the proposed lease, occupancy agreement or license agreement with the tenant, occupant or licensee identified in Seller's notice. If Seller enters into such lease or agreement and Seller has reasonably incurred out-of-pocket expenses in connection with such transaction, including brokerage commissions, reasonable legal fees, and/or fix up costs (the "Leasing Expenses"), then:

1. If the new tenant or occupant is not required to commence paying, and does not pay, rent until after the Closing Date, Purchaser shall reimburse Seller at the Closing for all the Leasing Expenses and Seller shall pay to the appropriate parties the Leasing Expenses, which obligation shall survive the Closing; but
2. If the new tenant or occupant commences paying rent prior to the Closing Date, Purchaser shall pay Seller at Closing the unamortized portion of the Leasing Expenses. The Leasing Expenses shall be amortized over a period commencing on the rent commencement date under such lease or agreement and ending on the expiration date of such lease or agreement (not taking into account any renewal or extension rights), and the unamortized portion shall be determined as of the Closing Date. Seller shall pay to the appropriate parties the Leasing Expenses, which obligation shall survive the Closing.

If Seller fails to pay the Leasing Expenses as required by this Section, Seller shall indemnify and hold harmless Purchaser from all loss, cost, expense, liability, and damages, including reasonable attorneys' fees, Purchaser may incur by reason of such failure, which indemnification obligation shall survive Closing.

§6.03. If any space is vacant on the Closing Date, Purchaser shall accept the Premises subject to such vacancy, provided that the vacancy was not permitted or created by Seller in violation of any restrictions contained in this contract.

§6.04. Seller shall not grant any concessions or rent abatements for any period following the Closing without Purchaser's prior written consent.

§6.05. Seller does not warrant that any particular Lease or Tenancy will be in force or effect at the Closing or that the tenants will have performed their obligations thereunder. The termination of any Lease or Tenancy prior to the Closing by reason of the tenant's default shall not affect the obligations of Purchaser under this contract in any manner or entitle Purchaser to an abatement of or credit against the Purchase Price or give rise to any other claim on the part of Purchaser.

§6.06. Seller hereby indemnifies and agrees to defend Purchaser against any claims made by tenants in the Premises with respect to their security deposits other than (a) claims with respect to tenants' security deposits to the extent paid, credited or assigned to

Purchaser pursuant to §10.01, (b) claims made against Purchaser pursuant to §7-107 of the New York General Obligations Law (“GOL”) with respect to funds for which Seller was not liable, and (c) claims made pursuant to §7-108 of the GOL by tenants to whom Purchaser failed to give the written notice specified in §7-108(2)(c) of the GOL within thirty days after the Closing Date. The foregoing indemnity and agreement shall survive the Closing and shall be in lieu of any escrow permitted by §7-108(d) of the GOL, and Purchaser hereby waives any right it may have to require any such escrow.

Section 7. Responsibility for Violations

§7.01. Except as provided in §7.02 and §7.03, all notes or notices of violations of law or governmental ordinances, orders or requirements which were noted or issued prior to the date of this contract by any governmental department, agency or bureau having jurisdiction as to conditions affecting the Premises and all liens which have attached to the Premises prior to the Closing pursuant to the Administrative Code of the City of New York, if applicable, shall be removed or complied with by Seller and Seller shall pay any fines or penalties imposed by reason of any such violations. If such removal or compliance or payment of fines or penalties, as applicable, has not been completed prior to the Closing, Seller shall pay to Purchaser at the Closing the reasonably estimated unpaid cost, including the reasonable fees of Purchaser’s attorney, architect and expediter, to effect or complete such removal or compliance and any penalties imposed for non-compliance, and Purchaser shall be required to accept title to the Premises subject thereto, except that Purchaser shall not be required to accept such title and may terminate this contract if (a) Purchaser’s institutional lender reasonably refuses to provide financing by reason thereof or (b) the Building is a multiple dwelling and either (i) such violation is rent impairing and causes rent to be unrecoverable under Section 302-a of the Multiple Dwelling Law or (ii) a proceeding has been validly commenced by tenants and is pending with respect to such violation for a judgment directing deposit and use of rents under Article 7-A of the Real Property Actions and Proceedings Law. All such notes or notices of violations noted or issued on or after the date of this contract shall be the sole responsibility of Purchaser.

§7.02. If the reasonably estimated aggregate cost to remove or comply with any violations or liens which Seller is required to remove or comply with pursuant to the provisions of §7.01 shall exceed the Maximum Amount specified in Schedule D, Seller shall have the right to cancel this contract, unless Purchaser elects to accept title to the Premises subject to all such violations or liens, in which event Purchaser shall be entitled to a credit of an amount equal to the Maximum Amount against the monies payable at the Closing.

§7.03. Seller’s failure to remove or fully comply with any violations which a tenant unaffiliated with Seller is required to remove or comply with pursuant to the terms of its lease by reason of such tenant’s use or occupancy shall not be an objection to title or a breach of Seller’s obligations under this Section 7. Purchaser shall accept the Premises subject to all such violations without any liability of Seller with respect thereto or any abatement of or credit against the Purchase Price, except that if Purchaser’s institutional lender reasonably refuses to provide financing by reason of a violation described in this

Section, Purchaser shall not be required to accept the Premises subject thereto and Purchaser shall have the right to terminate this contract.

§7.04. If this contract is terminated by Purchaser or Seller pursuant to this Section 7, such termination shall be subject to the provisions of §13.07.

§7.05. If required, Seller, upon written request by Purchaser, shall promptly furnish to Purchaser written authorizations to make any necessary searches for the purposes of determining whether notes or notices of violations have been noted or issued with respect to the Premises or liens have attached thereto.

Section 8. Destruction, Damage or Condemnation

§8.01. Damage by Casualty.

(a) Damage Not in Excess of [\$ _____]. If, prior to the Closing, there shall occur damage to the Premises caused by fire or other casualty which would cost less than [\$ _____] (the “Casualty Threshold”) to repair, as reasonably determined by an engineer selected by Seller and reasonably satisfactory to Purchaser, and such fire or other casualty does not adversely affect the lobby, building-wide systems, or common areas and the continued operation of the balance of the Premises not damaged and does not give rise to rent abatement or termination rights of lessees under leases covering more than ____% (the “Percentage”) of the rentable square feet of the Building, then Purchaser shall not have the right to terminate this contract by reason thereof, but Seller shall assign to Purchaser at the Closing, by written instrument in form and substance reasonably satisfactory to Purchaser, all of the insurance proceeds payable on account of any such fire or casualty, shall deliver to Purchaser any such proceeds actually paid to Seller, and shall afford to Purchaser at Closing a credit against the balance of the Purchase Price in an amount equal to any deductible. If the limit of Seller=s insurance policy with respect to a casualty at the Premises is less than the cost of restoration, then Buyer shall be entitled to a further reduction in the Purchase Price in an amount equal to the difference between the cost of restoration and the limit of such insurance policy (less the deductible). The proceeds of rent interruption insurance, if any, shall on the Closing Date be appropriately apportioned between Purchaser and Seller.

(b) Damage in Excess of [\$ _____]. If prior to the Closing there shall occur damage to the Premises caused by fire or other casualty which would cost an amount equal to the Casualty Threshold or more to repair, as reasonably determined by an engineer selected by Seller and reasonably satisfactory to Purchaser, or the damage affects the lobby, building-wide systems, or common areas or the continued operation of the balance of the Premises not damaged or gives rise to rent abatement or termination rights of lessees under leases covering more than the Percentage of the rentable square feet of the Building, then Purchaser may elect to terminate this contract by notice given to Seller and Escrowee within ten (10) days after Seller has given Purchaser notice that such damage occurred, or at the Closing, whichever is earlier, upon which termination, Escrowee shall deliver the Downpayment to Purchaser, this contract shall thereupon be null and void and neither party hereto shall thereupon have any further obligation to the other, except for

those obligations and liabilities that are expressly stated to survive termination of this contract. If Purchaser does not elect to terminate this contract, then the Closing shall take place as herein provided, without abatement of the Purchase Price, and Seller shall assign to Purchaser at the Closing, by written instrument in form reasonably satisfactory to Purchaser, all of the insurance proceeds payable on account of any such fire or casualty, shall deliver to Purchaser any such proceeds or awards actually paid to Seller, and shall afford to Purchaser at Closing a credit against the balance of the Purchase Price in an amount equal to any deductible. The proceeds of rent interruption insurance, if any, shall on the Closing Date be appropriately apportioned between Purchaser and Seller.

(c) Seller agrees not to repair any damage to the Premises (other than emergency repairs) without Purchaser's prior written consent and not to incur Reimbursable Amounts totaling in the aggregate in excess of [\$______] without Purchaser's prior written consent. Purchaser shall have the right to participate in any discussions, claims adjustments or settlements with insurance companies regarding any damage to the Premises.

(d) The term "Reimbursable Amounts" shall mean costs and expenses actually and reasonably incurred by or for the account of Seller in connection with fire or other casualty for (x) compliance with governmental ordinances, orders or requirements of any governmental department, agency or bureau having jurisdiction of the Premises, (y) safeguarding the Premises or any part thereof, including any protective restoration or (z) emergency repairs made by or on behalf of Seller (to the extent Seller has not theretofore been reimbursed by its insurance carrier).

§8.02. Condemnation. If after the execution and delivery of this contract and prior to Closing, any proceedings are instituted by any governmental authority which shall relate to the proposed taking of all or any portion of the Premises by eminent domain, or if any such proceedings are pending on the date of execution and delivery of this contract, or if all or any portion of the Premises is taken by eminent domain after the date of this contract and prior to the Closing, Seller shall promptly notify Purchaser in writing no later than two business days after Seller's receipt of any notification or the date of Closing, whichever occurs earlier. Purchaser shall thereafter have the right and option to terminate this contract by giving written notice to Seller and Escrowee within thirty (30) days after receipt by Purchaser of the notice from Seller or on the Closing Date, whichever is earlier. If the Closing Date was scheduled to occur after the institution of such proceeding, the Closing Date shall be deemed adjourned in order that Purchaser shall have its full thirty-day period within which to determine whether or not to proceed with Closing. If Purchaser timely terminates this contract, Purchaser shall be entitled to receive the Downpayment from Escrowee and this contract shall thereupon be terminated and become void and of no further effect, and neither party hereto shall have any obligations of any nature to the other hereunder or by reason hereof, except for those obligations and liabilities that are expressly stated to survive termination of this contract. If Purchaser does not elect to terminate this contract, the parties hereto shall proceed to the Closing and at the Closing, Seller shall assign to Purchaser all of its right, title and interest in all awards in connection with such taking and shall pay to Purchaser any award paid to Seller with respect to such taking. Purchaser shall have the right to participate in discussions or

proceedings with any governmental authority relating to the proposed taking of any portion of the Premises.

§8.03. The provisions of this Section 8 shall survive the Closing.

Section 9. Covenants of Seller

Seller covenants that between the date of this contract and the Closing:

§9.01. If Purchaser is acquiring the Premises subject to the Existing Mortgage(s), the Existing Mortgage(s) shall not be amended or supplemented or prepaid in whole or in part. Seller shall pay or make, as and when due and payable, all payments of principal and interest and all deposits required to be paid or made under the Existing Mortgage(s).

§9.02. Seller shall not modify or amend any Service Contract or enter into any new service contract unless the same is terminable without penalty or fee by the then owner of the Premises upon not more than 30 days' notice.

§9.03. Seller shall maintain in full force and effect until the Closing the insurance policies described in Schedule G attached hereto.

§9.04. No fixtures, equipment or personal property included in this sale shall be removed from the Premises unless the same are replaced with similar items of at least equal quality prior to the Closing.

§9.05. Seller shall not withdraw, settle or otherwise compromise any protest or reduction proceeding affecting real estate taxes assessed against the Premises for any fiscal period in which the Closing is to occur or any subsequent fiscal period without the prior written consent of Purchaser, which consent shall not be unreasonably withheld or delayed.

§9.06. Seller shall allow Purchaser or Purchaser's representatives access to the Premises (provided such access shall not unreasonably interfere with the occupancy of tenants), the Leases and other documents required to be delivered under this contract upon reasonable prior notice at reasonable times.

§9.07. Seller shall operate the Premises in substantially the same manner as the Premises are being operated on the date of this contract.

Section 10. Seller's Closing Obligations

§10.01. At the Closing, Seller shall deliver the following to Purchaser:

(a) A statutory form of bargain and sale deed without covenant against grantor's acts, containing the covenant required by Section 13 of the Lien Law, and properly executed in proper form for recording so as to convey the title required by this contract.

(b) All Leases, assignments of leases, subleases, subordination, nondisturbance and attornment agreements and tenant files and records.

(c) A schedule of all security deposits (and, if the Premises contains six or more family dwelling units, the most recent reports with respect thereto issued by each banking organization in which they are deposited pursuant to GOL §7-103) and a check or credit to Purchaser in the amount of any cash security deposits, including any interest thereon, held by Seller on the Closing Date or, if held by an institutional lender, an assignment to Purchaser and written instructions to the holder of such deposits to transfer the same to Purchaser, and appropriate instruments of transfer or assignment with respect to any security deposits which are other than cash.

(d) A schedule updating the Rent Schedule and setting forth all arrears in rents and all prepayments of rents.

(e) All Service Contracts initialed by Purchaser and all others in Seller's possession which are in effect on the Closing Date and which are assignable by Seller.

(f) An assignment to Purchaser, without recourse or warranty, of all of the interest of Seller in the Service Contracts, union contracts, if any, certificates, permits and other documents to be delivered to Purchaser at the Closing which are then in effect and are assignable by Seller.

(g) (i) If Schedule C provides for the acceptance of title by Purchaser subject to one or more Existing Mortgages, written consent(s) of the Mortgagee(s), if required under §2.03(b), and (ii) certificate(s) executed by the Mortgagee(s) in proper form for recording and certifying (1) the amount of the unpaid principal balance thereof, (2) the maturity date thereof, (3) the interest rate, (4) the last date to which interest has been paid thereon and (5) the amount of any escrow deposits held by the Mortgagee(s). Seller shall pay the fees for recording such certificate(s). Any Mortgagee which is an institutional lender may furnish a letter complying with Section 274-a of the Real Property Law in lieu of such certificate.

(h) If Schedule C provides for the acceptance of title by Purchaser subject to one or more Existing Mortgages, an assignment of all Seller's right, title and interest in escrow deposits for real estate taxes, insurance premiums and other amounts, if any, then held by the Mortgagee(s).

(i) To the extent they are then in Seller's possession and not posted at the Premises, certificates, licenses, permits, authorizations and approvals issued for or with respect to the Premises by governmental and quasi-governmental authorities having jurisdiction.

(j) Such affidavits as Purchaser's title company shall reasonably require in order to omit from its title insurance policy all exceptions for judgments, bankruptcies, work by the City of New York (if the Premises are in the City of New York), emergency repair liens of the City of New York (if the Premises are in the City of New York) or other returns against persons or entities whose names are the same as or similar to Seller's name,

to omit the rights of parties who are no longer in possession and to limit the exception for tenants and occupants to those having “rights as tenants only”.

(k) (i) Checks to the order of the appropriate officers or the Title Company in payment of all applicable real property transfer taxes and copies of any required tax returns therefor executed by Seller, which checks shall be certified or official bank checks if required by the taxing authority or the Title Company unless Seller elects to have Purchaser pay any of such taxes and credit Purchaser with the amount thereof, and (ii) a certification of non-foreign status, in form required by the Code Withholding Section, signed under penalty of perjury, and (iii) Form RP-5217 (or, in New York City, Form RP-5217NYC). Seller understands that such certification will be retained by Purchaser and will be made available to the Internal Revenue Service on request.

(l) To the extent they are then in Seller’s possession, copies of current painting and payroll records. Purchaser shall make all other Building and tenant files and records, including those contained on computer software, available to Seller for copying, which obligation shall survive the Closing.

(m) An original letter, executed by Seller or by its agent, advising the tenants of the sale of the Premises to Purchaser and directing that rents and other payments thereafter be sent to Purchaser or as Purchaser may direct.

(n) If Schedule C provides for the acceptance of title by Purchaser subject to one or more Existing Mortgages, notice(s) to the Mortgagee(s), executed by Seller or by its agent, advising of the sale of the Premises to Purchaser and directing that future bills and other correspondence should thereafter be sent to Purchaser or as Purchaser may direct.

(o) If Seller is a corporation and if required by Section 909 of the Business Corporation Law, a resolution of Seller’s board of directors authorizing the sale and delivery of the deed and a certificate executed by the secretary or assistant secretary of Seller certifying as to the adoption of such resolution and setting forth facts showing that the transfer complies with the requirements of such law and the deed referred to in §10.01(a) shall also contain a recital sufficient to establish compliance with such law. If Seller is a partnership or limited liability company, the written consent of the partners or members to the extent required by the partnership agreement or operating agreement and delivery of a certificate executed by the general partner of any partnership or by the manager (if any) or a member of a limited liability company, attaching true and complete copies of the organizational documents of Seller and affirming that the sale and conveyance of title comply with the requirements of such organizational documents (or of the applicable statute, if any).

(p) Possession of the Premises in the condition required by this contract, subject to the Leases and Tenancies, and keys therefor.

(q) A blanket assignment, without recourse or representation, of all Seller’s right, title and interest, if any, to all contractors’, suppliers’, materialmen’s and builders’

guarantees and warranties of workmanship and/or materials in force and effect with respect to the Premises on the Closing Date and a true and complete copy of each thereof.

(r) Estoppel letters in the form attached hereto as Schedule F from the following tenants: _____.

(s) A certificate of Seller confirming that the warranties and representations of Seller set forth in this contract are true and complete on and as of the Closing Date (the statements made in such certificate shall be subject to the same limitations on survival as are applicable to Seller's representations and warranties under §4).

(t) A blanket assignment of all Leases and an agreement to indemnify and defend Purchaser against any claims made by tenants, subtenants, occupants or licensees with respect to any failure of Seller to perform its obligations prior to the Closing Date.

(u) Upon request of Purchaser, a bill of sale transferring to Purchaser the Personal Property free and clear of all liens and encumbrances except, if applicable, for the lien of the holder of the Existing Mortgage.

(v) Any other documents required by this contract to be delivered by Seller.

§10.02. Seller shall promptly after the Closing, notify the unions having Union Contracts affecting the Premises of the sale of the Premises and the name and address of Purchaser.

Section 11. Purchaser's Closing Obligations

At the Closing, Purchaser shall:

§11.01. Pay to Seller (and/or to Seller's designee(s) provided Seller shall have given notice to Purchaser of the name(s) of such designee(s) not less than five days prior to Closing) by check, or wire transfer immediately available federal funds to Seller (and/or such designee(s)), the portion of the Purchase Price payable at the Closing, as adjusted for apportionments under §12 and any other credits or adjustments provided in this contract.

§11.02. Deliver to Seller the Purchase Money Mortgage, if any, in proper form for recording, the note secured thereby, financing statements covering personal property, fixtures and equipment included in this sale and replacements thereof, all properly executed, and Purchaser shall pay the mortgage recording tax and recording fees for any Purchase Money Mortgage.

§11.03. Deliver to Seller an agreement indemnifying and agreeing to defend Seller against any claims made by tenants with respect to tenants' security deposits to the extent paid, credited or assigned to Purchaser under §10.01(c).

§11.04. Duly complete and sign all required real property transfer tax returns and all tax reports (such as RP-5217), and cause all such returns, reports and checks in payment of such taxes to be delivered to the appropriate officers promptly after the Closing.

§11.05. Deliver to Seller an agreement assuming all of landlord's obligations under the Leases and any subordination, nondisturbance and attornment agreement given by Seller to a subtenant from and after the Closing Date and indemnifying and agreeing to defend Seller against any claims made by tenants, subtenants, licensees or occupants with respect to any failure to perform such obligations.

§11.06. Deliver to Seller a certificate confirming that the warranties and representations of Purchaser set forth in this contract are true and complete as of the Closing Date (the statements made in such certificate shall be subject to the same limitations on survival as are applicable to Purchaser's representations and warranties under §5).

§11.07. Deliver to Seller an agreement assuming all Seller's obligations under the Union Contracts affecting the Premises from and after the Closing Date and indemnifying and agreeing to defend Seller against any claims made by the union(s) with respect to such obligations.

§11.08. Deliver to Seller an agreement assuming all Seller's obligations for brokerage commissions payable after the Closing with respect to leases entered into by Seller prior to the Closing to the extent such obligations have been disclosed to Purchaser in Schedule E.

§11.09. Deliver any other documents required by this contract to be delivered by Purchaser.

Section 12. Apportionments

§12.01. The following apportionments shall be made between the parties at the Closing as of the close of business on the day prior to the Closing Date:

(a) prepaid rents and Additional Rents (as defined in §12.03) and revenues, if any, from telephone booths, vending machines and other income-producing agreements to the extent collected;

(b) interest on the Existing Mortgage(s) and any Existing Mortgage escrow accounts to the extent assigned to Purchaser;

(c) real estate taxes, water charges and sewer rents, if any, on the basis of the fiscal period for which assessed, except that if there is a water meter on the Premises, apportionment at the Closing shall be based on the last available reading, subject to adjustment after the Closing when the next reading is available;

(d) wages, vacation pay, pension and welfare benefits and other fringe benefits of all persons employed at the Premises, whose employment was not terminated at or prior to the Closing;

(e) value of fuel stored on the Premises, at the price then charged by Seller's supplier, including any taxes, as shown on the invoices of Seller's supplier;

- (f) charges under transferable Service Contracts or permitted renewals or replacements thereof;
- (g) permitted administrative charges, if any, on tenants' security deposits;
- (h) dues to rent stabilization associations, if any;
- (i) Reletting Expenses under §6.02, if any;
- (j) Accrued senior citizen exemptions, if any; and
- (k) any other items listed in Schedule D, including assessments.

If on the Closing Date the Premises shall be affected by an assessment which is or may become payable in annual installments, all installments allocable to the period following the Closing Date shall be Purchaser's responsibility.

If the Closing shall occur before a new tax rate is fixed, the apportionment of taxes at the Closing shall be upon the basis of the old tax rate for the preceding period applied to the latest assessed valuation. Promptly after the new tax rate is fixed, the apportionment of taxes shall be recomputed. Any discrepancy resulting from such recomputation shall be promptly corrected, which obligation shall survive the Closing.

Any errors or omissions in computing apportionments at Closing shall be promptly corrected, which obligations shall survive the Closing.

Real estate tax refunds, abatements and credits received after the Closing Date which are attributable to the fiscal tax year during which the Closing Date occurs shall be apportioned between Seller and Purchaser, after deducting the expenses of collection thereof, which obligation shall survive the Closing.

Prior to the Closing Date Seller shall use commercially reasonable efforts to obtain from the agency of the City of New York having jurisdiction thereof readings of all water meters at the Premises within the 30-day period preceding the Closing Date.

§12.02. If any tenant is in arrears in the payment of rent on the Closing Date, rents received from such tenant after the Closing shall be applied in the following order of priority: (a) first to the month preceding the month in which the Closing occurred; (b) then to the month in which the Closing occurred; (c) then to any month or months following the month in which the Closing occurred; and (d) then to the period prior to the month preceding the month in which the Closing occurred. If rents or any portion thereof received by Seller or Purchaser after the Closing are payable to the other party by reason of this allocation, the appropriate sum, less a proportionate share of any reasonable attorneys' fees, costs and expenses of collection thereof, shall be promptly paid to the other party, which obligation shall survive the Closing.

§12.03. If any tenants are required to pay percentage rent, escalation or pass-through charges for real estate taxes, operating expenses, or other charges,

cost-of-living adjustments or other charges of a similar nature (“Additional Rents”) and any Additional Rents are collected by Purchaser after the Closing which are attributable in whole or in part to any period prior to the Closing, then Purchaser shall promptly pay to Seller Seller’s proportionate share thereof, less a proportionate share of any reasonable attorneys’ fees, costs and expenses of collection thereof, if and when the tenant paying the same has made all payments of rent and Additional Rent then due to Purchaser pursuant to the tenant’s Lease, which obligation shall survive the Closing. If any tenant is or becomes entitled to a refund of overpayments of Additional Rent which are attributable in whole or in part to any period prior to the Closing, Seller shall pay to Purchaser an amount equal to the amount of such refund attributable to any such period within ten days after notice from Purchaser, which obligation shall survive the Closing.

Section 13. Objections to Title, Vendee’s Lien, Remedies for Purchaser’s Default, Procedure on Termination of Contract by Purchaser

§13.01. Purchaser shall promptly order an examination of title and shall cause a copy of the title report to be forwarded to Seller’s attorney upon receipt. Seller shall be entitled to a reasonable adjournment or adjournments of the Closing for up to 60 days or, if Purchaser’s obligation to close is conditioned on the issuance of a loan commitment, until the expiration date of any written commitment of Purchaser’s institutional lender delivered to Purchaser prior to the scheduled date of Closing, whichever occurs first, to remove any defects in or objections to title (other than Permitted Exceptions) noted in such title report and any other defects or objections (other than Permitted Exceptions) which may be disclosed on or prior to the Closing Date.

§13.02. If Seller shall be unable to convey title to the Premises at the Closing in accordance with the provisions of this contract, Purchaser, nevertheless, may elect to accept such title as Seller may be able to convey without any credit against the monies payable at the Closing or liability on the part of Seller. If Purchaser shall not so elect, Purchaser may terminate this contract, which termination shall be subject to the provisions of §13.07. Seller shall not be required to bring any action or proceeding or to incur any expense in excess of the Maximum Expense specified in Schedule D to cure any title defect or to enable Seller otherwise to comply with the provisions of this contract, but the foregoing shall not permit Seller to refuse to pay off at the Closing, to the extent of the monies payable at the Closing, mortgages or other liens on the Premises which can be satisfied or discharged by payment of a sum certain, other than Existing Mortgages.

§13.03. Any unpaid taxes, assessments, water charges and sewer rents, together with the interest and penalties thereon to a date not less than two days following the Closing Date, and any other liens and encumbrances which Seller is obligated to pay and discharge or which are against corporations, estates or other persons in the chain of title, together with the cost of recording or filing any instruments necessary to discharge such liens and encumbrances of record, may be paid out of the proceeds of the monies payable at the Closing if Seller delivers to Purchaser on the Closing Date official bills for such taxes, assessments, water charges, sewer rents, interest and penalties and instruments in recordable form sufficient to discharge any other liens and encumbrances of record. Upon request made a reasonable time before the Closing, Purchaser shall provide at the Closing

separate checks for the foregoing payable to the order of the holder of any such lien, charge or encumbrance and otherwise complying with §2.02. If Purchaser's title insurance company is willing to insure both Purchaser and Purchaser's institutional lender, if any, that such charges, liens and encumbrances will not be collected out of or enforced against the Premises, then, unless Purchaser's institutional lender reasonably refuses to accept such insurance in lieu of actual payment and, discharge, Seller shall have the right, in lieu of payment and discharge, to deposit with the title insurance company such funds or assurances or to pay such special or additional premiums as the title insurance company may require in order to so insure. In such case the charges, liens and encumbrances with respect to which the title insurance company has agreed so to insure shall not be considered objections to title.

§13.04. Notwithstanding anything to the contrary contained herein, if Purchaser shall default in the performance of its obligations under this contract, the sole remedy of Seller shall be to retain the Downpayment as liquidated damages for all loss, damage and expense suffered by Seller, including without limitation the loss of its bargain, subject, however, to Seller's rights under §14 and §17.04.

§13.05. If Seller shall willfully default in the performance of its obligations under this contract, Purchaser shall have the right to seek specific performance of such obligations or damages for all loss, damage and expense suffered by Purchaser, including, without limitation, the loss of its bargain, excluding consequential or punitive damages.

§13.06. Purchaser shall have a vendee's lien against the Premises for the amount of the Downpayment and the interest earned thereon, but such lien shall not continue after default by Purchaser beyond any notice and cure period under this contract or after deposit of the Downpayment in court by the Escrowee.

§13.07. If (a) Purchaser shall have grounds under this contract for refusing to consummate the purchase provided for herein, or (b) Purchaser or Seller terminates this contract pursuant to a provision that refers to this Section, the sole liability of Seller shall be to refund the Downpayment to Purchaser and to reimburse Purchaser for (i) the cost of title examination, but not to exceed the amount charged by Purchaser's title company therefor without issuance of a policy, (ii) the cost of updating the existing survey of the Premises or the cost of a new survey of the Premises if no existing survey was delivered to Purchaser by Seller or the existing survey was not capable of being updated and a new survey was required by Purchaser's institutional lender and (iii) the cost of departmental searches. Upon the giving of the termination notice and Seller's refund of the Downpayment, this contract shall be null and void and the parties hereto shall be relieved of all further obligations and liability other than any arising under §14 and §17.04.

Section 14. Broker

§14.01. If a broker is specified in Schedule D, Seller and Purchaser mutually represent and warrant that such broker is the only broker with whom they have dealt in connection with this contract and that neither Seller nor Purchaser knows of any other broker who has claimed or may have the right to claim a commission in connection with

this transaction, unless otherwise indicated in Schedule D. The commission of such broker shall be paid pursuant to separate agreement by the party specified in Schedule D. If no broker is specified in Schedule D, the parties acknowledge that this contract was brought about by direct negotiation between Seller and Purchaser and that neither Seller nor Purchaser knows of any broker entitled to a commission in connection with this transaction. Unless otherwise provided in Schedule D, Seller and Purchaser shall indemnify and defend each other against any costs, claims or expenses, including reasonable attorneys' fees, arising out of the breach on their respective parts of any representations, warranties or agreements contained in this paragraph. The representations and obligations under this paragraph shall survive the Closing or, if the Closing does not occur, the termination of this contract.

Section 15. Notices

§15.01. All notices under this contract shall be in writing and shall be delivered personally with receipt acknowledged or shall be sent by (i) prepaid certified mail, or (ii) prepaid nationally recognized overnight courier for next business day delivery with receipt acknowledged, or (iii) legible facsimile transmission (with copy acknowledged), in each case addressed as set forth in Schedule D or as Seller or Purchaser shall otherwise have given notice as herein provided. Notice sent by certified mail shall be deemed received on the third business day following mailing. Notice sent by overnight courier shall be deemed received on the first business day following delivery to the overnight courier. Notices sent by facsimile transmission shall be deemed received on the date received (or, if the date of receipt is not a business day, on the first business day following date of receipt). Notices under this contract may not be given by e-mail or other electronic system. Any notice under this contract may be given by the attorneys of the respective parties who are hereby authorized to do so on their behalf.

Section 16. Limitations on Survival of Representations, Warranties, Covenants and other Obligations

§16.01. Except as otherwise provided in this contract, no representations, warranties, covenants or other obligations of Seller set forth in this contract shall survive the Closing, and no action based thereon shall be commenced after the Closing.

§16.02. The delivery of the deed by Seller, and the acceptance thereof by Purchaser, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed hereunder, except those obligations of Seller which are expressly stated in this contract to survive the Closing.

Section 17. Due Diligence Period

§17.01. During the period (the "Due Diligence Period") commencing on the date hereof and ending at 5:00 P.M. Eastern Standard Time on the ____ day following the date hereof, Purchaser shall have the right to have the Premises inspected during reasonable hours, after reasonable notice to Seller, and to obtain the following inspection reports with respect to the Premises, at Purchaser's sole cost and expense:

(a) An inspection and report (the “Environmental Report”) from a licensed environmental inspection laboratory or a licensed engineer (the “Inspection Company”) with respect to the presence or absence of hazardous or toxic substances or conditions at the Premises including, without limitation, asbestos, mold, polychlorinated biphenyls, petroleum products and those hazardous substances defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. and all amendments thereto, the Superfund Amendments and Reauthorization Act, 42 U.S.C. §9601 et seq., and the rules and regulations promulgated thereunder, New York State Environmental Liability Review Act, New York Environmental Conservation Law (ECL) §§8-0101 et seq., and the New York State Water Pollution Control Act, ECL §§17-0101 et seq. (collectively, “Hazardous Substances”); and

(b) An inspection and report (the “Engineering Report”) from a licensed engineer and other appropriate professionals (collectively, the “Engineer”) with respect to the structural and general physical condition of the Premises, all mechanical systems and utilities servicing the Premises, curtain walls, roofs, wells, septic and drainage systems, and compliance with the Americans with Disabilities Act (collectively, “Building Conditions”).

§17.02. Purchaser shall cause copies of the Environmental Report and Engineering Report (collectively, the “Reports”) to be delivered to Seller prior to the expiration of the Due Diligence Period. Purchaser may elect to cancel this contract, by written notice (the “Termination Notice”) to Seller delivered on or before the last day of the Due Diligence Period, if the Environmental Report or the Engineering Report is unacceptable to Purchaser. If Purchaser so elects to terminate this contract, such termination shall be subject to the provisions of §13.07 except that Purchaser shall not be entitled to reimbursement from Seller of any of the costs listed in clauses (i), (ii), or (iii).

§17.03. During the Due Diligence Period, Seller agrees to cooperate in all reasonable respects with Purchaser and agrees to make available to Purchaser and its agents all of the books, files and records relating to the Premises which are in the possession or under the control of Seller. Notwithstanding the foregoing, Purchaser shall not have the right to conduct a Phase II Environmental Assessment or make any other intrusive tests without Seller’s prior written consent, which shall not be unreasonably withheld, delayed or conditioned.

§17.04. Purchaser hereby indemnifies and agrees to defend and hold Seller harmless from all loss, cost (including, without limitation, reasonable attorneys’ fees), claim or damage caused by the inspection of the Premises by Purchaser, its agents, consultants or representatives.

§17.05. TIME SHALL BE OF THE ESSENCE WITH RESPECT TO PURCHASER’S ACTIONS PURSUANT TO THIS SECTION 17. If Purchaser shall (i) fail to have the Premises inspected prior to the expiration of the Due Diligence Period, (ii) fail to deliver a copy of the Reports to Seller prior to the expiration of the Due Diligence Period or (iii) fail to give the Termination Notice prior to the expiration of the Due

Diligence Period, Purchaser shall be deemed to have waived the right to cancel this contract as provided in §17.02.

Section 18. Miscellaneous Provisions

§18.01. (a) Purchaser shall not assign this contract or its rights hereunder without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion. No permitted assignment of Purchaser's rights under this contract shall be effective against Seller unless and until an executed counterpart of the instrument of assignment shall have been delivered to Seller and Seller shall have been furnished with the name and address of the assignee. The term "Purchaser" shall be deemed to include the assignee under any such effective assignment.

(b) Notwithstanding anything to the contrary in §18.01(a), if Seller or Purchaser is or may in the future be under contract with a qualified intermediary for the purpose of effecting a tax-deferred exchange in accordance with Section 1031 of the Internal Revenue Code of 1986, as amended, each party consents to the assignment of this contract to such intermediary. Each party shall cooperate with the other and with the qualified intermediary to accomplish such exchange and shall perform any acts and execute any and all documents reasonably necessary to assist in such exchange, provided that neither party shall be required to accept title to any property other than the Premises, expend any additional amounts of money above those amounts for which it is obligated under this contract or extend the Closing Date, and Seller's time to close under this contract shall not be reduced. Seller and Purchaser shall each defend, indemnify and hold the other harmless from and against expenses, costs and damages of any kind (including reasonable attorneys' fees) suffered by either resulting from the performance of, or failure to perform, any acts of cooperation necessitated by this Section.

§18.02. This contract embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this contract. Neither this contract nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

§18.03. This contract shall be governed by, and construed in accordance with, the law of the State of New York.

§18.04. The captions in this contract are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this contract or any of the provisions hereof.

§18.05. This contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns.

§18.06. This contract shall not be binding or effective until properly executed and delivered by Seller and Purchaser.

§18.07. As used in this contract, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context may require.

§18.08. If the provisions of any schedule or rider to this contract are inconsistent with the provisions of this contract, the provisions of such schedule or rider shall prevail. Set forth in Schedule D is a list of any and all schedules and riders which are attached hereto but which are not listed in the Table of Contents.

§18.09. This contract may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall be one instrument.

§18.10. For purposes of this contract, an “institutional lender” is a bank, savings bank, trust company, savings and loan association, credit union or similar banking institution whether organized under the laws of the State of New York, the United States or any other state; a foreign banking corporation licensed by the Superintendent of Banks of New York or the Comptroller of the Currency to transact business in New York State; a mortgage banker licensed pursuant to Article 12-D of the Banking Law; any instrumentality created by the United States or any state with the power to make mortgage loans; an insurance company, pension fund, annuity company, pension plan or pension advisory firm, a mutual fund, a real estate investment trust, a real estate mortgage investment conduit (“REMIC”) or similar vehicle, so long as the mortgage held by the REMIC or similar vehicle is serviced by an entity that is a rated servicer, and an investment bank.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the date first above written.

Seller:

Purchaser:

Receipt by Escrowee

The undersigned Escrowee hereby acknowledges receipt of \$_____, by check subject to collection, to be held in escrow pursuant to §2.06.

Schedule A

DESCRIPTION OF PREMISES

(to be attached separately and to include tax map designation)

Schedule B

PERMITTED EXCEPTIONS

1. Zoning and subdivision laws, regulations and ordinances and landmark, historic or wetlands designations, which are not violated by the existing structures or present use thereof.

2. Consents by the Seller or any former owner of the Premises for the erection of any structure or structures on, under or above any street or streets on which the Premises may abut.

3. If Schedule C provides for the acceptance of title by Purchaser subject to one or more Existing Mortgage(s), the Existing Mortgage(s) and financing statements, assignments of leases and other agreements ancillary thereto.

4. Leases and Tenancies specified in the Rent Schedule and any new leases, tenancies, occupancy agreements and licenses not prohibited by this contract.

5. Unpaid installments of assessments not due and payable on or before the Closing Date; and real estate taxes that are a lien but are not yet due and payable.

6. Financing statements, chattel mortgages and liens on personalty filed more than 5 years prior to the Closing Date and not renewed, or filed against property or equipment no longer located on the Premises or owned by Tenants.

7. Rights of utility companies to lay, maintain, install and repair pipes, lines, poles, conduits, cable boxes and related equipment on, over and under the Premises, provided that none of such rights imposes any monetary obligation on the owner of the Premises or interferes with the existing use of the Premises or the following proposed use of the Premises: _____.

8. Encroachments of stoops, areas, cellar steps, trim cornices, lintels, window sills, awnings, canopies, ledges, fences, hedges, coping and retaining walls projecting from the Premises over any street or highway or over any adjoining property and encroachments of similar elements projecting from adjoining property over the Premises.

9. Revocability or lack of right to maintain vaults, coal chutes, excavations or sub-surface equipment beyond the line of the Premises.

10. Any state of facts that an accurate survey would disclose, provided that such facts do not render title uninsurable without additional premium or charge or is a Permitted Exception. For the purposes of this contract, none of the facts shown on the survey, if any, identified below shall be deemed to render title uninsurable or unmarketable, and Purchaser shall accept title subject thereto: _____.

Schedule C

PURCHASE PRICE

The Purchase Price shall be paid as follows:

(a)	By check subject to collection, the receipt of which is hereby acknowledged by Seller (the Downpayment):	\$
(b)	By check or checks delivered or wire transfers of federal funds to Seller or Seller's designee(s) or the holder of any Existing Mortgage being assigned pursuant to §2.04 at the Closing in accordance with the provisions of §2.02:	\$
(c)	By acceptance of title subject to the following Existing Mortgage(s): _____	\$
(d)	By execution and delivery to Seller by Purchaser or its assignee of a note secured by a Purchase Money Mortgage on the Premises:	\$
(e)	Total Purchase Price:	\$

Schedule D

MISCELLANEOUS

1. Address of Premises:
2. Title insurer designated by Purchaser (§1.02):
3. Last date for consent by Existing Mortgagee(s) (§2.03(b)):
4. Prepayment Date on or after which Purchase Money Mortgage may be prepaid (§2.05(c)(1)):
5. Maximum Interest Rate of any Refinanced Mortgage (§2.05(b)):
6. Seller's tax identification number:
7. Purchaser's tax identification number:
8. Scheduled time and date of Closing (§3.01):
9. Place of Closing (§3.01):
10. Assessed valuation of Premises (§4.10):

Actual Assessment:

Transition Assessment:
11. Fiscal year and annual real estate taxes on Premises (§4.10):
12. Tax abatements or exemptions affecting Premises (§4.10):
13. Assessments on Premises (§4.13):
14. Maximum Amount which Seller must spend to cure violations, etc. (§7.02):
15. Maximum Expense of Seller to cure title defects, etc. (§13.02):
16. Broker, if any (§14:01):
17. Party to pay broker's commission (§14:01)
18. Address for notices (§15.01):

If to Seller:

with a copy to Seller's attorney:

If to Purchaser:

with a copy to Purchaser's attorney:

19. Additional Schedules or Riders (§18.08):

Schedule E
RENT SCHEDULE
(to be attached separately)

Schedule F
FORM OF ESTOPPEL LETTER
(to be attached separately)

Schedule G
INSURANCE POLICIES

Schedule H
EMPLOYEES

Schedule I
SERVICE CONTRACTS

Schedule J
CERTIFICATE OF OCCUPANCY

Schedule K

PURCHASE MONEY NOTE AND MORTGAGE