

# INTRO TO REAL ESTATE

**Daniel Barli, Esq.**  
*Barli & Associates LLC*  
*(Clifton)*

**Michael J. Fichera, Jr., Esq.**  
*Avenue Law Firm*  
*(New York City)*

**Paula M. Zwiren, Esq., MBA, CTP**  
*Law Office of Paula M. Zwiren*  
*(Livingston)*

**This page intentionally left blank**

# **REAL ESTATE CLOSING PROCEDURES**

## **PRACTICAL SKILLS SERIES**

**2014 Edition Written by**

**Christine F. Li, Esq.**  
Greenbaum, Rowe, Smith & Davis LLP  
Woodbridge, New Jersey

**THE NEW JERSEY INSTITUTE FOR CONTINUING LEGAL EDUCATION  
One Constitution Square, New Brunswick, New Jersey, 08901-1520  
(732) 249-5100**



## **TABLE OF CONTENTS**

<b>CHAPTER I INTRODUCTION .....</b>	<b>1</b>
<b>CHAPTER II PRELIMINARY CLIENT REPRESENTATION CONSIDERATIONS .....</b>	<b>3</b>
Section 2.1.    General .....	3
Section 2.2    Retention of Legal Counsel .....	3
Section 2.3    Representing the Purchaser.....	6
Section 2.3.1    Information Regarding the Purchaser.....	6
Section 2.3.2    Information Regarding the Seller .....	7
Section 2.3.3    Information Regarding the Property.....	7
Section 2.3.4    Information Regarding Financing .....	8
Section 2.3.5    Information Regarding Closing Costs.....	8
Section 2.4    Representing the Seller .....	9
Section 2.5    Listing Agreement.....	10
Section 2.5.1    Types of Listing Agreement .....	10
Section 2.5.2    Obligations to the Broker.....	15
Section 2.5.3    Terms of Agreement .....	15
Section 2.5.4    Consumer Information Statement.....	17
Section 2.5.5    Property Disclosure Statement .....	17
<b>CHAPTER III CONTRACT .....</b>	<b>28</b>
Section 3.1    Attorney Preparation .....	28
Section 3.2    Real Estate Broker Preparation.....	41
Section 3.2.1    Attorney Review .....	41
Section 3.2.2    Disclosures .....	58
Section 3.2.3    Revisions to Contract.....	58
Section 3.3    Issues in the Preparation or Review of the Contract .....	71
Section 3.3.1    Capacity to Contract .....	71
(a)    Infancy .....	71
(b)    Aliens.....	71
(c)    Mental Incompetency .....	71
(d)    Marital Status, Dower and Curtesy .....	72
(e)    Agents.....	72
(f)    Power of Attorney .....	73
(g)    Corporations .....	76
(h)    Partnerships .....	76
(i)    Limited Liability Companies.....	77
Section 3.3.2    Identification of Parties.....	77
Section 3.3.3    Form of Ownership.....	78
(a)    Joint Tenants .....	78
(b)    Tenants in Common .....	78
(c)    Tenancy by the Entirety .....	78
Section 3.3.4    Identification of the Property .....	78

Section 3.3.5	Purchase Price .....	79
(a)	Initial Deposit.....	79
(b)	Balance of Deposit.....	79
(c)	Mortgage Amount.....	80
(d)	Assumption of Mortgage .....	81
(e)	Purchase Money Mortgage to Seller .....	81
(f)	Balance of Purchase Price.....	87
Section 3.3.6	Date and Time of Closing.....	87
Section 3.3.7	Place of Closing .....	88
Section 3.3.8	Contingencies.....	88
(a)	Attorney Review .....	89
(b)	Flood Area.....	89
(c)	Termite Inspection .....	89
(d)	Home Inspection .....	89
(e)	Radon Test.....	94
(f)	Well Inspection and Potability Test.....	94
(g)	Septic System Test.....	97
(h)	Home Heating Oil Tank Inspection.....	97
(i)	Lead Paint.....	98
(j)	Other Hazardous Conditions.....	103
(k)	Mortgage .....	103
(l)	Home Sale (by Purchaser) or Home Purchase (by Seller) Contingency .....	104
(m)	Smoke Detector, Carbon Monoxide, and Fire Extinguisher Compliance Certificate (Seller's Contingency).....	104
(n)	Certificate of Occupancy (Seller's Contingency).....	112
Section 3.3.9	Type of Deed.....	115
(a)	Bargain and Sale Deed.....	115
(b)	Warranty Deed .....	118
(c)	Special Warranty Deed .....	118
(d)	Quitclaim Deed .....	118
Section 3.3.10	Affidavit of Title .....	119
Section 3.3.11	Quality of Title.....	119
Section 3.3.12	Risk of Loss.....	122
Section 3.3.13	Personalty and Fixtures.....	122
Section 3.3.14	Physical Condition and Preclosing Inspection .....	122
Section 3.3.15	Adjustments.....	122
Section 3.3.16	Assessments for Municipal Improvements .....	123
Section 3.3.17	Possession and Tenancies .....	123
Section 3.3.18	Exculpatory Clause .....	124
Section 3.3.19	Notices.....	125
Section 3.4	Supportive Contract Documents.....	125
Section 3.4.1	Use and Occupancy Agreement .....	125
Section 3.4.2	Property Storage Agreement.....	132
Section 3.4.3	Lease With An Option to Buy .....	132
Section 3.5	Application of Deposit Toward Damages.....	156

Section 3.6	Plain Language Law .....	158
Section 3.7	Time of the Essence .....	158

**CHAPTER IV THE PURCHASER - BETWEEN CONTRACT AND CLOSING:**

<b>PREPARING FOR CLOSING .....</b>	<b>163</b>
Section 4.1 Addressing Inspection Results .....	164
Section 4.2 Mortgage Financing .....	164
(a) Amount of Loan .....	164
(b) Types of Loans .....	167
(c) Information for Mortgage Application .....	168
(d) Mortgage Commitment .....	209
Section 4.2.1 Refinance .....	216
Section 4.3 Title Insurance .....	216
Section 4.3.1 Title Searches and the Title Commitment .....	216
Section 4.3.2 Closing Services Letter .....	283
Section 4.3.3 Omitting Exceptions from the Title Commitment .....	286
(a) Existing Mortgage .....	286
(b) Judgments .....	298
(c) Real Estate Taxes and Other Municipal Charges .....	298
(d) USA Patriot Act .....	302
Section 4.3.4 Notice of Settlement .....	302
Section 4.3.5 Title Continuation .....	306
Section 4.3.6 Marked-Up Title Commitment .....	306
Section 4.3.7 Title Policies and the Protections of Title Insurance .....	306
Section 4.3.8 Recording Act .....	338
Section 4.3.9 County Recording Office .....	338
Section 4.4 Survey .....	339
Section 4.4.1 Reading of Survey .....	340
Section 4.5 The Mortgage Closing .....	343
Section 4.5.1 Document Preparation .....	343
(a) Document Preparation by the Lender .....	343
(b) Document Preparation by the Purchaser's Attorney .....	343
Section 4.5.2 Lender's Closing Package and Instructions .....	347
Section 4.5.3 Mortgage Loan Documentation .....	348
(a) Note .....	348
(b) Mortgage .....	352
(c) Mortgagor's Affidavit of Title .....	368
(d) Mortgage Loan Documents .....	370
(1) Assignment of Mortgage .....	370
(2) Notice of Assignment, Sale or Transfer of Servicing Rights .....	370
(3) Compliance Agreement .....	371
(4) Name Certification .....	371
(5) Form W-9 (Request for Taxpayer Identification Number and Certification) .....	371

	(6)	Federal Truth-in-Lending Statement .....	371
	(7)	Itemization of Amount Financed.....	371
	(8)	Estimate of Monthly Payments.....	371
	(9)	Estimated First Payment Coupon/Information.....	371
	(10)	Tax Authorization Notification.....	371
	(11)	Settlement Statement .....	372
	(12)	Closing Attorney or Closing Agent Certification .....	372
	(13)	Completed Mortgage Application and Amendments, if any .....	372
Section 4.6		Closing Adjustments/HUD-1 Settlement Statement (RESPA) .....	419
Section 4.6.1		Consumer Financial Protection Bureau.....	462
Section 4.6.2		Mansion Tax.....	464
Section 4.6.3		Homestead Rebate .....	466

## **CHAPTER V THE SELLER - BETWEEN CONTRACT AND CLOSING:**

	<b>PREPARING FOR CLOSING .....</b>	<b>470</b>
Section 5.1	Certificate of Occupancy .....	470
Section 5.2	Smoke Detector Certificate.....	470
Section 5.2.1	Carbon Monoxide Alarm Certificate.....	471
Section 5.2.2	Fire Extinguisher Certification .....	471
Section 5.3	Real Estate Brokerage Commission .....	472
Section 5.4	Review and Clearing of Title.....	472
Section 5.4.1	Grantor Information .....	473
Section 5.4.2	Record Mortgage.....	475
Section 5.4.3	Judgments.....	475
Section 5.5	Seller's Closing Documents .....	475
Section 5.5.1	Deed.....	475
Section 5.5.2	Affidavit of Consideration or Exemption.....	476
Section 5.5.3	Seller's Affidavit of Title .....	482
Section 5.5.4	1099-S .....	483
Section 5.5.5	Certificate of Nonforeign Status.....	488
Section 5.5.6	Survey Affidavit.....	491
Section 5.5.7	Home Equity Line Termination.....	493
Section 5.5.8	Settlement/Closing Statement.....	493
Section 5.5.9	Mortgage Transaction Related Documents.....	493
Section 5.5.10	Notice to Attorn.....	493
Section 5.6	Closing Figures .....	493
Section 5.6.1	Real Estate Brokerage Commission .....	494
Section 5.6.2	Realty Transfer Fee.....	494
Section 5.6.3	Deposit Monies .....	494
Section 5.6.4	Payoff Amount .....	494
Section 5.6.5	Final Readings.....	496
Section 5.6.6	Nonresident Income Tax.....	497
Section 5.6.7	Bulk Sales Notification.....	498
Section 5.7	Foreclosure Properties and Deeds in Lieu of Foreclosure .....	500
Section 5.8	Deceased Record Owners and Estates.....	513

<b>CHAPTER VI THE CLOSING .....</b>	<b>514</b>
Section 6.1    Time and Place of Closing.....	514
Section 6.2    Title Continuation .....	514
Section 6.2.1    Marking-Up the Title Commitment .....	515
Section 6.3    Mortgage Closing.....	536
Section 6.3.1    Lender's Requirements.....	536
Section 6.3.2    Mortgage Closing.....	540
Section 6.3.3    Closing Proceeds.....	540
Section 6.3.4    Closing Figures .....	540
Section 6.4    Title Closing.....	541
Section 6.4.1    Time.....	541
Section 6.4.2    Attendance by Seller .....	541
Section 6.4.3    Title Closing.....	544
Section 6.4.4    Closing Checklist .....	544
Section 6.5    Closing Problems .....	555
Section 6.6    Post Closing.....	559
Section 6.6.1    Recordation of Documents .....	559
Section 6.6.2    Mortgage Package to Lender .....	563
Section 6.6.3    Payoff of Existing Mortgage .....	564
Section 6.6.4    Alternate Method of Cancelling Mortgages.....	580
Section 6.6.5    Title Insurance Company Package .....	580
Section 6.6.6    Payment of Invoices of Other Professionals .....	583
Section 6.7    Post-Closing Follow-Up .....	583
 <b>CHAPTER VII SELECTED REAL ESTATE TRANSACTIONS.....</b>	 <b>611</b>
Section 7.1    New Construction .....	611
Section 7.1.1    Competence and Reputation of the Builder .....	611
Section 7.1.2    New Home Warranty and Builders' Registration Act.....	611
Section 7.1.3    New Residential Construction Off-Site Conditions Disclosure Act.....	 612
Section 7.1.4    Review and Negotiation of the Contract for New Construction .....	 613
(a)    Construction Standards .....	613
(b)    Deposit.....	613
(c)    Mortgage Contingency .....	613
(d)    Location of Closing.....	613
(e)    Model.....	614
(f)    Land.....	614
(g)    Improvements.....	614
(h)    Substitution.....	614
(i)    Approval of Changes .....	614
(j)    Escalation Clause .....	614
(k)    Improvements Within Lot Lines.....	614
(l)    Community Improvements .....	614

	(m) Taxes and Assessments.....	615
	(n) Delays.....	615
	(o) Utility Meter Charges and Deposits .....	615
	(p) Certificate of Occupancy .....	615
	(q) Lot Clearing.....	619
	(r) Release from Blanket Mortgage.....	619
Section 7.2	Common Interest Communities.....	619
Section 7.2.1	Planned Real Estate Development Full Disclosure Act.....	624
Section 7.2.2	Condominiums .....	625
Section 7.2.3	Fee Simple Townhouse Developments .....	651
Section 7.2.4	Cooperatives.....	655
	(a) The Cooperative Recording Act.....	655
	(b) Pre-Act Cooperatives .....	655
	(c) Post-Act Cooperatives .....	656
Section 7.3	Fair Housing Amendments Act .....	656
Section 7.4	Properties Subject to Tenancies.....	657

## **CHAPTER VIII CONSIDERATIONS IN UNDERTAKING LEGAL**

	<b>REPRESENTATION .....</b>	<b>665</b>
Section 8.1	Attorney's Fees.....	665
Section 8.2	Dual Representation.....	665
Section 8.3	Attorney Trust Account .....	667
Section 8.4	Opinion 26.....	668

**TABLE OF EXHIBITS**

Exhibit 1 - Retainer Letter (Representation of Seller) .....	4
Exhibit 2 - Retainer Letter (Representation of Purchaser/Mortgagor) .....	5
Exhibit 3 - Exclusive Right to Sell Agreement .....	12
Exhibit 4 - Consumer Information Statement Disclosure .....	18
Exhibit 5 - Property Condition Disclosure Statement .....	20
Exhibit 6 - All-State Short Form of Contract .....	29
Exhibit 7 - All-State Long Form of Contract .....	31
Exhibit 8 - Rider to All-State Long Form of Contract (Purchaser) .....	35
Exhibit 9 - Rider to All-State Long Form of Contract (Seller) .....	40
Exhibit 10 - New Jersey Association of REALTORS® Contract .....	42
Exhibit 11 - Broker's Form of Contract .....	52
Exhibit 12 - Broker's Notice to Buyer and Seller .....	59
Exhibit 13 - Rider to Broker's Form of Contract (Purchaser) .....	60
Exhibit 14 - Condominium Rider to Broker's Form of Contract .....	65
Exhibit 15 - Letter Agreement Amending Broker's Form of Contract .....	69
Exhibit 16 - Power of Attorney for Purchaser/Mortgagor .....	74
Exhibit 17 - Mortgage Note (All-State Form 2004) .....	82
Exhibit 18 - Mortgage (All-State Form 204) .....	83
Exhibit 19 - Flood Certification .....	90
Exhibit 20 - Termite Inspection Clause .....	92
Exhibit 21 - Home Inspection Clause .....	93
Exhibit 22 - Radon Clauses .....	95
Exhibit 23 - Lead Paint Contract Clause .....	100
Exhibit 24 - Lead Paint Warning Statement .....	101
Exhibit 25 - Smoke Detector and Carbon Monoxide Certificate Application .....	105
Exhibit 26 - Smoke Detector, Carbon Monoxide and Fire Extinguisher Certificate .....	111
Exhibit 27 - Certificate of Occupancy Application (Resale) .....	113
Exhibit 28 - Certificate of Continued Occupancy (Resale) .....	114
Exhibit 29 - Deed (Bargain and Sale with Covenant Against Grantor's Acts) .....	116
Exhibit 30 - Affidavit of Title (Seller) .....	120
Exhibit 31 - Use and Occupancy Agreement (Purchaser) .....	128
Exhibit 32 - Use and Occupancy Agreement (Seller) .....	133
Exhibit 33 - Property Storage Agreement .....	136
Exhibit 34 - New Jersey Association of REALTORS® Residential Leases and Lead Based Paint Disclosure .....	139
Exhibit 35 - Lease Form .....	149
Exhibit 36 - Option Agreement .....	152
Exhibit 37 - Time of the Essence Notice .....	160
Exhibit 38 - Inspection Results Agreement .....	165
Exhibit 39A - Uniform Residential Loan Application .....	171
Exhibit 39B - Cash-To-Close Statement .....	175
Exhibit 39C - Fees Worksheet – Summary of Transaction Details .....	176

Exhibit 39D - Fees Worksheet – Fee Details .....	177
Exhibit 39E - Good Faith Estimate (GFE) .....	178
Exhibit 39F - Intent to Proceed with Application .....	181
Exhibit 39G - Written List of Service Providers .....	182
Exhibit 39H - Truth-in-Lending Disclosure Statement .....	183
Exhibit 39I - Itemization of Amount Financed .....	185
Exhibit 39J - Borrowers' Certification and Authorization .....	186
Exhibit 39K - Credit Score and Price of Credit Statement .....	187
Exhibit 39L - Notice to Home Loan Applicant (Credit Score) .....	188
Exhibit 39M - Disclosure Notices (Occupancy, Anti-Coercion, Fair Credit Reporting Act, FHA/Governmental Loans) .....	189
Exhibit 39N - Equal Credit Opportunity Act .....	190
Exhibit 39O - Patriot Act Information Disclosure .....	191
Exhibit 39P - Customer Identification Documentation – Patriot Act .....	192
Exhibit 39Q - Personal Information Form .....	193
Exhibit 39R - Form 4506 Request for Transcript of Tax Return .....	195
Exhibit 39S - Appraisal Report Delivery Disclosure .....	196
Exhibit 39T - New Jersey Right to Own Attorney Disclosure .....	197
Exhibit 39U - New Jersey Application Disclosure .....	198
Exhibit 39V - New Jersey Disclosures Form .....	199
Exhibit 39W - Delivery Services & Fees Acknowledgement .....	203
Exhibit 39X - Addendum to the Loan Application (Civil Union/Registered Domestic Partnership) .....	204
Exhibit 39Y - Notice to Borrowers (Credit Changes) .....	205
Exhibit 39Z - Appraisal Payment Authorization Form .....	206
Exhibit 39AA - New Jersey Choice of Insurance Notice .....	207
Exhibit 39BB - Servicing Disclosure Statement .....	208
Exhibit 40 - Loan Commitment Letter .....	211
Exhibit 41 - Notice of Right to Cancel .....	217
Exhibit 42 - Title Insurance Search Order Form .....	218
Exhibit 43 - Title Insurance Rates and Charges .....	221
Exhibit 44 - Title Commitment .....	223
Exhibit 45 - Title Company Transmittal Letter .....	279
Exhibit 46 - Closing Services Letter .....	284
Exhibit 47 - Title Company Notice and Disclosure .....	285
Exhibit 48 - Title Commitment Endorsements .....	287
Exhibit 49 - Payoff Letter Request .....	288
Exhibit 50 - Payoff Letter .....	289
Exhibit 51 - Line of Credit Payoff .....	292
Exhibit 52 - Affidavit to Discharge Mortgage .....	297
Exhibit 53 - Warrant to Satisfy Judgment .....	299
Exhibit 54 - Release of Premises from Judgment .....	300
Exhibit 55 - Notice of Settlement (Sale) .....	304
Exhibit 56 - Notice of Settlement (Mortgage) .....	305
Exhibit 57A - ALTA Endorsement Form 4.1-06 Condominium .....	309
Exhibit 57B - ALTA Endorsement Form 5.1-06 Planned Unit Development .....	311

Exhibit 57C - ALTA Endorsement Form 6-06 Variable Rate Mortgage.....	312
Exhibit 57D - ALTA Endorsement Form 6.1 Variable Rate Mortgage-Regulations .....	313
Exhibit 57E - ALTA Endorsement Form 6.2-06 Variable Rate Mortgage Endorsement-Negative Amortization .....	314
Exhibit 57F - ALTA Endorsement Form 7-06 Manufactured Housing Unit.....	315
Exhibit 57G - ALTA Endorsement Form 8.1-06 Environmental Protection Lien .....	316
Exhibit 57H - ALTA Endorsement Form 9-06 Restrictions, Encroachments, Mineral-Loan .....	318
Exhibit 57I - ALTA Endorsement Form 9.3-06 Covenants, Conditions and Restrictions .....	320
Exhibit 57J - ALTA Endorsement Form 10-06 Assignment .....	322
Exhibit 57K - ALTA Endorsement Form 10.1-06 Assignment and Date Down.....	323
Exhibit 57L - ALTA Endorsement Form 14.1-06 Future Advance – Knowledge .....	325
Exhibit 57M - ALTA Endorsement Form 14.3-06 Future Advance-Reverse Mortgage .....	327
Exhibit 57N - ALTA Endorsement Form 22-06 Location (New Jersey Variation) .....	329
Exhibit 57O - ALTA Endorsement Form 25-06 Same As Survey (New Jersey Variation) .....	330
Exhibit 57P - ALTA Endorsement Form 30-06 Shared Appreciation Mortgage .....	331
Exhibit 57Q - ALTA Endorsement Mortgage Assignment Endorsement – Policy Update .....	332
Exhibit 57R - ALTA Endorsement Lender’s Survey Endorsement (Without Survey) .....	333
Exhibit 57S - ALTA Endorsement Reverse Annuity Mortgage Endorsement .....	334
Exhibit 57T - ALTA Endorsement Secondary Mortgage Market Endorsement .....	335
Exhibit 57U - Survey Endorsement .....	336
Exhibit 57V - Waiver of Arbitration Endorsement (Owner’s or Loan Policy).....	337
Exhibit 58 - Survey .....	341
Exhibit 59 - Lender's Pre-Closing Instructions .....	344
Exhibit 60 - Lender's Pre-Closing Transmittal Letter .....	346
Exhibit 61 - FNMA Note .....	349
Exhibit 62 - FNMA Mortgage .....	353
Exhibit 63 - Affidavit of Title (Mortgagor).....	369
Exhibit 64A - Closing Instructions for HUD-1 Settlement Statement and Addenda.....	373
Exhibit 64B - Checklist for Closing Package.....	379
Exhibit 64C - Final Truth-in-Lending Disclosure Statement.....	380
Exhibit 64D - Itemization of Amount Financed.....	381
Exhibit 64E – Note .....	382
Exhibit 64F – Mortgage .....	384
Exhibit 64G - Initial Tax Authorization Notice .....	399
Exhibit 64H - 12 Day Written Notice of Fees.....	400
Exhibit 64I - New Jersey Property Insurance Disclosure.....	401
Exhibit 64J - Corporation Assignment of Mortgage .....	402
Exhibit 64K - First Payment Letter .....	403
Exhibit 64L - Initial Escrow Account Disclosure .....	404
Exhibit 64M - Occupancy Affidavit.....	405
Exhibit 64N - Errors and Omissions Correction Document Agreement.....	406
Exhibit 64O - Borrower’s Acceptance of Property .....	407
Exhibit 64P - Borrow Affidavit Acknowledging Lender Compliance with Federal Requirement to Provide Credit Score Disclosures .....	408

*x / Real Estate Closing Procedures*

Exhibit 64Q - Borrow Affidavit .....	409
Exhibit 64R - Name Affidavit .....	410
Exhibit 64S - Patriot Act Disclosure .....	411
Exhibit 64T - Notice of Assignment, Sale, or Transfer of Servicing Rights .....	412
Exhibit 64U - Form W-9 Request for Taxpayer Identification Number and Certification .....	413
Exhibit 64V - Form 4506-T Request for Transcript of Tax Return .....	417
Exhibit 65 - RESPA/HUD-1 Uniform Settlement Statement .....	421
Exhibit 65A - Consumer Financial Protection Bureau .....	434
Exhibit 66 - Title Closing Statement .....	467
Exhibit 67 - Affidavit of Consideration for Use by Buyer .....	468
Exhibit 68 - Corporate Status Report .....	474
Exhibit 69 - Affidavit of Consideration for Use by Seller .....	478
Exhibit 70 - 1099-S Reporting Form .....	485
Exhibit 71 - Certificate of Non-Foreign Status (Individual) .....	489
Exhibit 72 - Certificate of Non-Foreign Status (Entity) .....	490
Exhibit 73 - Survey Affidavit .....	492
Exhibit 74 - Notice to Attorn .....	495
Exhibit 75 - Escrow Agreement (Final Reading) .....	501
Exhibit 76 - Nonresident Seller's Tax Declaration (GIT/REP-1) .....	503
Exhibit 77 - Nonresident Seller's Tax Prepayment Receipt (GIT/REP-2) .....	505
Exhibit 78 - Seller's Residency Certification/Exemption (GIT/REP-3) .....	507
Exhibit 79 - Waiver of Seller's Filing Requirement of GIT/REP Forms and Payment (GIT/REP-4) .....	509
Exhibit 80 - Waiver of Seller's Filing Requirement of GIT/REP Forms and Payment for Corrected Deed with No Consideration (GIT/REP-4a) .....	511
Exhibit 81 - Notification of Sale, Transfer, or Assignment in Bulk (C-9600) .....	516
Exhibit 82 - Asset Transfer Tax Declaration (TTD) .....	518
Exhibit 83 - Bulk Transfer Escrow Letter .....	520
Exhibit 84 - Bulk Transfer Escrow Release Letter .....	521
Exhibit 85 - Marked-Up Title Commitment .....	522
Exhibit 86 - Final Mortgage Closing Instructions .....	537
Exhibit 87 - Receipts and Disbursements Statement .....	542
Exhibit 88 - Seller's Power of Attorney (Broad Powers) .....	545
Exhibit 89 - Seller's Power of Attorney (Limited Powers) .....	547
Exhibit 90 - Broker's Commission Receipt .....	549
Exhibit 91 - Closing Checklist for Representing Seller .....	551
Exhibit 92 - Closing Checklist for Representing Buyer .....	553
Exhibit 93 - General Escrow Agreement .....	557
Exhibit 94 - Transmittal Letter to County Recording Office .....	560
Exhibit 95 - Recorder's Receipt .....	561
Exhibit 96 - Lender's Post-Closing Transmittal Letter .....	565
Exhibit 97 - Payoff Transmittal Letter .....	566
Exhibit 98 - Mortgage Endorsed for Cancellation and Cancelled of Record .....	567
Exhibit 99 - Discharge of Mortgage .....	574
Exhibit 100 - Blanket Mortgage Loan Payoff Letter .....	575
Exhibit 101 - Release of Part of Mortgaged Property .....	576

Exhibit 102 - UCC-3 Statement of Partial Release .....	578
Exhibit 103 - Title Company Post-Closing Transmittal Letter.....	582
Exhibit 104 - Title Insurance Policy (Mortgagee's) .....	584
Exhibit 105 - Title Insurance Policy (Owner's).....	597
Exhibit 106 - Closing Documents Binder Summary (Purchase).....	606
Exhibit 107 - Closing Documents Binder Summary (Sale).....	608
Exhibit 108 - Closing Documents Binder Summary (Refinance) .....	609
Exhibit 109 - Certificate of Occupancy (New Construction) .....	616
Exhibit 110 - Rider to Contract for New Construction Real Estate and Notification Regarding Off-Site Conditions .....	619
Exhibit 111 - Developer's Agreement for Newly Constructed Condominium Unit .....	626
Exhibit 112 - Condominium Unit Deed .....	644
Exhibit 113 - Survey Certificate .....	650
Exhibit 114 - Insurance Certificate .....	652
Exhibit 115 - Common Charges Letter .....	653
Exhibit 116 - Certificate of Registration .....	659



## **CHAPTER I INTRODUCTION**

The purchase of a home is likely to be the most significant financial investment made by a person. The purchase of a home is also likely to be the first time an individual voluntarily seeks legal representation to protect the interests of that individual during the course of the transaction. Furthermore, a real estate transaction is not accomplished by the attorney alone; rather, it frequently involves the joint efforts of the seller and purchaser and their respective attorneys, as well as the efforts of representatives of real estate brokerages, title insurance companies, mortgage lenders, and home inspection and testing companies.

Aside from the financial aspect of the transaction and the myriad of professionals involved in the effort, the purchase of a home often proves to be a somewhat stressful situation. Given all of these factors, it is important that the attorney representing either the seller or the purchaser of a residential dwelling not only master the procedural requirements in order to efficiently consummate a real estate transaction but also completely understand the laws governing real estate closing practice so that the attorney is in a position to handle any issues which may arise during the course of representing a client.

This book will focus on the innumerable steps through which the attorney and all other parties involved in the transaction proceed in order to take a real estate transaction from start to finish. This book will also create an awareness of the statutes, regulations and case law which underlie the closing process. By having knowledge of the respective roles and expectations of all parties involved in a transaction, the attorney will be in a position to anticipate and adequately address the requirements of each of the parties.



## **CHAPTER II**

### **PRELIMINARY CLIENT REPRESENTATION CONSIDERATIONS**

#### **Section 2.1. General**

An attorney is best able to protect the interests of a client when the attorney is able to get involved in the transaction at the earliest possible stage. Where the representation is of a seller, this might be at a point where the seller is considering signing a listing agreement with a real estate broker for the purpose of showing and selling the property. Where representation of a purchaser is involved, the point in time where the purchaser has located a home on which the purchaser is contemplating making an offer is not too early of a point in time to involve an attorney. Often, significant concerns that the prospective purchaser may have, i.e. the financial wherewithal of the purchaser, the tax consequences of a purchase, may warrant the services of an attorney at an even earlier point in time. Unfortunately, the reality often is that if an attorney is in a position to give a client the advice that the involvement of the attorney at the earliest possible point in time would be beneficial, the client has already started consulting with an attorney and that advice is no longer relevant or necessary.

#### **Section 2.2 Retention of Legal Counsel**

It is important to establish the terms of the attorney's retention with the client at the outset. The client may be someone who has used an attorney's services in the past and will continue to do so in the future. On the other hand, the real estate transaction for which the attorney has been retained may be the only matter for which services will be provided. The relationship with the client is likely to play a role in the terms governing the retention, e.g. the fee charged, whether payment will be at the time of closing or upon the issuance of an invoice after the closing, whether the fee is to be paid out of the closing proceeds if representation is of the seller.

Whatever the circumstances, the Rules of Professional Conduct, RPC 1.5(b) require the attorney to communicate in writing the fee arrangement before or within a reasonable time after commencing representation. It is a prudent practice to use a form of letter such as that appearing as Exhibit 1 to memorialize the terms of the retention by a seller and that appearing as Exhibit 2 to memorialize the terms of the retention by a purchaser. A more detailed discussion of issues to consider in undertaking legal representation of a seller or purchaser appears in Chapter VIII.

In establishing and referencing a file throughout the course of the transaction, the standard practice is to caption the file "name of client - to - name of purchaser" where the client is the seller and to caption the file "name of client - from - name of seller" where representation is of the purchaser. Communications and correspondence regarding the matter should reference the appropriate party caption, the street address of the property (which is sometimes supplemented by the tax lot and block on the tax map of the municipality in which the property is located), and the name of the municipality.

**EXHIBIT 1 - RETAINER LETTER (REPRESENTATION OF SELLER)**

## **Retainer Letter**

**(Representation of Seller)**

Date:

Name and Address of Seller:

Re: \_\_\_\_\_ - to - \_\_\_\_\_

File #:

Dear \_\_\_\_\_

This letter will confirm your engagement of our firm to represent your interests in the sale of the above-referenced premises, and preparation for and attendance at the title closing.

We have quoted a fee of \$ \_\_\_\_\_, which includes the negotiation, review and finalization of the contract, and the title closing at which time you will convey title to the property. If any unexpected or unanticipated events occur which require additional services, you will be billed for such on a time-incurred basis. Our normal hourly rates which will be applied vary from \$ \_\_\_\_\_ per hour for Associates to \$ \_\_\_\_\_ per hour for Partners. Any expenses incurred by us, such as for faxing, messenger service and overnight delivery service, will be charged as additional costs.

In the event that the contract is canceled, you will be billed only for the time incurred on the matter based upon our hourly rate as stated above, not to exceed \$ \_\_\_\_\_ plus any expenses. If any matter arises after the closing which requires our services, it will be billed at the above hourly rates.

Please be prepared to either pay the fee for our services and any additional costs at the time of closing or authorize such payment to be disbursed from the closing proceeds at the time of the closing.

If the foregoing is acceptable to you, kindly countersign the additional copy of the letter where indicated and return same to this office at your earliest convenience.

Very truly yours,

Law Firm

Dated: \_\_\_\_\_ By \_\_\_\_\_  
Seller

Dated: \_\_\_\_\_ By \_\_\_\_\_  
Seller

Dated: \_\_\_\_\_ By \_\_\_\_\_  
Attorney

**EXHIBIT 2 - RETAINER LETTER (REPRESENTATION OF  
PURCHASER/MORTGAGOR)**

## **Retainer Letter**

**(Representation of Purchaser/Mortgagor)**

Date:

Name and Address of Purchaser/Borrower:

Re: \_\_\_\_\_ - from -

File #:

Dear

This letter will confirm your engagement of our firm to represent your interests in the acquisition of the above-referenced premises, and preparation for and attendance at the title closing and the related mortgage closing for the financing of the purchase.

We have quoted a fee of \$ \_\_\_\_\_, which includes the negotiation, review and finalization of the contract, the closing of the mortgage loan and the title closing, at which time you will receive title to the property. If any extraordinary or unanticipated events occur which will require our additional services, you will be billed for such services on a time-incurred basis. Our normal hourly rates which will be applied vary from \$ \_\_\_\_\_ per hour for Associates, to \$ \_\_\_\_\_ per hour for Partners. Any out-of-pocket costs incurred by us, such as for faxing, appraiser's fees, messenger service and overnight delivery service, will be charged as an additional expense. You are responsible for any expenses associated with title work, survey, and inspections, etc., not included in our above-quoted fee.

In the event that the contract is canceled, you will be billed only for the time incurred on the matter, based upon our hourly rate as stated above, not to exceed \$ \_\_\_\_\_ plus any expenses. If any matter arises after the closing which requires our legal services, it will be billed at the above hourly rate.

Please be prepared to pay our fee for services and any out-of-pocket costs at the time of closing.

If the foregoing is acceptable to you, kindly countersign the additional copy of the letter where indicated and return same to this office at your earliest convenience.

Very truly yours,

Law Firm

Dated: \_\_\_\_\_ By \_\_\_\_\_, *Buyer*

Dated: \_\_\_\_\_ By \_\_\_\_\_, *Buyer*

Dated: \_\_\_\_\_ By \_\_\_\_\_, *Attorney*

### **Section 2.3     Representing the Purchaser**

One of the first steps taken in representing a purchaser is to conduct an initial conference with the purchaser. It is usually desirable to meet with the client in person; however, if time restrictions or scheduling difficulties do not permit such a meeting, the information typically gathered during the initial conference may be obtained over the telephone from the client. This conference gives the attorney an opportunity to establish a rapport with the client; obtain information regarding the client and the property which is the subject of the transaction; make an assessment as to the ability of the client to successfully consummate the transaction; review the contract which may already have been prepared for the transaction; make revisions to the contract based upon the attorney's recommendations and the information provided by the client; and provide the client with an estimate of the costs which will be incurred. More often than not, the seller and purchaser will be contacting an attorney after a contract has been prepared by a real estate broker involved in the transaction for review and approval; or the seller will be contacting an attorney to prepare the contract as the seller's offer to sell the property where no real estate broker has been involved in the sale of the property. Less frequently, the purchaser may be providing the attorney with the preliminary terms agreed to by the parties and asking that a form of contract reflecting those terms be prepared and presented as the purchaser's offer to buy from the seller.

At the initial conference, there is basic information which should be obtained by the attorney for immediate use or for use during the course of the transaction. The information relates to the purchaser, the seller, the property which is the subject of the transaction, and the costs which will be incurred by the purchaser in purchasing or the seller in selling the property.

#### **Section 2.3.1   Information Regarding the Purchaser**

Where appropriate, the following information should be obtained for each party purchasing the property:

1. Full name of purchaser.
2. Home address and telephone number.
3. Work address and telephone number.
4. Cell phone number.
5. E-mail address.
6. Maiden name of wife.
7. Complete marital history.
8. Manner in which title is to be held, e.g. as a single man or single woman, tenancy by the entirety, joint tenants with right of survivorship, tenants in common.
9. Name, address and telephone number of real estate broker and agent who worked with and sold the property to the purchaser (selling broker and selling agent).
10. Purchaser's current housing arrangements and plans for the termination of those arrangements in coordination with the purchase of the property.
11. Proposed closing date.
12. Social security number.

### **Section 2.3.2 Information Regarding the Seller**

Where appropriate, the following information should be obtained for each party selling the property:

1. Full name.
2. Name and address of seller's attorney.
3. Name, address and telephone number of the real estate broker and agent with whom the seller listed the property for sale (listing broker and listing agent).
4. Seller's relocation plans.
5. Social security number.

### **Section 2.3.3 Information Regarding the Property**

1. Street address.
2. Lot and block reference.
3. New construction or existing structure.
4. If existing structure, any proposed plans to change the use of or add to the structure.
5. Approximate age of the structure.
6. Recent improvements or additions to structure.
7. Is the property a dwelling within a condominium, cooperative or fee simple townhouse development?
  - a. Receipt of the public offering statement, if applicable, from the developer or availability of a copy of the public offering statement from the seller who purchased the property from the developer should be confirmed.
8. Is there a condominium or homeowners association governing the property?
  - a. Name and address of association representative or managing agent retained by the association
  - b. Availability of current operating budget and audited financial statement of the association.
9. What inspections and contingencies are desired by the purchaser?
  - a. Mortgage contingency.
  - b. Home sale contingency.
  - c. Flood area contingency.
  - d. Home/structural inspection.
  - e. Swimming pool and equipment inspection.
  - f. Termite inspection.
  - g. Radon test.
  - h. Septic inspection.
  - i. Well testing/inspection.
  - j. Heating oil tank inspection.
  - k. Lead paint inspection.
  - l. Others: e.g. asbestos, urea formaldehyde foam insulation, lead pipes and plumbing.
10. Adverse conditions (on- and off-site) which may affect the property, e.g. high-tension wires, buried fuel oil tanks, air traffic patterns, noise nuisances.
11. Personal property included in or excluded from the sale.

12. Tenants occupying the property. Will purchaser be taking title to the property subject to the existing tenancy or will the seller vacate any tenants prior to closing?
13. Utilities.
  - a. Gas.
  - b. Electric.
  - c. Heating oil.
  - d. Public/private water/sewer.
  - e. Well/septic.
14. Real estate taxes.
15. Subject to farmland assessment?

#### **Section 2.3.4 Information Regarding Financing**

1. Sales price.
2. Deposit.
3. Availability of additional funds to be paid at closing.
4. Amount of financing needed.
5. Name and address of lender.
6. Submission of mortgage application.
7. Type of financing.
8. Issues related to financing ("jumbo" loan, private mortgage insurance, co-borrower).

#### **Section 2.3.5 Information Regarding Closing Costs**

1. Attorneys fees.
  - a. Fee for services.
  - b. Fee for disbursements and out-of-pocket costs.
2. Title searches and owner's and mortgagee's policies of title insurance.
3. Survey or survey certificate.
4. Premium for homeowners insurance policy.
5. Flood search.
6. Flood insurance.
7. Recording costs.
8. Fees to condominium or homeowners association, if applicable.
  - a. Working capital contribution.
  - b. Membership fee.
  - c. Escrows.
  - d. Prepayment of insurance premium.
9. Home inspection.
10. Termite inspection.
11. Radon inspection.
12. Well inspection.
13. Septic system test.
14. Heating oil tank inspection.
15. Lead paint inspection.
16. Costs related to mortgage loan financing.
  - a. Application fee.
  - b. Credit report fee.

- c. Processing fee.
- d. Loan discount fee.
- e. Loan origination fee.
- f. Inspection fee.
- g. Processing fee.
- h. Appraisal fee.
- i. Lender's attorney's fee.
- j. Document preparation fee.
- k. Amounts required by lender to be paid in advance.
  - (1) Interest.
  - (2) Real estate taxes.
  - (3) Water and sewer.
  - (4) Private mortgage insurance.
- l. Escrows to be placed with lender.
  - (1) Hazard insurance.
  - (2) Private mortgage insurance.
  - (3) Real estate taxes.

#### **Section 2.4 Representing the Seller**

The initial conference with the seller will give the attorney the opportunity to meet with the seller to prepare a contract setting forth the terms which have been discussed between the seller or purchaser or to review a contract which may have been prepared by the real estate broker. Moreover, the conference will be an opportunity to engage in a dialogue for the purpose of anticipating any potential problems and devising ways to address those problems.

Where appropriate, the following information should be obtained for each party selling the property:

- 1. Full name and age of the seller (or of each seller when more than one individual holds title).
- 2. Manner in which title is currently held by the seller, e.g. as a single man or single woman, tenancy by the entirety, joint tenants with right of survivorship, tenants in common.
- 3. Evidence of title in the seller, e.g. copy of deed vesting title in the seller.
- 4. Title policy insuring seller's purchase of the property.
- 5. Survey obtained by seller when seller purchased the property.
- 6. Knowledge of adverse conditions (on- and off-site) which may affect the property, e.g. potential environmental hazards such as lead paint, asbestos, radon; defective conditions within the property such as leaking roofs and basements air traffic patterns; noise nuisances.
- 7. Name, address and telephone number of the real estate broker and agent with whom the seller listed the property for sale (listing broker and listing agent) and the related information for the broker and agent who worked with and sold the property to the purchaser (seller broker and selling agent).
- 8. Name and address of the attorney for the purchaser.
- 9. Status of contract.
- 10. Seller's relocation plans and impact on contract terms and closing.

11. Social security number or taxpayer identification number.
12. Annual real estate taxes.
13. Sales price.
14. Deposit.
15. Form of payment of balance due to seller.
16. Status of mortgage application of purchaser.
17. Name and address of lender for purchaser, if known.
18. Personalty included in or excluded from the transaction.
19. Seller's closing expenses.
  - a. Attorney's fee.
  - b. Broker's commission.
  - c. Realty transfer fee.
  - d. Mortgage cancellation fee.
20. Qualification, if any, of the seller for a partial exemption from the realty transfer fee, e.g. senior citizen, blind, disabled.
21. Current mortgages on the property.
  - a. Name, address and account numbers for the purpose of obtaining payoff letters.
22. Any second mortgages/home equity lines secured by a lien on the property.
  - a. Name, address and account numbers for the purpose of obtaining payoff letters.
23. Any escrows to which the seller is entitled to a credit at closing, e.g. held condominium or homeowners association.
24. Potential for seller to owe money at the closing, e.g. to satisfy one or more mortgages or judgments encumbering the property that exceed the proceeds from the sale, and availability of those funds.

## **Section 2.5 Listing Agreement**

A seller may consult with an attorney when the seller is proposing to sign an agreement with a real estate broker for the purpose of listing the property for sale. Such an agreement is commonly referred to as a listing agreement and, unfortunately, many sellers do not consult with an attorney regarding the listing agreement until a problem arises.

When a real estate broker is involved in a transaction, it is helpful to understand the various parties performing a role in that effort. Real estate agents are employed by real estate brokers and work under the auspices of a broker. In order to qualify to be either a broker or an agent, licensing and other requirements set forth at *N.J.S.A. 45:15-1 et seq.* governing real estate brokers and salesmen and the regulations promulgated thereunder at *N.J.A.C. 11:5-1.1 et seq.* must be satisfied. All commissions and compensation to be received by an agent are to be paid by that agent's broker. Commissions in connection with the sale of the property are paid to the broker at closing who, in turn, pays the agent an agreed upon percentage. Frequently, the term "realtor", which is a trademark of the New Jersey Board of Realtors, will be used. For the purposes of this discussion, "real estate broker" or "broker" will be used to mean either the real estate broker(s) or agent(s), as appropriate, involved in a transaction.

### **Section 2.5.1 Types of Listing Agreement**

Under an open listing, the seller agrees to pay a commission to the listing broker if (a) the broker finds a purchaser ready, willing and able to meet the seller's terms, and (b) the title closes.

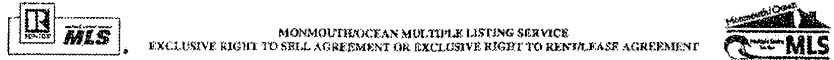
Under this type of listing agreement, the seller retains the most options because the seller can either independently sell the property or procure the services of another broker to sell the property.

The exclusive agency listing is for a specified length of time and authorizes only one broker to sell the property. The seller, however, retains the right to independently sell the property without incurring a commission. Although a seller who uses a nonexclusive or open listing instead of an exclusive listing may gain the advantage of having the property shown more often by several brokers, each broker may actually make a less ardent effort due to the risk of losing out to the others.

The most common type of listing agreement is the exclusive right to sell. This listing agreement obligates the owner to pay a commission to the listing broker on any sale made within the time specified in the listing contract, regardless of who negotiates the sale of the property. Thus, even when the owner sells without the broker's assistance, the broker is entitled to the specified commission. *Post v. Gerson Backer, Torrid K-9, Inc.*, 48 N.J. Super. 518 (App. Div. 1958). Moreover, the seller is under an obligation to refer all inquiries regarding the property to the broker. *Kislak Co., Inc. v. Geldzahler*, 210 N.J. Super. 255 (Law Div. 1985).

Multiple listing agreements take the form of the exclusive right to sell. Under a multiple listing, the listing broker and the selling broker share, at the time of closing, the commission amount in proportions specified in the listing agreement. A form of listing agreement appears as Exhibit 3.

## EXHIBIT 3 - EXCLUSIVE RIGHT TO SELL AGREEMENT



PROPERTY ADDRESS \_\_\_\_\_ TWP OR BORO \_\_\_\_\_  
 MAILING ADDRESS (IF DIFFERENT) \_\_\_\_\_ COMPLEX/SUB-DIVISION \_\_\_\_\_  
 OWNER(S) \_\_\_\_\_ HOME PHONE \_\_\_\_\_  
 OWNER'S ADDRESS \_\_\_\_\_ ALT. PHONE \_\_\_\_\_  
 LISTING AGENCY \_\_\_\_\_ LISTING AGENT \_\_\_\_\_ PHONE \_\_\_\_\_

In consideration of the services to be performed by the listing REALTOR®, the owner (or owners) does authorize the listing REALTOR® the sole exclusive and irrevocable right to sell at the price of \$ \_\_\_\_\_, to lease or rent at a monthly rate of \$ \_\_\_\_\_, the real estate and/or business located at \_\_\_\_\_

Property Address \_\_\_\_\_

The owners do agree to assist and fully cooperate in the sale or lease of the property, including granting the listing REALTOR® the exclusive right to place his or her sign on the property, advertise the property (including, without limitation, placing the property on the internet site (the "Internet"), including proprietary sites owned by third parties). The owners represent that this property is not listed in any manner with any other broker.

1. The right to sell, lease/rent, shall begin on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and shall expire on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.
2. The REALTOR® agrees to exert his/her best effort to obtain a purchaser or lessee for the real estate and/or business and agree to register the same with all Participants of the Multiple Listing Service, in accordance with its Rules and Regulations.
3. All persons signing this agreement as Owners represent that they are either owners or authorized by the Owners to sign this agreement, and that they have the legal right to sell, lease, or exchange the property and that they own and will execute a sufficient instrument of conveyance. They also acknowledge receipt of the Summary of the NJ Law Against Discrimination, dated January 2008, as printed on the reverse side of this agreement.
4. If, before the expiration date (item 1 above), the real estate and/or business is sold or exchanged, regardless of who effects such sale or exchange (including the owner), the Owner shall pay a commission of \_\_\_\_\_ of the sale price, due and payable at the time the sale or exchange takes place. In the event of an exchange, the listing price shall be considered the sale price.
5. If, before the expiration date (item 1 above) the real estate and/or business is leased/rented, regardless of who effects such lease/rental (including the owner), the owner agrees to pay a commission of \_\_\_\_\_ % on each installment of rent or \_\_\_\_\_ month(s) rent. The commission shall be payable (check one) to upon execution of the lease; or in equal monthly installments over the term of the lease. If the tenancy continues beyond the initial term, the owner agrees to pay a commission on all renewals or extensions, pursuant to the provisions of the preceding sentences. If during the term of the lease/rental or any extension or renewal thereof, the tenant purchases the real estate and/or business, a commission of \_\_\_\_\_ % of the sale price shall be paid by the owner upon closing of the title.
6. If, the real estate and/or business is sold, leased or exchanged within a period of \_\_\_\_\_ days from the expiration of this listing or any extension thereof to a buyer introduced to the property during the term of this listing agreement, the Owner shall pay to the listing broker the commission set forth above. However, the Owner shall not be obligated to pay such commission if a valid listing agreement is entered into during the term of this protection period with another licensed real estate broker, and the sale, lease, or exchange of the property is made during the term of this protection period.
7. The owner agrees to indemnify and hold harmless the REALTOR® from any claim arising out of personal injuries to a tenant or other persons injured in or on the property.
8. The owner (check one) ☐ agrees to permit ☐ does not agree to permit a lock box to be placed upon the property by the REALTOR®.

The owner (check one) ☐ agrees to permit ☐ does not agree to permit the street address of the property to be placed on the Internet by the REALTOR®.

9. In the event the real estate is sold in cooperation with another member of the Multiple Listing Service, the Listing REALTOR® will retain \_\_\_\_\_ of the purchase price. Listing REALTORS® offer the following commissions to Seller's Agents: \_\_\_\_\_; Buyer's Agents: \_\_\_\_\_; Dual Disclosure Agent: \_\_\_\_\_; Transaction Broker: \_\_\_\_\_.
10. In the event the real estate is rented or leased in cooperation with another member of the Multiple Listing Service, the Listing REALTOR® will retain \_\_\_\_\_ of the purchase price. Listing REALTORS® offer the following commissions to Seller's Agents: \_\_\_\_\_; Buyer's Agents: \_\_\_\_\_; Dual Disclosure Agent: \_\_\_\_\_; Transaction Broker: \_\_\_\_\_.
11. Owners and Listing REALTORS® understand that if a Buyer has been obtained by a Buyer's Agent who has a written Buyer's Agent contract with that Buyer, in such a case the Buyer's Agent is representing the Buyer and has no fiduciary responsibility to the owner or the Listing REALTOR®, regardless of whether the Buyer's Agent participated in the brokerage fee.
12. The owners agree and acknowledge that the dollar amount of said commission shall be a lien (a legal claim) on the purchase money proceeds derived from sale of the subject property. The owners, by this agreement, authorize and direct the party disbursing the closing proceeds to pay to the broker/brokers, the full commission as set forth out of the proceeds of the sale, prior to the payment of any funds to the owners or other lien holders.
13. In the event the property is taken by condemnation, through and eminent domain proceeding while the property is under contract of sale, the Broker shall be entitled to a commission at the rate set forth herein on the price paid by the condemning authority.

\* I, \_\_\_\_\_, as an authorized representative of \_\_\_\_\_, intend as of this time, to work \_\_\_\_\_  
 (Name of Licensee) (Name of Brokerage Firm)

with you, the Seller, as a \_\_\_\_\_ (\*indicates one of the following: seller's (landlord) agent only, Seller's (landlord) agent and disclosed dual agent if the opportunity arises, transaction broker)

REMARKS \_\_\_\_\_

Witness \_\_\_\_\_ DATE: \_\_\_\_\_

Saleperson \_\_\_\_\_ (Owner, Partner or Corporate Legal Signature)

Accepted by: Listing Broker or Authorized Signature \_\_\_\_\_ (Owner, Partner or Corporate Legal Signature)

LISTING BROKERS USUALLY COOPERATE WITH OTHER BROKERAGE FIRMS BY SHARING INFORMATION ABOUT THEIR LISTINGS AND OFFERINGS TO PAY PART OF THEIR COMMISSION TO THE FIRM THAT PRODUCES A BUYER. THIS IS GENERALLY REFERRED TO AS THE "COMMISSION SPLIT". SOME LISTING BROKERS OFFER TO PAY COMMISSION SPLITS OF A PORTION OF THE GROSS COMMISSION, USUALLY EXPRESSED AS A PERCENTAGE OF THE SELLING PRICE, LESS A SIGNIFICANT DOLLAR AMOUNT. OTHER LISTING BROKERS OFFER A PORTION OF THE GROSS COMMISSION LESS ONLY A MINIMAL LISTING FEE OR LESS ZERO. THE AMOUNT OF COMMISSION SPLIT YOUR BROKER OFFERS CAN AFFECT THE EXTENT TO WHICH YOUR PROPERTY IS EXPOSED TO PROSPECTIVE BUYERS WORKING WITH LICENSEES FROM OTHER BROKERAGE FIRMS. ON THIS LISTING, THE BROKER IS OFFERING A COMMISSION SPLIT OF \_\_\_\_\_ PERCENT. TO POTENTIAL COOPERATING BROKERS, IF YOU FEEL THAT THIS MAY RESULT IN YOUR PROPERTY RECEIVING LESS THAN MAXIMUM EXPOSURE TO BUYERS, YOU SHOULD DISCUSS THOSE CONCERNS WITH THE LISTING SALESPERSON OR HIS/HER SUPERVISING BROKER. BY SIGNING THIS LISTING AGREEMENT THE OWNER(S) ACKNOWLEDGE HAVING READ THIS STATEMENT ON COMMISSION SPLITS.

"AS SELLER, YOU HAVE THE RIGHT TO INDIVIDUALLY REACH AN AGREEMENT ON ANY FEE, COMMISSION, OR OTHER VALUABLE CONSIDERATION WITH ANY BROKER. NO FEE, COMMISSION OR OTHER CONSIDERATION HAS BEEN PAID BY ANY GOVERNMENTAL AUTHORITY OR BY ANY TRADE ASSOCIATION OR MULTIPLE LISTING SERVICE. NOTHING HEREIN IS INTENDED TO PREVENT AN INDIVIDUAL BROKER FROM INDEPENDENTLY ESTABLISHING A POLICY REGARDING THE AMOUNT OF FEE, COMMISSION OR OTHER VALUABLE CONSIDERATION TO BE CHARGED BY THE BROKER IN THIS TRANSACTION."

REVISED 7-07 WHITE TO LISTING OFFICE YELLOW TO OWNER

Exhibit 3 - Exclusive Right to Sell Agreement - Continued



JOHN S. CORZINE  
Governor

State of New Jersey  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
P.O. Box 089  
Trenton, NJ 08625-089

ANNE MILGRAM  
Attorney General

J. FRANK VESPA-PAPALEO, ESQ.  
Director

**DATE:** April 2008  
**TO:** Real Estate Agents, Brokers, and Owners of Real Property in New Jersey  
**FROM:** Anne Milgram, *Attorney General*, State of New Jersey  
J. Frank Vespa-Papaleo, *Director*, New Jersey Division on Civil Rights  
**SUBJECT:** New Jersey Law Against Discrimination and Federal Fair Housing Laws

The rules of the New Jersey Real Estate Commission require every licensed broker or salesperson with whom you are listing your property for sale or for rent to give you a copy of this legal memorandum. The purpose of this memorandum is to help you comply with the New Jersey Law Against Discrimination ("LAD") and federal laws that prohibit discrimination in the sale or rental of real property.

Together, the LAD and the federal Fair Housing Amendments Act of 1988 prohibit you from discriminating against a prospective buyer or tenant because of his/her race, creed, color, national origin, sex, gender identity or expression, marital status, civil union status, affectional or sexual orientation, familial status, actual or perceived physical or mental disability, ancestry, nationality, and domestic partner status. (Note: "familial status" refers to families with a child or children under 18 years old and/or pregnant women. "Disability" includes persons afflicted with AIDS or HIV or perceived to be afflicted with AIDS.) The LAD also prohibits housing discrimination based on the source of lawful income or source of lawful rent or mortgage payment a tenant or purchaser uses. This means, for example, that **a landlord cannot deny the lawful recipient of a Section 8 HUD voucher the right to rent an apartment because of that source of lawful rent payment on which that person relies.**

The following are some of the requirements that apply to the sale or rental of real property:

1. All persons, regardless of their membership in one of the protected classes stated above or source of lawful income used for rent or mortgage payments, are entitled to equal treatment in the terms, conditions or privileges of the sale or rental of any real property (e.g., it is illegal to deny that housing is available for inspection, sale or rent when it really is available);
2. No discriminatory advertising of any kind relating to the proposed sale or rental is permitted;
3. The broker or salesperson with whom you list your property must refuse the listing if you indicate any intention of discriminating on any of the aforesaid bases;
4. The broker or salesperson with whom you list your property must transmit to you every written offer he/she receives on your property;

NJ Division on Civil Rights  
[www.NJCivilRights.org](http://www.NJCivilRights.org)  
(866) 405-3050



**CIVIL RIGHTS**

### Exhibit 3 - Exclusive Right to Sell Agreement - Continued

5. Any provision in any lease or rental agreement prohibiting maintenance of a pet or pets on the premises is not applicable to a service or guide dog owned by a tenant who is disabled, blind, deaf or has another qualified disability;
6. A landlord may not charge a tenant with a disability an extra fee for keeping a service or guide dog; and
7. As landlord, you must permit a tenant with a disability, at that tenant's own expense, to make reasonable modifications to the existing premises if such modifications are necessary to afford such person full enjoyment of the premises.

The sale or rental of all property including open land, whether for business or residential purposes, is covered by the LAD, with the following exceptions:

1. The rental of a single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as his/her residence at the time of such rentals;
2. The rental of a room or rooms to another person or persons by the owner or occupant of a one family dwelling occupied by him/her as his/her residence at the time of such rental;
3. In the sale, lease or rental of real property, preference given to persons of the same religion by a religious organization; and
4. The prohibition against discrimination on the basis of familial status does not apply to housing for older persons (as defined in the LAD at N.J.S.A. 10:5-5mm).

Note: The first two exceptions do **not** apply if the dwelling was built or substantially rebuilt with the use of public funds, or financed in whole or in part by a loan, or a commitment for a loan, guaranteed or insured by any agency of the federal government. The term "any agency of the federal government" includes, but is not limited to, the Federal Housing Administration (FHA) or the Veterans Administration (VA), which are most commonly used in such matters. Furthermore, discrimination in connection with some of the transactions covered by the above-described exceptions may nevertheless be prohibited under the Federal Civil Rights Act of 1866 (42 U.S.C. 1981, 1982).

Brokers and salespersons are licensed by the New Jersey Real Estate Commission. Their activities are subject to the general real estate laws of the State and the Commission's own rules and regulations. The New Jersey Law Against Discrimination applies to all people in the State and is enforced by the New Jersey Division on Civil Rights, Office of the Attorney General, the Department of Law and Public Safety. Under the NJ Law Against Discrimination, Respondents who violated the law are subject to a penalty of up to \$10,000 for a first violation, up to \$25,000 for a second violation within the last 5 years, and up to \$50,000 for two or more violations within the last seven years.

Should you require additional information or have any questions, including how to report a complaint, please review the Division's Web site at [www.NJCivilRights.org](http://www.NJCivilRights.org) or contact the Division on Civil Rights **Housing Hotline** toll free at (866) 405-3050. Please contact the Division if you desire securing the services of a Division trainer on the subject of housing discrimination.

Sincerely yours,



ANNE MILGRAM  
Attorney General



J. FRANK VESPA-PAPALEO  
Director



### Section 2.5.2 Obligations to the Broker

Perhaps the most important case in the area of broker-seller relationships is *Ellsworth Dobbs, Inc. v. Johnson*, 50 N.J. 528 (1967). In this landmark case, the Court rejected the earlier rule under which the seller was obligated to pay the broker's commission once the broker had found a purchaser acceptable to the seller and had executed a contract to sell to such purchaser, *even if title did not close*. The Court stated that:

When a broker is engaged by owner of property to find a purchaser for it, the broker earns his commission when (a) he produces a purchaser ready, willing, and able buy on the terms fixed by the owner, (b) the purchaser enters into a binding contract with the owner to do so, and (c) the purchaser completes the transaction by closing the title in accordance with the provisions of the contract.

*Id.* at 551.

The Court further protected the seller by making clear that "in the absence of default by the seller, the broker's right to commission against the seller comes into existence only when his buyer performs in accordance with the contract of sale." *Id.*

Under any type of listing agreement, the seller owes an obligation of good faith to the broker. Thus, the seller may not terminate the brokerage contract or wait until it expires and thereafter sell to a purchaser introduced by the broker in order to avoid paying the broker's commission. However, a seller of a home who legitimately withdraws from a sales contract pursuant to an attorney review clause is not liable for a broker's commission under a listing agreement. *Century 21--Candid Realty v. Cliett*, 203 N.J. Super. 78 (Law Div. 1985).

Although the seller is responsible for paying the commission upon the closing of title, "ordinarily when an owner of property lists it with a broker for sale, his expectation is that the money for the payment of commission will come out of the proceeds of the sale." *Ellsworth Dobbs*, 50 N.J. at 547. In order to ensure the broker receives such payment, "the inchoate right of a broker to a commission to be paid at closing is entitled to the protection of an equitable lien on the property of the seller until closing...and, at closing, to an equitable lien on the funds due to the seller." *Cohen v. Sheridan Estate*, 218 N.J. Super. 565, 570 (Ch. Div. 1987). A prospective purchaser who is brought to the seller by the broker and later negotiates directly with the seller and buys the property, thus leaving the broker with no commission for the sale, is liable for tortious interference with the contractual relationship between the broker and the seller. *Smith v. Cyprus*, 178 N.J. Super. 7 (App. Div. 1981).

### Section 2.5.3 Terms of Agreement

Regardless of the type of listing agreement into which the seller decides to enter, if a listing agreement is presented for review, the following should be discussed with the seller:

- (a) The agreement should reflect the names of the individuals or entity currently holding title and all record owners of the property should sign the agreement.
- (b) The seller should be aware of the significance of any marketing tools which the broker intends to utilize. For example, the seller may not want a sign posted in front of the

property advertising that the home has been listed for sale. Additionally, the client may not want a key box/lock box/keysafe system to be used by the broker. That system provides for a container to be attached to the property in which is located the key for the property. Any real estate broker who has access to the key in the container, either by possession of the key to the box, knowledge of a padlock combination, or a computerized card system will be able to open the box and use the key to the home in the absence of the owner. Usually, the real estate brokers are instructed to obtain prior telephone consent from the office of the listing broker prior to the use of the key and certain systems are coded so that it is possible to subsequently identify a real estate broker who has gained access to a home. The seller may wish to restrict access to the property to times when a family member is home or allow access only by brokers who secure from and subsequently return to the listing broker the key for the home so that there is greater accountability. The seller should understand that such restrictions may impede the showing of the property and adversely impact marketing efforts.

- (c) The length of the term of the agreement should be discussed with the seller. Most real estate brokers want a term of a period from six months to a year. The seller may wish to negotiate a listing agreement term of three months, so that the seller may assess the quality of the efforts of the real estate brokerage and, subsequently, extend the term of the agreement when services have been satisfactorily rendered but the property has not sold. By limiting the initial term of the agreement until the brokerage has demonstrated its abilities, a seller will not be bound to continue marketing a property with the broker with whom the seller is dissatisfied. The seller should understand that the reason for seeking a term ranging from six months to a year is due to the substantial investment of time, money and personnel into the marketing of a property which, depending on the numerous factors which affect the marketability of the property, may easily require a period of a year before an acceptable purchaser may be found for the property.
- (d) The seller should understand the significance of the listing of the property under a multiple listing system and the dissemination to other members subscribing to the system of written and computerized information regarding the property and the seller.
- (e) The commission being charged by the real estate broker should be discussed with the client. Typically, a total commission of six percent (6%) of the sales price is charged for the listing and sale of a single family home. However, a seller may wish to list a property for a higher commission, e.g. seven percent (7%), as an incentive to the brokers if the seller is seeking an expedited closing, or for a lower amount, e.g. five percent (5%), if the sales price of the property is likely to be high and, as a result, the brokers will be adequately compensated or the property is extremely desirable and will require little effort to sell. The amount will be specified in the listing agreement entered into by the seller and the listing broker. The amount of the commission may be shared, either equally or in some other proportion, with a selling broker who markets and sells the home to the purchaser. Commissions and fees are not fixed by any governmental entity or trade organization. By law, the seller has the right to negotiate an agreement regarding the commission to be paid. *N.J.A.C. 11:5-1.16(c)*.
- (f) The agreement should be clear that the commission will be earned, due and payable to the broker only upon the closing of title and delivery of the deed to the purchaser and

the payment of the sales price to the seller. The seller will not then be held responsible for the payment of a commission in the event that the transaction does not close due to circumstances either within or outside of the seller's control.

#### **Section 2.5.4 Consumer Information Statement**

In accordance with *N.J.A.C. 11:5-1.43*, real estate brokers in New Jersey are required to disclose the manner in which they intend to work with the seller and purchaser in a real estate transaction and supply information confirming their working relationship with the parties to a transaction. The disclosure explains the four (4) business relations which may exist with a party, which are those of (a) seller's agent, (b) buyer's agent, (c) disclosed dual agent, and (d) transaction broker. A Consumer Information Statement on New Jersey Real Estate Relationships (CIS) discussing the various relationships appears as Exhibit 4.

A seller is required to acknowledge receipt in writing of the CIS prior to discussing the motivation or desire to sell the property with the real estate broker and the purchaser is required to acknowledge receipt in writing of the CIS prior to discussing the motivation or desire to buy property with the broker. The regulations are also applicable to the rental of real property. All contracts and leases to which the regulations apply must also include a provision acknowledging receipt of the CIS and a declaration of the licensee business relationship(s) between and among the parties. A discussion of this requirement and of others in contracts prepared by brokers appears in Section 3.2.

#### **Section 2.5.5 Property Disclosure Statement**

The Consumer Fraud Act, *N.J.S.A. 56:8-1 et seq.*, was adopted which provides that a licensed real estate broker or agent is exempt from recovery of punitive damages and attorney fees under the Consumer Fraud Act for any communication by the licensee of any false, misleading, or deceptive information provided to the licensee by or on behalf of the seller of the real estate. The exemption is applicable only for so long as the licensee (1) does not know the information is false, misleading or deceptive; and (2) performs a reasonable and diligent inquiry to determine the accuracy of the information.

A real estate broker or agent may perform a "reasonable and diligent inquiry" by obtaining from the seller a written property condition disclosure statement that complies with regulations promulgated by the New Jersey Division of Consumer Affairs. The amendment further provides that a real estate licensee inform the purchaser that the seller is the source of the information and that, prior to making that communication to the purchaser, the licensee visually inspected the property with reasonable diligence to ascertain the accuracy of the information disclosed by the seller to the extent possible from such visual inspection. *N.J.A.C. 13:45A-29.1* prescribes the contents, at a minimum, to be included in a disclosure statement.

Property condition disclosure statements are commonly used to obtain from the seller pertinent information and to ensure that the seller acknowledges the obligation to disclose known material defects. The New Jersey Association of REALTORS® Standard Form appears as Exhibit 5.

## EXHIBIT 4 - CONSUMER INFORMATION STATEMENT DISCLOSURE

### CONSUMER INFORMATION STATEMENT ON NEW JERSEY REAL ESTATE RELATIONSHIPS

In New Jersey, real estate licensees are required to disclose how they intend to work with buyers and sellers in a real estate transaction. (In rental transactions, the terms "buyers" and "sellers" should be read as "tenants" and "landlords", respectively.)

1. AS A SELLER'S AGENT OR SUBAGENT, I, AS A LICENSEE, REPRESENT THE SELLER AND ALL MATERIAL INFORMATION SUPPLIED TO ME BY THE BUYER WILL BE TOLD TO THE SELLER.
2. AS A BUYER'S AGENT, I AS LICENSEE, REPRESENT THE BUYER AND ALL MATERIAL INFORMATION SUPPLIED TO ME BY THE SELLER WILL BE TOLD TO THE BUYER.
3. AS A DISCLOSED DUAL AGENT, I AS A LICENSEE, REPRESENT BOTH PARTIES, HOWEVER, I MAY NOT, WITHOUT EXPRESS PERMISSION, DISCLOSE THAT THE SELLER WILL ACCEPT A PRICE LESS THAN THE LISTING PRICE OR THAT THE BUYER WILL PAY A PRICE GREATER THAN THE OFFERED PRICE.
4. AS A TRANSACTION BROKER, I, AS A LICENSEE, DO NOT REPRESENT EITHER THE BUYER OR THE SELLER. ALL INFORMATION I ACQUIRE FROM ONE PARTY MAY BE TOLD TO THE OTHER PARTY.

Before you disclose confidential information to a real estate licensee regarding a real estate transaction, you should understand what type of business relationship you have with that licensee. There are four business relationships: (1) seller's agent; (2) buyer's agent; (3) disclosed dual agent; and (4) transaction broker. Each of these relationships imposes certain legal duties and responsibilities on the licensee as well as on the seller or buyer represented. These four relationships are defined in greater detail below. Please read carefully before making your choice.

#### SELLERS' AGENT

A seller's agent **WORKS ONLY FOR THE SELLER** and has legal obligations, called fiduciary duties, to the seller. These include reasonable care, undivided loyalty, and confidentiality and full disclosure. Seller's agents often work with buyers, but do not represent the buyers. However, in working with buyers as a seller's agent must act honestly. In dealing with both parties, a seller's agent may not make any misrepresentations to either party on matters material to the transaction, such as the buyer's financial ability to pay, and must disclose

defects of a material nature affecting the physical condition of the property which a reasonable inspection by the licensee would disclose.

Seller's agents include all persons licensed with the brokerage firm, which has been authorized through a listing agreement to work as the seller's agent. In addition, other brokerage firms may accept an offer to work with the listing broker's firm as the seller's agents. In such cases, those firms and all persons licensed with such firms are called "sub-agents." Sellers who do not desire to have their property marketed through sub-agents should so inform the seller's agent.

#### BUYER'S AGENT

A buyer's agent **WORKS ONLY FOR THE BUYER**. A buyer's agent has fiduciary duties to the buyer, which include reasonable care, undivided loyalty, and confidentiality and full disclosure. However, in dealing with sellers, a buyer's agent must act honestly. In dealing with both parties, a buyer's agent may not make any misrepresentations on matters material to the transaction, such as the buyer's financial ability to pay, and must disclose defects of a material nature affecting the physical condition of the property which a reasonable inspection by the licensee would disclose.

A buyer wishing to be represented by a buyer's agent is advised to enter into a separate written buyer agency contract with the brokerage firm, which is to work as their agent.

#### DISCLOSED DUAL AGENT

A disclosed dual agent **WORKS FOR BOTH THE BUYER AND SELLER**. To work as a dual agent, a firm must first obtain the **informed written consent** of the buyer and the seller. Therefore, before acting as a disclosed dual agent, brokerage firms must make written disclosure to both parties. Disclosed dual agency is most likely to occur when a licensee with a real estate firm working as a buyer's agent shows the buyer properties owned by sellers for whom that firm is also working as a seller's agent or sub-agent.

A real estate licensee working as a disclosed dual agent must carefully explain to each party, that, in addition to working as their agent, their firm will also work as the agent for the party. They must also explain what effect their working as a disclosed dual agent will have on the fiduciary duties their firm owes to the buyer and to the seller. When working as a disclosed dual agent, a brokerage firm must have the express permission of a party prior to disclosing confidential information to the other party. Such information includes the highest price a buyer can afford to pay and the lowest price a seller will accept and the parties' motivation to buy or sell.

## Exhibit 4 - Consumer Information Statement Disclosure - Continued

Remember, a brokerage firm acting as a disclosed dual agent will not be able to put one party's interests ahead of those of the other party and cannot advise or counsel either party on how to gain an advantage at the expense of the other party on the basis of confidential information obtained from or about the other party.

If you decide to enter into an agency relationship with a firm, which is to work as a disclosed dual agent, you are advised to sign a written agreement with that firm.

### TRANSACTION BROKER

The New Jersey Real Estate Licensing Law does not require licensees to work in the capacity of an "agent" when providing brokerage services. A transaction broker works with a buyer or a seller or both in the sales transaction without representing anyone. A TRANSACTION BROKER DOES NOT PROMOTE THE INTERESTS OF ONE PARTY OVER THOSE OF THE OTHER PARTY TO THE TRANSACTION. Licensees with such a firm would be required to treat all parties honestly and to act in a competent manner, but they would not be required to keep confidential any information. A transaction broker can locate qualified buyers for a seller or suitable properties for a buyer. They can then work with both parties in an effort to arrive at an agreement on the sale or rental of real estate and perform tasks to facilitate the closing of a transaction.

A transaction broker primarily serves as a manager of the transaction, communicating information between the parties to assist them in arriving at a mutually acceptable agreement and in closing the transaction, but cannot advise or counsel either party on how to gain an advantage at the expense of the other party. Owners considering working with transaction brokers are advised to sign a written agreement with that firm which clearly states what services that firm will perform and how it will be paid. In addition, any transaction brokerage agreement with a seller or landlord should specifically state whether a notice on the property to be rented or sold will or will not be circulated in any or all Multiple Listing System(s) of which that firm is a member.

YOU MAY OBTAIN LEGAL ADVICE ABOUT THESE BUSINESS RELATIONSHIPS FROM YOUR OWN LAWYER.

THIS STATEMENT IS NOT A CONTRACT AND IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

ACKNOWLEDGEMENT OF RECEIPT OF CONSUMER INFORMATION STATEMENT (CIS)

### FOR SELLERS AND LANDLORDS

"By signing this Consumer Information Statement, I acknowledge that I received this Statement from \_\_\_\_\_ (Name of Brokerage Firm) prior to discussing my motivation to sell or lease or my desired selling or leasing price with one of its representatives."

Signed \_\_\_\_\_

### FOR BUYERS AND TENANTS

"By signing this Consumer Information Statement, I acknowledge that I received this Statement from \_\_\_\_\_ (Name of Brokerage Firm) prior to discussing my motivation or financial ability to buy or lease with one of its representatives."

Signed \_\_\_\_\_

####

### DECLARATION OF BUSINESS RELATIONSHIP

I, \_\_\_\_\_

(name of licensee)

as an authorized representative of \_\_\_\_\_

(name of brokerage firm)

intend, as of this time, to work with you as a:  
(indicate one of the following)

- ☐ seller's agent only
- ☐ buyer's agent only
- ☐ seller's agent and disclosed dual agent if the opportunity arises
- ☐ buyer's agent and disclosed dual agent if the opportunity arises
- ☐ transaction broker only
- ☐ seller's agent on properties on which this firm is acting as the seller's agent and transaction broker on other properties

DATE \_\_\_\_\_

5/98 CIS (A)

**EXHIBIT 5 - PROPERTY CONDITION DISCLOSURE STATEMENT****SELLER'S PROPERTY CONDITION DISCLOSURE STATEMENT**

©2012, New Jersey Association of Realtors®, Inc.



Property Address: \_\_\_\_\_

Seller: \_\_\_\_\_

The purpose of this Disclosure Statement is to disclose, to the best of Seller's knowledge, the condition of the Property, as of the date set forth below. The Seller is aware that he or she is under an obligation to disclose any known material defects in the Property even if not addressed in this printed form. Seller alone is the source of all information contained in this form. All prospective buyers of the Property are cautioned to carefully inspect the Property and to carefully inspect the surrounding area for any off-site conditions that may adversely affect the Property. Moreover, this Disclosure Statement is not intended to be a substitute for prospective buyer's hiring of qualified experts to inspect the Property.

If your property consists of multiple units, systems and/or features, please provide complete answers on all such units, systems and/or features even if the question is phrased in the singular, such as if a duplex has multiple furnaces, water heaters and fireplaces.

**OCCUPANCY**

Yes	No	Unknown
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

1. Age of House, if known \_\_\_\_\_
2. Does the Seller currently occupy this property?  
If not, how long has it been since Seller occupied the property? \_\_\_\_\_
3. What year did the seller buy the property? \_\_\_\_\_
- 3a. Do you have in your possession the original or a copy of the deed evidencing your ownership of the property? If "yes," please attach a copy of it to this form.

Yes	No	Unknown
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. Age of roof \_\_\_\_\_
5. Has roof been replaced or repaired since seller bought the property? \_\_\_\_\_
6. Are you aware of any roof leaks? \_\_\_\_\_
7. Explain any "yes" answers that you give in this section: \_\_\_\_\_

**ATTIC, BASEMENTS AND CRAWL SPACES (Complete only if applicable)**

Yes	No	Unknown
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

8. Does the property have one or more sump pumps?  
8a. Are there any problems with the operation of any sump pump? \_\_\_\_\_
9. Are you aware of any water leakage, accumulation or dampness within the basement or crawl spaces or any other areas within any of the structures on the property?  
9a. Are you aware of the presence of any mold or similar natural substance within the basement or crawl spaces or any other areas within any of the structures on the property? \_\_\_\_\_
10. Are you aware of any repairs or other attempts to control any water or dampness problem in the basement or crawl space? If "yes," describe the location, nature and date of the repairs: \_\_\_\_\_
11. Are you aware of any cracks or bulges in the basement floor or foundation walls? If "yes," specify location: \_\_\_\_\_

**Exhibit 5 - Property Condition Disclosure Statement - Continued**

51	<input type="checkbox"/>	<input type="checkbox"/>	12. Are you aware of any restrictions on how the attic may be used as a result of the manner in which the attic or roof was constructed?
52			
53	<input type="checkbox"/>	<input type="checkbox"/>	13. Is the attic or house ventilated by: <input type="checkbox"/> a whole house fan? <input type="checkbox"/> an attic fan?
54	<input type="checkbox"/>	<input type="checkbox"/>	13a. Are you aware of any problems with the operation of such a fan?
55			14. In what manner is access to the attic space provided?
56			<input type="checkbox"/> staircase <input type="checkbox"/> pull down stairs <input type="checkbox"/> crawl space with aid of ladder or other device
57			<input type="checkbox"/> other _____
58			15. Explain any "yes" answers that you give in this section:
59			_____
60			_____
61			
62	<b>TERMITES/WOOD DESTROYING INSECTS, DRY ROT, PESTS</b>		
63	Yes	No	Unknown
64	<input type="checkbox"/>	<input type="checkbox"/>	
65	<input type="checkbox"/>	<input type="checkbox"/>	16. Are you aware of any termites/wood destroying insects, dry rot, or pests affecting the property?
66			17. Are you aware of any damage to the property caused by termites/wood destroying insects, dry rot, or past?
67	<input type="checkbox"/>	<input type="checkbox"/>	18. If "yes," has work been performed to repair the damage?
68	<input type="checkbox"/>	<input type="checkbox"/>	19. Is your property under contract by a licensed pest control company? If "yes," state the name and address of the licensed pest control company: _____
69			
70			
71	<input type="checkbox"/>	<input type="checkbox"/>	20. Are you aware of any termite/pest control inspections or treatments performed on the property in the past?
72			21. Explain any "yes" answers that you give in this section:
73			_____
74			_____
75			
76			
77	<b>STRUCTURAL ITEMS</b>		
78	Yes	No	Unknown
79	<input type="checkbox"/>	<input type="checkbox"/>	
80			22. Are you aware of any movement, shifting, or other problems with walls, floors, or foundations, including any restrictions on how any space, other than the attic or roof, may be used as a result of the manner in which it was constructed?
81			
82	<input type="checkbox"/>	<input type="checkbox"/>	23. Are you aware if the property or any of the structures on it have ever been damaged by fire, smoke, wind or flood?
83			
84	<input type="checkbox"/>	<input type="checkbox"/>	24. Are you aware of any fire retardant plywood used in the construction?
85	<input type="checkbox"/>	<input type="checkbox"/>	25. Are you aware of any current or past problems with driveways, walkways, patios, sinkholes, or retaining walls on the property?
86			
87	<input type="checkbox"/>	<input type="checkbox"/>	26. Are you aware of any present or past efforts made to repair any problems with the items in this section?
88			
89			27. Explain any "yes" answers that you give in this section. Please describe the location and nature of the problem.
90			_____
91			_____
92			
93			
94	<b>ADDITIONS/REMODELS</b>		
95	Yes	No	Unknown
96	<input type="checkbox"/>	<input type="checkbox"/>	
97			28. Are you aware of any additions, structural changes or other alterations to the structures on the property made by any present or past owners?
98	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
99			29. Were the proper building permits and approvals obtained? Explain any "yes" answers you give in this section: _____
100			_____
101			
102			
103	<b>PLUMBING, WATER AND SEWAGE</b>		
104	Yes	No	Unknown
105			
106			30. What is the source of your drinking water? <input type="checkbox"/> Public <input type="checkbox"/> Community System <input type="checkbox"/> Well on Property <input type="checkbox"/> Other (explain) _____
107	<input type="checkbox"/>	<input type="checkbox"/>	31. If your drinking water source is not public, have you performed any tests on the water? If so, when? _____
108			Attach a copy of or describe the results.
109			
110	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			32. Does the wastewater from any clothes washer, dishwasher, or other appliance discharge to any loca-

**Exhibit 5 - Property Condition Disclosure Statement - Continued**

111				tion other than the sewer, septic, or other system that services the rest of the property?
112			<input type="checkbox"/>	33. When was well installed? _____
113			<input type="checkbox"/>	Location of well? _____
114	<input type="checkbox"/>	<input type="checkbox"/>		34. Do you have a softener, filter, or other water purification system? <input type="checkbox"/> Leased <input type="checkbox"/> Owned
115				35. What is the type of sewage system?
116				<input type="checkbox"/> Public Sewer <input type="checkbox"/> Private Sewer <input type="checkbox"/> Septic System <input type="checkbox"/> Cesspool <input type="checkbox"/> Other (explain): _____
117	<input type="checkbox"/>	<input type="checkbox"/>		36. If you answered "septic system," have you ever had the system inspected to confirm that it is a true
118				septic system and not a cesspool?
119			<input type="checkbox"/>	37. If Septic System, when was it installed? _____
120				Location? _____
121			<input type="checkbox"/>	38. When was the Septic System or Cesspool last cleaned and/or serviced? _____
122	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	39. Are you aware of any abandoned Septic Systems or Cesspools on your property?
123	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	39a. If "yes," is the closure in accordance with the municipality's ordinance? (explain): _____
124				
125	<input type="checkbox"/>	<input type="checkbox"/>		40. Are you aware of any leaks, backups, or other problems relating to any of the plumbing systems and
126				fixtures (including pipes, sinks, tubs and showers), or of any other water or sewage related problems?
127				If "yes," explain: _____
128				
129	<input type="checkbox"/>	<input type="checkbox"/>		41. Are you aware of any shut off, disconnected, or abandoned wells, underground water or sewage
130				tanks, or dry wells on the property?
131	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	42. Is either the private water or sewage system shared? If "yes," explain: _____
132				
133				43. Water Heater: <input type="checkbox"/> Electric <input type="checkbox"/> Fuel Oil <input type="checkbox"/> Gas
134			<input type="checkbox"/>	Age of Water Heater _____
135	<input type="checkbox"/>	<input type="checkbox"/>		43a. Are you aware of any problems with the water heater?
136				44. Explain any "yes" answers that you give in this section: _____
137				
138				
139				
140	<b>HEATING AND AIR CONDITIONING</b>			
141	Yes	No	Unknown	
142				45. Type of Air Conditioning:
143				<input type="checkbox"/> Central one zone <input type="checkbox"/> Central multiple zone <input type="checkbox"/> Wall/Window Unit <input type="checkbox"/> None
144				46. List any areas of the house that are not air conditioned: _____
145				
146			<input type="checkbox"/>	47. What is the age of Air Conditioning System? _____
147				48. Type of heat: <input type="checkbox"/> Electric <input type="checkbox"/> Fuel Oil <input type="checkbox"/> Natural Gas <input type="checkbox"/> Propane <input type="checkbox"/> Unheated <input type="checkbox"/> Other
148				49. What is the type of heating system? (for example, forced air, hot water or base board, radiator, steam
149				heat) _____
150				50. If it is a centralized heating system, is it one zone or multiple zones? _____
151				
152			<input type="checkbox"/>	51. Age of furnace _____ Date of last service: _____
153				52. List any areas of the house that are not heated: _____
154				
155	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	53. Are you aware of any tanks on the property, either above or underground, used to store fuel or other
156				substances?
157	<input type="checkbox"/>	<input type="checkbox"/>		54. If tank is not in use, do you have a closure certificate?
158	<input type="checkbox"/>	<input type="checkbox"/>		55. Are you aware of any problems with any items in this section? If "yes," explain: _____
159				
160				
161	<b>WOODBURNING STOVE OR FIREPLACE</b>			
162	Yes	No	Unknown	
163	<input type="checkbox"/>	<input type="checkbox"/>		56. Do you have <input type="checkbox"/> wood burning stove? <input type="checkbox"/> fireplace? <input type="checkbox"/> insert? <input type="checkbox"/> other
164	<input type="checkbox"/>	<input type="checkbox"/>		56a. Is it presently usable? _____
165	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	57. If you have a fireplace, when was the flue last cleaned? _____
166	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	57a. Was the flue cleaned by a professional or non-professional? _____
167	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	58. Have you obtained any required permits for any such item?
168	<input type="checkbox"/>	<input type="checkbox"/>		59. Are you aware of any problems with any of these items? If "yes," please explain: _____
169				
170				

**Exhibit 5 - Property Condition Disclosure Statement - Continued**

171	<b>ELECTRICAL SYSTEM</b>			
172	Yes	No	Unknown	
173				60. What type of wiring is in this structure? <input type="checkbox"/> Copper <input type="checkbox"/> Aluminum <input type="checkbox"/> Other <input type="checkbox"/> Unknown
174				61. What amp service does the property have? <input type="checkbox"/> 60 <input type="checkbox"/> 100 <input type="checkbox"/> 150 <input type="checkbox"/> 200 <input type="checkbox"/> Other <input type="checkbox"/> Unknown
175	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	62. Does it have 240 volt service? Which are present <input type="checkbox"/> Circuit Breakers, <input type="checkbox"/> Fuses or <input type="checkbox"/> Both?
176	<input type="checkbox"/>	<input type="checkbox"/>		63. Are you aware of any additions to the original service?
177				If "yes," were the additions done by a licensed electrician? Name and address:
178				
179				
180	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	64. If "yes," were proper building permits and approvals obtained?
181	<input type="checkbox"/>	<input type="checkbox"/>		65. Are you aware of any wall switches, light fixtures or electrical outlets in need of repair?
182				66. Explain any "yes" answers you give in this section:
183				
184				
185				
186	<b>LAND (SOILS, DRAINAGE AND BOUNDARIES)</b>			
187	Yes	No	Unknown	
188	<input type="checkbox"/>	<input type="checkbox"/>		67. Are you aware of any fill or expansive soil on the property?
189	<input type="checkbox"/>	<input type="checkbox"/>		68. Are you aware of any past or present mining operations in the area in which the property is located?
190	<input type="checkbox"/>	<input type="checkbox"/>		69. Is the property located in a flood hazard zone?
191	<input type="checkbox"/>	<input type="checkbox"/>		70. Are you aware of any drainage or flood problems affecting the property?
192	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	71. Are there any areas on the property which are designated as protected wetlands?
193	<input type="checkbox"/>	<input type="checkbox"/>		72. Are you aware of any encroachments, utility easements, boundary line disputes, or drainage or other easements affecting the property?
194				73. Are there any water retention basins on the property or the adjacent properties?
195	<input type="checkbox"/>	<input type="checkbox"/>		74. Are you aware if any part of the property is being claimed by the State of New Jersey as land presently or formerly covered by tidal water (Riparian claim or lease grant)? Explain:
196	<input type="checkbox"/>	<input type="checkbox"/>		
197				
198				
199				
200	<input type="checkbox"/>	<input type="checkbox"/>		75. Are you aware of any shared or common areas (for example, driveways, bridges, docks, walls, bulkheads, etc.) or maintenance agreements regarding the property?
201				76. Explain any "yes" answers to the preceding questions in this section:
202				
203				
204				
205	<input type="checkbox"/>	<input type="checkbox"/>		77. Do you have a survey of the property?
206				
207	<b>ENVIRONMENTAL HAZARDS</b>			
208	Yes	No	Unknown	
209	<input type="checkbox"/>	<input type="checkbox"/>		78. Have you received any written notification from any public agency or private concern informing you that the property is adversely affected, or may be adversely affected, by a condition that exists on a property in the vicinity of this property? If "yes," attach a copy of any such notice currently in your possession.
210				
211				
212	<input type="checkbox"/>	<input type="checkbox"/>		78a. Are you aware of any condition that exists on any property in the vicinity which adversely affects, or has been identified as possibly adversely affecting, the quality or safety of the air, soil, water, and/or physical structures present on this property? If "yes," explain:
213				
214				
215				
216				
217	<input type="checkbox"/>	<input type="checkbox"/>		79. Are you aware of any underground storage tanks (UST) or toxic substances now or previously present on this property or adjacent property (structure or soil), such as polychlorinated biphenyl (PCB), solvents, hydraulic fluid, petro-chemicals, hazardous wastes, pesticides, chromium, thorium, lead or other hazardous substances in the soil? If "yes," explain:
218				
219				
220				
221				
222				
223	<input type="checkbox"/>	<input type="checkbox"/>		80. Are you aware if any underground storage tank has been tested? (Attach a copy of each test report or closure certificate if available).
224				
225	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	81. Are you aware if the property has been tested for the presence of any other toxic substances, such as lead-based paint, urea-formaldehyde foam insulation, asbestos-containing materials, or others? (Attach copy of each test report if available).
226				
227				
228				82. If "yes" to any of the above, explain:
229				
230				

## Exhibit 5 - Property Condition Disclosure Statement - Continued

231	<input type="checkbox"/>	<input type="checkbox"/>	82a. If "yes" to any of the above, were any actions taken to correct the problem? Explain:
232			
233			
234	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
235			83. Is the property in a designated Airport Safety Zone?
236	<b>DEED RESTRICTIONS, SPECIAL DESIGNATIONS, HOMEOWNERS ASSOCIATION/CONDOMINIUMS AND CO-OPS</b>		
237	Yes	No	Unknown
238	<input type="checkbox"/>	<input type="checkbox"/>	
239			84. Are you aware if the property is subject to any deed restrictions or other limitations on how it may be used due to its being situated within a designated historic district, or a protected area like the New Jersey Pinelands, or its being subject to similar legal authorities other than typical local zoning ordinances?
240			
241			
242	<input type="checkbox"/>	<input type="checkbox"/>	85. Is the property part of a condominium or other common interest ownership plan?
243	<input type="checkbox"/>	<input type="checkbox"/>	85a. If so, is the property subject to any covenants, conditions, or restrictions as a result of its being part of a condominium or other form of common interest ownership?
244			
245	<input type="checkbox"/>	<input type="checkbox"/>	86. As the owner of the property, are you required to belong to a condominium association or homeowners association, or other similar organization or property owners?
246			
247	<input type="checkbox"/>	<input type="checkbox"/>	86a. If so, what is the Association's name and telephone number?
248			
249	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
250			86b. If so, are there any dues or assessments involved? If "yes," how much?
251	<input type="checkbox"/>	<input type="checkbox"/>	
252			87. Are you aware of any defect, damage, or problem with any common elements or common areas that materially affects the property?
253	<input type="checkbox"/>	<input type="checkbox"/>	88. Are you aware of any condition or claim which may result in an increase in assessments or fees?
254	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
255			89. Since you purchased the property, have there been any changes to the rules or by-laws of the Association that impact the property?
256			90. Explain any "yes" answers you give in this section:
257			
258			
259			
260	<b>MISCELLANEOUS</b>		
261	Yes	No	Unknown
262	<input type="checkbox"/>	<input type="checkbox"/>	
263			91. Are you aware of any existing or threatened legal action affecting the property or any condominium or homeowners association to which you, as an owner, belong?
264	<input type="checkbox"/>	<input type="checkbox"/>	
265			92. Are you aware of any violations of Federal, State or local laws or regulations relating to this property?
266	<input type="checkbox"/>	<input type="checkbox"/>	
267			93. Are you aware of any zoning violations, encroachments on adjacent properties, non-conforming uses, or set-back violations relating to this property? If so, please state whether the condition is pre-existing non-conformance to present day zoning or a violation to zoning and/or land use laws.
268			
269			
270			
271	<input type="checkbox"/>	<input type="checkbox"/>	
272			94. Are you aware of any public improvement, condominium or homeowner association assessments against the property that remain unpaid? Are you aware of any violations of zoning, housing, building, safety or fire ordinances that remain uncorrected?
273			
274	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
275	<input type="checkbox"/>	<input type="checkbox"/>	
276			95. Are there mortgages, encumbrances or liens on this property?
277	<input type="checkbox"/>	<input type="checkbox"/>	95a. Are you aware of any reason, including a defect in title, that would prevent you from conveying clear title?
278			
279			96. Are you aware of any material defects to the property, dwelling, or fixtures which are not disclosed elsewhere on this form? (A defect is "material," if a reasonable person would attach importance to its existence or non-existence in deciding whether or how to proceed in the transaction.)
280			If "yes," explain:
281			
282	<input type="checkbox"/>	<input type="checkbox"/>	
283			97. Other than water and sewer charges, utility and cable tv fees, your local property taxes, any special assessments and any association dues or membership fees, are there any other fees that you pay on an ongoing basis with respect to this property, such as garbage collection fees?
284			
285			98. Explain any other "yes" answers you give in this section:
286			
287			
288			
289			
290			

**Exhibit 5 - Property Condition Disclosure Statement - Continued****291 RADON GAS Instructions to Owners**

292 By law (N.J.S.A. 26:2D-73), a property owner who has had his or her property tested or treated for radon gas may require that information  
 293 about such testing and treatment be kept confidential until the time that the owner and a buyer enter into a contract of sale, at which time  
 294 a copy of the test results and evidence of any subsequent mitigation or treatment shall be provided to the buyer. The law also provides that  
 295 owners may waive, in writing, this right of confidentiality. As the owner(s) of this property, do you wish to waive this right?

296 Yes No

297 ☐ ☐

(Initials)

(Initials)

299 If you responded "yes," answer the following questions. If you responded "no," proceed to the next section.

302 Yes No Unknown

303 ☐ ☐

99. Are you aware if the property has been tested for radon gas? (Attach a copy of each test report if available.)

304 ☐ ☐

100. Are you aware if the property has been treated in an effort to mitigate the presence of radon gas? (If "yes," attach a copy of any evidence of such mitigation or treatment.)

305 ☐ ☐

101. Is radon remediation equipment now present in the property?

306 ☐ ☐

101a. If "yes," is such equipment in good working order?

**311 MAJOR APPLANCES AND OTHER ITEMS**

312 The terms of any final contract executed by the seller shall be controlling as to what appliances or other items, if any, shall be included  
 313 in the sale of the property. Which of the following items are present in the property? (For items that are not present, indicate "not ap-  
 314 plicable.")

316 Yes No Unknown N/A

317 ☐ ☐

102. Electric Garage Door Opener

318 ☐ ☐

102a. If "yes," are they reversible? Number of Transmitters \_\_\_\_\_

319 ☐ ☐

103. Smoke Detectors

☐ Battery ☐ Electric ☐ Both How many \_\_\_\_\_

☐ Carbon Monoxide Detectors How many \_\_\_\_\_

Location \_\_\_\_\_

322 ☐ ☐

104. With regard to the above items, are you aware that any item is not in working order?

323 ☐ ☐

104a. If "yes," identify each item that is not in working order or defective and explain the nature of the problem: \_\_\_\_\_

328 ☐ ☐

105. ☐ In-ground pool ☐ Above-ground pool ☐ Pool Heater ☐ Spa/Hot Tub

329 ☐ ☐

105a. Were proper permits and approvals obtained?

330 ☐ ☐

105b. Are you aware of any leaks or other defects with the filter or the walls or other structural or mechanical components of the pool or spa/hot tub?

331 ☐ ☐

105c. If an in-ground pool, are you aware of any water seeping behind the walls of the pool?

332 ☐ ☐

106. Indicate which of the following may be included in the sale? (Indicate Y for yes N for no.)

☐ Refrigerator

☐ Range

☐ Microwave Oven

☐ Dishwasher

☐ Trash Compactor

☐ Garbage Disposal

☐ In-Ground Sprinkler System

☐ Central Vacuum System

☐ Security System

☐ Washer

☐ Dryer

☐ Intercom

☐ Other

347 ☐ ☐

107. Of those that may be included, is each in working order?

If "no," identify each item not in working order, explain the nature of the problem: \_\_\_\_\_

**Exhibit 5 - Property Condition Disclosure Statement - Continued****ACKNOWLEDGMENT OF SELLER**

The undersigned Seller affirms that the information set forth in this Disclosure Statement is accurate and complete to the best of Seller's knowledge, but is not a warranty as to the condition of the Property. Seller hereby authorizes the real estate brokerage firm representing or assisting the seller to provide this Disclosure Statement to all prospective buyers of the Property, and to other real estate agents. Seller alone is the source of all information contained in this statement. If the Seller relied upon any credible representations of another, the Seller should state the name(s) of the person(s) who made the representation(s) and describe the information that was relied upon.

\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 SELLER DATE

\_\_\_\_\_  
 SELLER DATE

**EXECUTOR, ADMINISTRATOR, TRUSTEE**

(If applicable) The undersigned has never occupied the property and lacks the personal knowledge necessary to complete this Disclosure Statement.

\_\_\_\_\_  
 DATE

\_\_\_\_\_  
 DATE

**RECEIPT AND ACKNOWLEDGMENT BY PROSPECTIVE BUYER**

The undersigned Prospective Buyer acknowledges receipt of this Disclosure Statement prior to signing a Contract of Sale pertaining to this Property. Prospective Buyer acknowledges that this Disclosure Statement is not a warranty by Seller and that it is Prospective Buyer's responsibility to satisfy himself or herself as to the condition of the Property. Prospective Buyer acknowledges that the Property may be inspected by qualified professionals, at Prospective Buyer's expense, to determine the actual condition of the Property. Prospective Buyer further acknowledges that this form is intended to provide information relating to the condition of the land, structures, major systems and amenities, if any, included in the sale. This form does not address local conditions which may affect a purchaser's use and enjoyment of the property such as noise, odors, traffic volume, etc. Prospective Buyer acknowledges that they may independently investigate such local conditions before entering into a binding contract to purchase the property. Prospective Buyer acknowledges that he or she understands that the visual inspection performed by the Seller's real estate broker/broker-salesperson/salesperson does not constitute a professional home inspection as performed by a licensed home inspector.

\_\_\_\_\_  
 PROSPECTIVE BUYER DATE

\_\_\_\_\_  
 PROSPECTIVE BUYER DATE

## Exhibit 5 - Property Condition Disclosure Statement - Continued

411	<b>ACKNOWLEDGMENT OF REAL ESTATE BROKER/BROKER-SALESPERSON/SALESPERSON</b>	
412	The undersigned Seller's real estate broker/broker-salesperson/salesperson acknowledges receipt of the Property Disclosure Statement	
413	form and that the information contained in the form was provided by the Seller.	
414	The Seller's real estate broker/broker-salesperson/salesperson also confirms that he or she visually inspected the property with reason-	
415	able diligence to ascertain the accuracy of the information disclosed by the seller, prior to providing a copy of the property disclosure	
416	statement to the buyer.	
417	The Prospective Buyer's real estate broker/broker-salesperson/salesperson also acknowledges receipt of the Property Disclosure State-	
418	ment form for the purpose of providing it to the Prospective Buyer.	
419		
420		
421	SELLER'S REAL ESTATE BROKER	DATE
422	BROKER-SALESPERSON/SALESPERSON:	
423		
424		
425		
426	BUYER'S REAL ESTATE BROKER	DATE
427	BROKER-SALESPERSON/SALESPERSON:	
428		
429		
430		
431		
432		
433		
434		
435		
436		
437		
438		
439		
440		
441		
442		
443		
444		
445		
446		
447		
448		
449		
450		
451		
452		
453		
454		
455		
456		
457		
458		
459		
460		
461		
462		
463		
464		
465		
466		
467		
468		
469		
470		

## **CHAPTER III CONTRACT**

The contract for the sale and the purchase of the property will set forth the respective rights and obligations of the parties. A carefully drafted contract at the outset will serve to address the special circumstances of which the scrivener was aware when drafting the contract and to anticipate and address problems which may arise during the course of the transaction.

### **Section 3.1 Attorney Preparation**

The attorney may be approached by either the seller or purchaser for the purpose of drafting a contract memorializing the agreement which has been reached between the seller and purchaser for the sale of the subject property. The attorney for the seller or purchaser is most likely to prepare the contract when a real estate broker is not involved in the transaction. In order for the attorney to proceed, it will be necessary for the attorney to obtain from the client the terms which have been agreed upon up until that point and, in consultation with the client, reach an understanding with the attorney for the other party as to which attorney will be drafting the contract. When the contract is prepared by an attorney, the attorney for the seller usually will prepare the contract for review and approval by the purchaser's attorney. In addition to the information which will be provided by the client, there will be other issues which evolve and terms which will be developed to respond to those issues during the course of the preparation of the contract. Prior to actually expending the time and effort in preparing the contract, it is prudent to communicate with the attorney representing the other party to confirm that the information relayed by the client is correct.

If the attorney for either the seller or purchaser will be preparing the contract, the efforts of the attorney are often facilitated by beginning with a preprinted form of contract. Forms often considered for use are the All-State Legal short form of Contract for Sale of Real Estate which appears as Exhibit 6 and the All-State Legal long form of Contract for Sale of Real Estate which appears as Exhibit 7. The use of such forms, however, is no alternative for a firm and full grasp by the attorney of real estate contract law governing the transaction, an understanding by the attorney of the desires the client, and the ability of the attorney to anticipate and prevent problems as the transaction proceeds.

Of significant concern to the client is likely to be the ability of the attorney to prepare, negotiate and finalize a contract on an expedited basis. Commencing the process with a preprinted form facilitates a timely response. Even if preprinted forms of contracts appear to be thorough in the consideration of terms applicable to the transaction, the use of preprinted contracts often warrants the preparation of riders to modify, supplement and expound upon the terms in the contract. Included as Exhibit 8 is a rider amending the long form of contract on behalf of a purchaser. Exhibit 9 is a rider prepared on behalf of a seller amending either the long or short form of contract. Notwithstanding the availability of preprinted forms of contract and their modification by means of riders, the attorney also should be able to recognize those special circumstances which warrant the preparation of a specially drafted form of contract.

EXHIBIT 6 - ALL-STATE SHORT FORM OF CONTRACT

# Contract for Sale of Real Estate

This Contract for Sale is made on \_\_\_\_\_

**BETWEEN**

(Include Soc. Sec. No.)

whose address is \_\_\_\_\_

referred to as the "Seller,"

**AND**

(Include Soc. Sec. No.)

whose address is \_\_\_\_\_

referred to as the "Buyer."

The words "Buyer" and "Seller" include all Buyers and all Sellers listed above.

**1. Purchase Agreement.** The Seller agrees to sell and the Buyer agrees to buy the Property (called the "Property") described in this Contract.

**2. Property.** The Property to be sold consists of: (a) the land and all of the buildings, other improvements and fixtures on the land; (b) all of the Seller's rights relating to the land; and (c) all personal property specifically included in this Contract. The real Property to be sold is commonly known as \_\_\_\_\_

in the \_\_\_\_\_ of \_\_\_\_\_ in the County of \_\_\_\_\_ and State of New Jersey. It is shown on the municipal tax map as lot \_\_\_\_\_ in block \_\_\_\_\_.

This Property is more fully described in the attached Schedule A.

**3. Purchase Price.** The purchase price is \$ \_\_\_\_\_

**4. Payment of Purchase Price.** The Buyer will pay the purchase price as follows:

Previously paid by the Buyer (initial deposit) \$ \_\_\_\_\_

Upon signing of this Contract (balance of deposit) \$ \_\_\_\_\_

Balance to be paid at closing of title, in cash or by certified or bank cashier's check or attorney's trust account check (subject to adjustment at closing). \$ **0.00**

**5. Time and Place of Closing.** The closing date cannot be made final at this time. The Buyer and Seller agree to make \_\_\_\_\_, the estimated date for the closing. Both parties will fully cooperate so the closing can take place on or before the estimated date. The closing will be held at \_\_\_\_\_

**6. Transfer of Ownership.** At the closing, the Seller will transfer ownership of the Property to the Buyer. This transfer of ownership will be free of all claims and rights of others except as provided in other parts of this Contract. The Seller will give the Buyer a properly executed deed and an adequate Affidavit of Title. If the Seller is a corporation, it will also deliver a corporate resolution authorizing the sale.

**7. Type of Deed.** A deed is a written document used to transfer ownership of Property. In this sale, the Seller agrees to provide and the Buyer agrees to accept a deed known as bargain and sale with covenants against grantors' acts.

**8. Physical Condition of the Property.** This Property is being sold "As Is," except for paragraph 10 as required by Federal Regulation. The Seller does not make any claims or promises about the condition or value of any of the Property included in this sale. The Buyer has inspected the Property and relies on this inspection and any rights which may be provided for in other parts of this Contract.

**9. Risk of Loss.** The Seller is responsible for any damage to the Property, except for normal wear and tear, until the closing.

### Exhibit 6 - All-State Short Form of Contract - Continued

**10. Lead Paint.** The Buyer acknowledges that:

- ☐ The Seller has provided the Buyer with an EPA-approved lead hazard information pamphlet.
- ☐ The Seller has attached to this Contract a Lead Warning Statement (see ALL-STATE form NC132).
- ☐ The Seller has disclosed the presence of known lead-based paint and/or lead-based paint hazards and has provided additional information concerning the known lead-based paint and/or lead-based paint hazards, or has indicated no knowledge of the presence of lead-based paint and/or lead-based paint hazards.
- ☐ The Seller has provided the Buyer with a list of any records or reports available to the Seller pertaining to lead-based paint and/or lead-based paint hazards or Seller has indicated that no such records or reports are available.

**11. Lead Paint Sale Contingency.** This Contract is contingent upon a risk assessment or inspection of the Property for the presence of lead-based paint and/or lead-based paint hazards at the Buyer's expense until 9 p.m. on the tenth calendar-day after the signing of this Contract by all parties for housing built before 1978. [Intact lead-based paint that is in good condition is not necessarily a hazard. See the EPA pamphlet, "Protect Your Family from Lead in Your Home," for more information.] This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written Contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within \_\_\_\_\_ days after delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs, or if the Seller makes a counter-offer, the Buyer shall have \_\_\_\_\_ days to respond to the counter-offer or remove this contingency and take the Property in "As Is" condition or this Contract shall become void. The Buyer may remove this contingency at any time without cause. (42 U.S.C. 4852d) (61FR 9064).

**12. Private Well Testing Act (N.J.S.A. 58:12A-26 et seq.)**

(a) **Applicability:** If the property (i) has a potable water supply furnished by a private well located on the property, or (ii) the potable water supply is furnished by a well that has fewer than 15 service connections or that does not regularly service an average of at least 25 individuals daily at least 60 days out of the year, then the water supply must be tested as a condition of the sale.

(b) **Testing Parameters:** The water test must conform with the parameters established in the Private Well Testing Act and any additional parameters as required by the Department of Environmental Protection.

(c) **Disclosure:** Closing of title shall not occur unless both the Buyer and the Seller have received and reviewed a copy of the water test results. At closing, the Buyer and Seller shall certify in writing that they have received and reviewed the water test results.

**13.** If this Contract is for the sale of a new residential property, a Notification Regarding Off-Site Conditions MUST be attached to notify the purchaser regarding off-site conditions which may affect the value of this property. New Residential Construction Off-Site Conditions Disclosure Act, P.L. 1995, c. 253 (C. 46:3C-1 et seq.) (see ALL-STATE form No. 132).

**14. Complete Agreement.** This Contract is the entire and only agreement between the Buyer and the Seller. This Contract replaces and cancels any previous agreements between the Buyer and the Seller. This Contract can only be changed by an agreement in writing signed by both Buyer and Seller. The Seller also promises that she/he has not made any other Contract to sell the Property to anyone else.

**15. Parties Liable.** This Contract is binding upon all parties who sign it and all who succeed to their rights and responsibilities.

**SIGNED AND AGREED TO BY:**

Witnessed or Attested by:

Date Signed:

_____	_____
As to Buyer(s)	Buyer
_____	_____
As to Seller(s)	Seller
_____	_____
	Seller

EXHIBIT 7 - ALL-STATE LONG FORM OF CONTRACT

# Contract for Sale of Real Estate

This Contract for Sale is made on \_\_\_\_\_  
BETWEEN

(Soc. Sec. No.)

whose address is \_\_\_\_\_

referred to as the "Seller,"

AND

(Soc. Sec. No.)

whose address is \_\_\_\_\_

referred to as the "Buyer."

The words "Buyer" and "Seller" include all Buyers and all Sellers listed above.

1. **Purchase Agreement.** The Seller agrees to sell and the Buyer agrees to buy the Property described in this Contract.

2. **Property.** The property (called the "Property") to be sold consists of: (a) the land and all the buildings, other improvements and fixtures on the land; (b) all of the Seller's rights relating to the land; and (c) all personal property specifically included in this Contract. The real property to be sold is commonly known as \_\_\_\_\_

in the \_\_\_\_\_ of \_\_\_\_\_ in the County of \_\_\_\_\_  
and State of New Jersey. It is shown on the municipal tax map as lot \_\_\_\_\_ in block \_\_\_\_\_  
This Property is more fully described in the attached addendum.

3. **Purchase Price.** The purchase price is \$ \_\_\_\_\_

4. **Payment of Purchase Price.** The Buyer will pay the purchase price as follows:

Previously paid by the Buyer (initial deposit) \$ \_\_\_\_\_

Upon signing of this Contract (balance of deposit) \$ \_\_\_\_\_

Amount of mortgage (paragraph 6) \$ \_\_\_\_\_

By assuming the obligation to pay the present mortgage according to its terms. This mortgage shall be in good standing at the closing. Either party may cancel this Contract if the Lender does not permit the Buyer to assume the mortgage (estimated balance due). \$ \_\_\_\_\_

By the Seller taking back a note and mortgage for \_\_\_\_\_ years at \_\_\_\_\_ % interest with monthly payments based on a \_\_\_\_\_ year payment schedule. The Buyer will pay the Seller's attorney \$ \_\_\_\_\_ for the preparation of the necessary documents. The Buyer will also pay all recording costs and provide the Seller with an adequate Affidavit of Title. \$ \_\_\_\_\_

Balance to be paid at closing of title, in cash or by certified or bank cashier's check or attorney's trust account check (subject to adjustment at closing). \$ \_\_\_\_\_

5. **Deposit Moneys.** All deposit moneys will be held in trust by \_\_\_\_\_ until \_\_\_\_\_

6. **Mortgage Contingency.** The Buyer agrees to make a good faith effort to obtain a first mortgage loan upon the terms listed below. The Buyer has until \_\_\_\_\_ to obtain a commitment from a lender for this mortgage loan or to agree to buy the Property without this loan. If this is not done before this deadline, and any agreed-upon extensions, either party may cancel this Contract.

Type of Mortgage: ☐ conventional ☐ FHA ☐ VA ☐ other \_\_\_\_\_

Amount of Loan: \$ \_\_\_\_\_ Interest Rate: \_\_\_\_\_ %

Length of Mortgage: \_\_\_\_\_ years with monthly payments based on a \_\_\_\_\_ year payment schedule.

Points: The Buyer agrees to pay \_\_\_\_\_ points for a total of \$ \_\_\_\_\_

The Seller agrees to pay \_\_\_\_\_ points for a total of \$ \_\_\_\_\_

7. **Time and Place of Closing.** The closing date cannot be made final at this time. The Buyer and Seller agree to make \_\_\_\_\_ the estimated date for the closing. Both parties will fully cooperate so the closing can take place on or before the estimated date. The closing will be held at \_\_\_\_\_

### Exhibit 7 - All-State Long Form of Contract - Continued

**8. Transfer of Ownership.** At the closing, the Seller will transfer ownership of the Property to the Buyer. The Seller will give the Buyer a properly executed deed and an adequate affidavit of title. If the Seller is a corporation, it will also deliver a corporate resolution authorizing the sale.

**9. Type of Deed.** A deed is a written document used to transfer ownership of property. In this sale, the Seller agrees to provide and the Buyer agrees to accept a deed known as bargain and sale with covenants against grantors' acts.

**10. Personal Property and Fixtures.** Many items of property become so attached to a building or other real property that they become a part of it. These items are called fixtures. They include such items as fireplaces, patios and built-in shelving. All fixtures are **INCLUDED** in this sale unless they are listed below as being **EXCLUDED**.

a) The following items are **INCLUDED** in this sale: gas and electric fixtures, chandeliers, wall to wall carpeting, linoleum, mats and matting in halls, screens, shades, awnings, storm windows and doors, television antenna, water pump, sump pump, water softeners.

b) The following items are **EXCLUDED** from this sale:

**11. Physical Condition of the Property.** This Property is being sold "As Is." The Seller does not make any claims or promises about the condition or value of any of the Property included in this sale. The Buyer has inspected the Property and relies on this inspection and any rights which may be provided for elsewhere in this Contract. The Seller agrees to maintain the grounds, buildings and improvements subject to ordinary wear and tear. Seller agrees to leave the Property in broom-clean condition, free of debris.

**12. Inspection of the Property.** The Seller agrees to permit the Buyer to inspect the Property at any reasonable time before the closing. The Seller will permit access for all inspections provided for in this Contract.

**13. Building and Zoning Laws.** The Buyer intends to use the Property as a \_\_\_\_\_ family home. The Seller states that this use does not violate any applicable zoning ordinance building code or other law. The Seller will obtain and pay for all inspections required by law. This includes any municipal "Certificate of Occupancy." If the Seller fails to correct any violations of law, at the Seller's own expense, the Buyer may cancel this Contract.

**14. Flood Area.** The federal and state governments have designated certain areas as "flood areas." This means they are more likely to have floods than other areas. If this Property is in a "flood area" the Buyer may cancel this Contract within 30 days of the signing of this Contract by all parties.

**15. Property Lines.** The Seller states that all buildings, driveways and other improvements on the Property are within its boundary lines. Also, no improvements on adjoining properties extend across the boundary lines of this Property.

**16. Ownership.** The Seller agrees to transfer and the Buyer agrees to accept ownership of the Property free of all claims and rights of others, except for:

- a) the rights of utility companies to maintain pipes, poles, cables and wires over, on and under the street, the part of the Property next to the street or running to any house or other improvement on the Property;
- b) recorded agreements which limit the use of the Property, unless the agreements: (1) are presently violated; (2) provide that the Property would be forfeited if they were violated, or (3) unreasonably limit the normal use of the Property; and
- c) all items included in Schedule A as part of the description of the Property.

In addition to the above, the ownership of the Buyer must be insurable at regular rates by any title insurance company authorized to do business in New Jersey subject only to the above exception.

**17. Correcting Defects.** If the Property does not comply with paragraphs 15 or 16 of this Contract, the Seller will be notified and given 30 days to make it comply. If the Property still does not comply after that date, the Buyer may cancel this Contract or give the Seller more time to comply.

**18. Inspection of Property by Buyers:**

a) **Kinds of Inspections.** The Buyer may have the Property inspected by a home inspection service or by a construction expert at the Buyer's expense. The inspection may include the structural and mechanical condition of the Property, the presence of radon gas, along with an inspection of the plumbing, heating, cooling and electrical systems. The Buyer may also inspect the septic or other sewerage disposal system and test the well, water system and the quality of the water. The Buyer may also make an inspection to determine if the Property is free of any damage or infestation caused by termites, dry rot, fungi, wood-destroying insects and other pests or organisms.

b) **Time and Access for Inspections.** All inspections must be completed and Seller notified of the results within \_\_\_\_\_ days of the date this Contract is executed by all parties. The Seller agrees to provide the Buyer with reasonable access to make all of the inspections provided for in this Contract.

c) **Results of Inspections and Remedies.** If the inspections reveal any serious defects and the parties do not agree on what corrective actions or repairs are to be made by the Seller, either party may cancel this Contract.

**19. Lead Paint.** The Buyer acknowledges that:

- ☐ The Seller has provided the Buyer with an EPA-approved lead hazard information pamphlet.
- ☐ The Seller has attached to this Contract a Lead Warning Statement. (See ALL-STATE form NC182)
- ☐ The Seller has disclosed the presence of known lead-based paint and/or lead-based paint hazards and has provided additional information concerning the known lead-based paint and/or lead-based paint hazards, or has indicated no knowledge of the presence of lead-based paint and/or lead-based paint hazards.
- ☐ The Seller has provided the Buyer with a list of any records or reports available to the Seller pertaining to lead-based paint and/or lead-based paint hazards or Seller has indicated that no such records or reports are available.

### Exhibit 7 - All-State Long Form of Contract - Continued

**20. Lead Paint Sale Contingency.** This Contract is contingent upon a risk assessment or inspection of the Property for the presence of lead-based paint and/or lead-based paint hazards at the Buyer's expense until 9 p.m. on the tenth calendar-day after the signing of this Contract by all parties for housing built before 1978. [Intact lead-based paint that is in good condition is not necessarily a hazard. See the EPA pamphlet, "Protect Your Family from Lead in Your Home," for more information.] This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within \_\_\_\_\_ days after delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs, or if the Seller makes a counter-offer, the Buyer shall have \_\_\_\_\_ days to respond to the counter-offer or remove this contingency and take the Property in "As Is" condition or this Contract shall become void. The Buyer may remove this contingency at any time without cause. (42 U.S.C. 4852d) (61FR 9064)

**21. Private Well Testing Act (N.J.S.A. 58:12A-26 et seq.)**

(a) **Applicability:** If the property (i) has a potable water supply furnished by a private well located on the property, or (ii) the potable water supply is furnished by a well that has fewer than 15 service connections or that does not regularly service an average of at least 25 individuals daily at least 60 days out of the year, then the water supply must be tested as a condition of the sale.

(b) **Testing Parameters:** The water test must conform with the parameters established in the Private Well Testing Act and any additional parameters as required by the Department of Environmental Protection.

(c) **Disclosure:** Closing of title shall not occur unless both the Buyer and the Seller have received and reviewed a copy of the water test results. At closing, the Buyer and Seller shall certify in writing that they have received and reviewed the water test results.

**22. Risk of Loss.** The Seller is responsible for any damage to the Property, except for normal wear and tear, until the closing. If there is damage, the Buyer can proceed with the closing and either:

a. require that the Seller repair the damage before the closing, or

b. deduct from the purchase price a fair and reasonable estimate of the cost to repair the Property

In addition, either party may cancel this Contract if the cost of repair is more than 10% of the purchase price.

**23. Cancellation of Contract.** If this Contract is legally and rightfully canceled, the Buyer can get back the deposit and the parties will be free of liability to each other. However, if the Contract is canceled in accordance with paragraphs 13, 14, 17, 18, or 19 of this Contract, the Seller will pay the Buyer for all title and survey costs.

**24. Assessments for Municipal Improvements.** Certain municipal improvements such as sidewalks and sewers may result in the municipality charging Property owners to pay for the improvement. All unpaid charges (assessments) against the Property for work completed before the closing will be paid by the Seller at or before the closing. If the improvement is not completed before the closing, then only the Buyer will be responsible. If the improvement is completed, but the amount of the charge (assessment) is not determined, the Seller will pay an estimated amount at the closing. When the amount of the charge is finally determined, the Seller will pay any deficiency to the Buyer (if the estimate proves to have been too low), or the Buyer will return any excess to the Seller (if the estimate proves to have been too high).

**25. Adjustments at Closing.** The Buyer and Seller agree to adjust the following expenses as of the closing date: rents, municipal water charges, sewer charges, taxes, interest on any mortgage to be assumed and insurance premiums. If the Property is heated by fuel oil, the Buyer will buy the fuel oil in the tank at the closing date. The price will be the current price at that time as calculated by the supplier. The Buyer or the Seller may require that any person with a claim or right affecting the Property be paid off from the proceeds of this sale.

**26. Possession.** At the closing the Buyer will be given possession of the Property. No tenant will have any right to the Property unless otherwise agreed to in this Contract.

**27. Complete Agreement.** This Contract is the entire and only agreement between the Buyer and the Seller. This Contract replaces and cancels any previous agreements between the Buyer and the Seller. This Contract can only be changed by an agreement in writing signed by both Buyer and Seller. The Seller states that the Seller has not made any other contract to sell the Property to anyone else.

**28. Parties Liable.** This Contract is binding upon all parties who sign it and all who succeed to their rights and responsibilities.

**29. Notices.** All notices under this Contract must be in writing. The notices must be delivered personally or mailed by certified mail, return receipt requested, to the other party at the address written in this Contract, or to that party's attorney.

**30. New Residential Construction.** If this Contract is for the sale of a New Residential Property, a Notification Regarding Off-Site Conditions MUST be attached to notify the purchaser regarding off-site conditions which may affect the value of this property. New Residential Construction Off-Site Conditions Disclosure Act, P.L. 1995, c. 253 (C. 46:3C-1 et seq.). (See ALL-STATE Form #132)

### Exhibit 7 - All-State Long Form of Contract - Continued

**31. Realtor's Commission.** The Seller agrees to pay the REALTOR(s) a commission for services rendered in procuring this sale as follows:

Name of REALTOR

Commission

Address

Tel. No.

Fax No.

Name of REALTOR

Commission

Address

Tel. No.

Fax No.

This commission will not be earned until the title is transferred and the purchase price is paid. This commission will be paid at the closing.

**32. Attorney Review (NJAC 11:5-6.2).**

- a) **Study by Attorney.** The Buyer or the Seller may choose to have an attorney study this Contract. If an attorney is consulted, the attorney must complete his or her review of the Contract within a three-day period. This Contract will be legally binding at the end of this three-day period unless an attorney for the Buyer or Seller reviews and disapproves of the Contract.
- b) **Counting the Time.** You count the three days from the date of delivery of the signed Contract to the Buyer and the Seller. You do not count Saturdays, Sundays or legal holidays. The Buyer and the Seller may agree in writing to extend the three-day period for attorney review.
- c) **Notice of Disapproval.** If an attorney for the Buyer or the Seller reviews and disapproves of this Contract, the attorney must notify the Broker(s) and the other party named in this Contract within the three-day period. Otherwise this Contract will be legally binding as written. The attorney must send the notice of disapproval to the Broker(s) by certified mail or by delivering it personally. The certified letter will be effective upon sending. The personal delivery will be effective upon delivery to the Broker's office. The attorney may, but need not, inform the Broker(s) of any suggested revisions in the Contract that would make it satisfactory.
- d) The names and full addresses of all persons to whom a Notice of Disapproval must be sent in order to be effective as provided in item "c" above of this Attorney Review Provision are as indicated below.

**SIGNED AND AGREED TO BY:**

Witnessed or Attested by:

Date Signed:

As to Buyer(s)

Buyer

Buyer

As to Seller(s)

Seller

Seller

**EXHIBIT 8 - RIDER TO ALL-STATE LONG FORM OF CONTRACT (PURCHASER)**

**PURCHASER'S RIDER TO ALL-STATE LONG FORM**

1. **Usage of Terms.** This Rider is intended to be attached to and supplement the terms of the preprinted Contract for Sale of Real Estate to which it is annexed. The preprinted Contract shall be referred to as "Contract." This Rider shall be referred to as "Rider." The Contract and Rider shall be referred to from time to time collectively as "Agreement." All references in the Contract to a Contract shall be references to the "Agreement." In the event of any conflict or inconsistency between the Contract and Rider, the Rider shall control.

2. **Deposit Monies.** By way of supplement to Paragraph 5 of the Contract concerning deposit monies, all deposit monies paid by buyer shall be held by the attorney for Seller in escrow until closing of title in an interest-bearing account located in New Jersey. The interest earned on the deposit monies shall be paid to the party entitled to receive the deposit. The Seller's Social Security Number is \_\_\_\_\_. The Buyer's Social Security Number is \_\_\_\_\_. At closing of title, the Buyer shall receive a credit as against the purchase price for the entire amount of the deposit, but not the interest. If this Agreement is terminated prior to closing without default of either party in accordance with its terms, then the deposit, together with interest, shall be repaid to Buyer. If, as a result of an allegation of default, one party objects to the other party receiving the deposit, then the attorney for Seller shall continue to hold the deposit monies paid by Buyer, together with all interest earned thereon, in escrow, until the disposition of said deposit monies is agreed to by the parties, in writing, or until otherwise directed by a court of competent jurisdiction. Notwithstanding Seller's attorney's role as escrow agent for Seller and Buyer, in the event of any dispute between Seller and Buyer, provided Seller's attorney retains the deposit monies as aforesaid, Seller's attorney shall be entitled to represent the Seller in such dispute. The parties agree to hold Seller's attorney harmless in connection with its role as escrow agent hereunder, except in connection with the Seller's attorney's negligence or willful failure of default.

3. **Mortgage Contingency.** By way of supplement to Paragraph 6 of the Contract concerning mortgage contingency, if on \_\_\_\_\_, \_\_\_\_\_, the Buyer has not advised Seller, in writing, that the mortgage contingency has been satisfied or has not advised Seller, in writing, that this Agreement is terminated by reason of non-satisfaction of the mortgage contingency, and if on \_\_\_\_\_, \_\_\_\_\_, the Seller has not advised Buyer, in writing, that this Agreement has been terminated by reason of non-satisfaction of the mortgage contingency, then the mortgage contingency shall continue until the earlier of Buyer notifying Seller, in writing, that the contingency has been satisfied or that there has been a failure of contingency, or Seller notifying Buyer, in writing, that there has been a failure of contingency.

4. **Place of Closing.** By way of supplement to Paragraph 7 of the Contract, the parties hereto agree that closing will take place in Buyer's attorney's New Jersey office to accommodate Buyer in connection with the closing of the mortgage loan.

**Exhibit 8 - Rider to All-State Long Form of Contract (Purchaser) - Continued**

5. **Further Documentation.** By way of supplement to Paragraph 8 of the Contract, Seller shall also execute a survey affidavit of no change if requested by Buyer, which affidavit shall be prepared in blank by Buyer. Seller shall also execute such other documents as are reasonably requested by Buyer's title insurance company to remove non-permitted exceptions to title. Both parties agree to execute any document reasonably required by Seller's attorney to complete any Internal Revenue reporting forms.

6. **Type of Deed.** By way of supplement to Paragraph 9 of the Contract, Seller shall convey title by bargain and sale deed with covenant against grantor's acts, unless Seller has received a warranty deed. In that event, Seller shall convey title by warranty deed.

7. **Closing Documents.** Not less than one week prior to the date set for closing of title, Seller shall cause to be forwarded to Buyer's attorney copies of the proposed Deed, Affidavit of Title, and Corporate Resolution, if applicable, and such other documents as are required from Seller under the terms of this Agreement.

8. **Physical Condition of the Property.** By way of supplement to Paragraph 11 of the Contract, Seller agrees that in consideration of Buyer's purchase of the premises in an As Is condition, Seller has agreed to allow Buyer such home inspection and termite contingencies as are described elsewhere in this Agreement. Seller agrees that the appliances, notwithstanding the foregoing representation, shall be in the same working order on the date of closing as they are at the inspection, wear and tear excepted, and that Buyer's willingness to proceed after inspection shall constitute Buyer's acceptance of the condition of the premises in its state as of the date of inspection. None of the representations of Seller in connection with the condition of the property shall survive closing of title. In the event Buyer terminates this Agreement for failure of any inspection, as a condition of Buyer's receipt of the deposit, Buyer shall be required to forward to Seller a complete copy of such inspection.

9. **Personalty and Fixtures.** By way of supplement to Paragraph 10 of the Contract, concerning personal property and fixtures, Seller represents that all personalty and fixtures which are included in the sale are owned free and clear of all liens and encumbrances.

10. **Seller Representations.** By way of further supplement to Paragraph 11 of the Contract, and notwithstanding anything to the contrary therein stated, Seller represents that all personalty and fixtures included in the sale, including all appliances, the plumbing, HVAC and the electrical and mechanical systems are, and will be at the time of closing, in good working order and that the roof and basement are, and at the time of closing will be, free of water leakage or seepage.

If there are any required warranties or guaranties covering personal property, fixtures and appliances included in this sale, Seller shall turn over and assign such to Buyer at closing. Buyer shall prepare a form of assignment for Seller's execution. Seller makes no representations that such warranties or guaranties are assignable.

**Exhibit 8 - Rider to All-State Long Form of Contract (Purchaser) - Continued**

11. **Survey.** Buyer shall have the right, at its sole cost and expense, to obtain a new survey of the property. Provided such survey depicts the property and is certified to Seller, Seller shall utilize the legal description drawn in accordance with such survey in the Deed provided for in this Agreement. Buyer shall provide Seller with such legal description and a copy of the survey not less than one week prior to the date set for closing of title.

12. **House Inspection.** The Buyer is hereby granted the right, at its sole cost and expense, to have the property inspected by a home inspection service to determine the overall condition of the property, the structural integrity of all improvements, the adequacy and operational status of the plumbing, heating, electrical and air conditioning, and mechanical systems at the property and to determine if there are any structural defects or water leaks at the property. If the Buyer chooses to have this inspection, the inspection must be completed within fifteen (15) days of the date hereof. If the results of this inspection prove unsatisfactory to Buyer, Buyer may terminate this Agreement within the fifteen (15) day period. In the event the Buyer terminates this Agreement, all deposit monies then held, together with all interest earned thereon, shall immediately be returned to the Buyer and this Agreement shall be null and void and neither party shall have any further liability to the other.

13. **Title Matters.** By way of supplement to Paragraphs 8, 25, 16 and 22 of the Contract, Seller agrees to deliver title which is good, marketable and insurable, with title valid of record, subject only to such exceptions as are shown in Paragraph 16. As soon as possible after satisfaction of the house inspection and termite contingency, Buyer shall order a commitment to insure title from a title insurance company licensed to do business in the State of New Jersey of Buyer's choice. Buyer shall advise Seller, in writing, of any defects in title which are not permitted exceptions or which otherwise constitute defects to the state of title required in this Agreement. Seller shall remove or cure such defects within thirty (30) days of Buyer's notification to Seller of such defects. If Seller is unable to remove or cure such defects, Seller shall advise Buyer, in writing. In such event Buyer shall have the right to either (a) declare the Agreement null and void or (b) extend the time of closing to allow Seller reasonable additional time to remove such defects. In the event Buyer allows Seller additional time within which to cure or remove such defects and Seller is not able to do so Buyer may (a) declare the Agreement null and void or (b) proceed to closing of title either without a reduction in the purchase price or with a reduction agreed to between Buyer and Seller. If Buyer elects to declare this Agreement null and void, all deposit monies, together with all interest earned thereon, shall immediately be repaid to Buyer and Seller shall reimburse Buyer for Buyer's actual title search and costs survey costs, if any. Upon payment of such sums to Buyer and return of deposit monies, this Agreement shall be null and void and neither party shall have any further liability to the other.

**Exhibit 8 - Rider to All-State Long Form of Contract (Purchaser) - Continued**

14. **Termite Inspection.** By way of supplement to Paragraph 18 of the Contract concerning the termite inspection, the parties agree that if there is any evidence of termites or wood destroying insects, or damage from them, then the Seller shall be responsible for the first \$1,000.00 of the cost to connect and repair same. In the event that the cost of the correction or repair shall exceed \$1,000.00, then the Seller shall have the option of paying the excess cost for correcting or of refusing to do so. In the event that the Seller refuses to pay the excess cost for repairs or treatment, the Buyer shall have the option of paying for such repair or treatment in excess of \$1,000.00 or terminating this Agreement. In the event the Buyer terminates this Agreement, all deposit monies then held, together with all interest earned thereon, shall immediately be returned to the Buyer and this Agreement shall be null and void and neither party shall have any further liability to the other.

15. **Notices.** By way of supplement to Paragraph 29 of the Contract, notices shall be deemed given when received in connection with personal delivery, the next day when placed in the hands of a recognized overnight courier or three (3) days after placed in the U.S. mails when given by certified mail, return receipt requested.

16. **Time Periods.** With respect to any time period set forth in this Agreement which is established by reference to "the date hereof," "from the date hereof" or similar statement, the parties agree that such time period shall be calculated from the date of delivery of the signed Agreement to Buyer and Seller after final execution and dating by the last signatory to this Agreement, including execution of the Rider, exhibits, if any, and initialing and dating of any changes thereto.

17. **Real Estate Brokerage Commissions.** Buyer represents that in connection with the negotiation of this Agreement it has utilized the services of \_\_\_\_\_. Seller represents that it shall pay to \_\_\_\_\_ broker, a commission equal to \_\_\_\_\_ percent of the purchase price. The parties hereto agree to indemnify and hold each other harmless for any loss, damage, judgment, claim, liability and expense, including legal fees, if the representation of either party proves to be untrue, resulting in the foregoing damage to either party.

18. **Loan of Documents.** The Seller shall loan to Buyer within ten (10) days of the date hereof all searches, deeds, maps, surveys, title papers and title binders in the possession and control of Seller. If so requested by Seller, all such documents so loaned to Buyer shall be returned to Seller, at the time of closing.

19. **Survival.** Wherever the context of any provision of this Agreement allows, expressly provides, or reasonably implies a continuing obligation, unless expressed to the contrary, then the provision shall survive the closing of title and shall not merge into the deed delivered at closing.

20. **Applicable Law.** The Buyer and Seller agree that this Agreement shall be governed and construed in accordance with the laws of the State of New Jersey.

**Exhibit 8 - Rider to All-State Long Form of Contract (Purchaser) - Continued**

21. **Realty Transfer Fees.** The Seller will be responsible for all real estate transfer tax fees imposed by the State of New Jersey, in connection with the recording of the deed.

22. **Recording of Contract Prohibited.** The Buyer agrees not to record this Agreement or any memorandum of this Agreement. If the Buyer breaks this promise, the Seller may declare this Agreement to be in default.

23. **Assignment.** The Buyer may not transfer the Buyer's rights under this Agreement without the prior written consent of the Seller.

24. **Condition of Premises at Closing.** Without limiting any warranties, representations or obligations of Seller herein expressed, Seller agrees at closing that it shall deliver the premises in "broom clean" condition, having removed all furniture, furnishings and personal articles which are not included in the sale.

25. **Mortgage Liens.** Seller agrees that Buyer shall be entitled to deduct from the purchase price due at closing all sums necessary to pay off existing mortgages. If such sums are insufficient, Seller shall present a bank or certified check in form and amount reasonably satisfactory to Buyer's title insurance company sufficient to insure the payoff of existing liens. Seller agrees that notwithstanding any deduction on the closing statement executed at closing which reflects amounts due to pay off liens which are based upon a payoff statement, Seller shall remain liable after closing if any additional sums are needed. Seller further agrees that if there are mortgages held by non-institutional lenders, then Seller shall present at closing the original mortgages duly endorsed for cancellation or original executed discharges in recordable form.

WITNESS:

\_\_\_\_\_  
(as to Sellers)

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Seller

\_\_\_\_\_  
(as to Buyers)

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Buyer

**EXHIBIT 9 - RIDER TO ALL-STATE LONG FORM OF CONTRACT (SELLER)**

**SELLER'S RIDER TO ALL-STATE LONG OR SHORT FORM**

1. **Usage of Terms.** This Rider is intended to be attached to and supplement the terms of the preprinted Contract for Sale of Real Estate to which it is annexed. The Rider shall be referred to as "Rider." The Contract and Rider shall be referred to, from time to time, collectively, as "Agreement". All references in the Contract to a contract shall be references to the Agreement. In the event of any conflict between the Contract and Rider, the Rider shall control.

2. **Seller's Statement.** By way of supplement to Paragraphs \_\_\_, and \_\_\_, and any other paragraph of the Contract which contains language such as "the Seller states. . .," such statements shall be read as if the Contract provides "Seller states, to the best of its knowledge,..."

3. **Default by Buyer-Liquidated Damages.** This Agreement contains the Buyer's promises to do or not do various things. Failure to keep these promises within designated time periods, if any are specified, is called a "default" or "breach of contract."

The Buyer and the Seller specifically agree that if the Buyer commits or permits a default, the damages which the Seller will suffer cannot be calculated in advance with any degree of mathematical certainty. However, in good faith, the Buyer and the Seller have agreed to estimate the amount of such damages which will reasonably compensate the Seller for a default. This is called "liquidated damages." If the Buyer commits or permits a default, the Seller may choose to terminate this Agreement or may pursue any other remedy permitted under law. If the Seller terminates this Agreement, the Buyer will no longer have any rights under this Agreement or with respect to the property. Upon termination, the Seller will be entitled to liquidated damages in an amount equal to percent of the total purchase price of the property. The Seller may retain the deposit monies paid by the Buyer up to that sum and will promptly return any excess to the Buyer. If the deposit monies are less than that sum, the Seller may institute legal proceedings to recover the remaining amount due.

WITNESS:

\_\_\_\_\_  
(as to Sellers)

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Seller

\_\_\_\_\_  
(as to Buyers)

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Buyer

## **Section 3.2 Real Estate Broker Preparation**

### **Section 3.2.1 Attorney Review**

Because of the likelihood that real estate brokers will have been involved in the listing of the property on behalf of the seller and procuring a purchaser for the property, the role of the attorney is likely to begin with the review of a contract which has been prepared by one of the real estate brokers involved in the transaction. Exhibit 10 is the standard form of real estate sales contract of the New Jersey Association of REALTORS®. Exhibit 11 is another form of broker's contract setting forth different terms and conditions for consideration.

All contracts prepared by brokers allow for a three-day period for the review of the contract by either the attorney for the seller or the purchaser. In *N.J. State Bar Ass'n. v. N.J. Ass'n of Realtor Bds.*, 93 N.J. 470 (1983), the Supreme Court approved a settlement between the State's attorneys and brokers requiring every contract of sale prepared by a broker to begin with the following clause:

THIS IS A LEGALLY BINDING CONTRACT THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL THE CONTRACT. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS. *Id.* at 475.

Once the signed contract has been delivered to the purchaser and seller, they have three days, not including Saturdays, Sundays or legal holidays, before the contract automatically becomes "legally binding...unless an attorney for the Buyer or the Seller reviews and disapproves of the contract." *Id.* at 475-76.

Pursuant to the Court's consent judgment, if the attorney for either party disapproves of the contract, the attorney must notify both the broker(s) and the other party within the three day period. This notice may be personally delivered or be sent by certified mail or by telegram. Notice by mail or telegram is effective upon mailing and notice by personal delivery is effective upon delivery to the broker's office. In practice, notice to the "other party" is given to that party's attorney in light of that party's representation by legal counsel; however, in order to comply with the strict terms of the contract, notice should be directed to the party, as well as that party's attorney and the broker(s). An attorney asked to review a contract should realize that the client expects the review to be a priority so that the terms of the contract may be finalized and become binding. If the attorney foresees any delay in the completion of the review and the submission of a response to the other attorney within the three day period, an extension in time should be requested from the other attorney by telephone and confirmed in writing.

## EXHIBIT 10 - NEW JERSEY ASSOCIATION OF REALTORS CONTRACT

### NOTICE

#### TO BUYER AND SELLER

#### READ THIS NOTICE BEFORE SIGNING THE CONTRACT

The Law requires real estate brokers to give you the following information before you sign this contract. It requires us to tell you that you must read all of it before you sign. The purpose is to help you in this purchase or sale.

1) As a real estate broker, I represent: ☐ the seller, not the buyer; ☐ the buyer, not the seller; ☐ both the seller and the buyer; ☐ neither the seller nor the buyer. The title company does not represent either the seller or the buyer.

2) You will not get any legal advice unless you have your own lawyer. Neither I nor anyone from the title company can give legal advice to either the buyer or the seller. If you do not hire a lawyer, no one will represent you in legal matters now or at the closing. Neither I nor the title company will represent you in those matters.

3) The contract is the most important part of the transaction. It determines your rights, risks, and obligations. Signing the contract is a big step. A lawyer would review the contract, help you to understand it, and to negotiate its terms.

4) The contract becomes final and binding unless your lawyer cancels it within the following three business days. If you do not have a lawyer, you cannot change or cancel the contract unless the other party agrees. Neither can the real estate broker nor the title insurance company change the contract.

5) Another important service of a lawyer is to order a survey, title report, or other important reports. The lawyer will review them and help to resolve any questions that may arise about the ownership and condition of the property. These reports and survey can cost you a lot of money. A lawyer will also prepare the documents needed to close title and represent you at the closing.

6) A buyer without a lawyer runs special risks. Only a lawyer can advise a buyer about what to do if problems arise concerning the purchase of this property. The problems may be about the seller's title, the size and shape of the property, or other matters that may affect the value of the property. If either the broker or the title company knows about the problems, they should tell you. But they may not recognize the problem, see it from your point of view, or know what to do. Ordinarily, the broker and the title company have an interest in seeing that the sale is completed, because only then do they usually receive their commissions. So, their interests may differ from yours.

7) Whether you retain a lawyer is up to you. It is your decision. The purpose of this notice is to make sure that you have the information needed to make your decision.

Seller

Buyer

Seller

Buyer

Date

Date

Selling Broker

Date

NJAR® Form-118-10/12 Page 1 of 10

Serial# 097139-200138-3870291

Prepared by: Barry Goodman | Greenbaum, Rowe, Smith | bgoodman@greenbaumlaw.com | 7325495600

formsimplicity

Exhibit 10 - New Jersey Association of REALTORS® Contract - Continued



NEW JERSEY ASSOCIATION OF REALTORS® STANDARD FORM OF  
REAL ESTATE CONTRACT

©1996 New Jersey Association of REALTORS®, Inc.  
THIS FORM MAY BE USED ONLY IN THE SALE OF A ONE TO FOUR FAMILY RESIDENTIAL PROPERTY OR VACANT ONE FAMILY LOTS.  
THIS FORM IS SUITABLE FOR USE ONLY WHERE THE SELLER HAS PREVIOUSLY EXECUTED A WRITTEN LISTING AGREEMENT.



THIS IS A LEGALLY BINDING CONTRACT THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS.  
DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND/OR CANCEL  
THE CONTRACT. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.

CONTRACT OF SALE

1. PURCHASE AGREEMENT AND PROPERTY DESCRIPTION:

\_\_\_\_\_, Buyer,  
whose address is \_\_\_\_\_

AGREES TO PURCHASE FROM

\_\_\_\_\_, Seller,  
whose address is \_\_\_\_\_

THROUGH THE BROKER(S) NAMED IN THIS AGREEMENT AT THE PRICE AND TERMS STATED BELOW, THE FOLLOWING PROPERTY:

Property Address: \_\_\_\_\_

Shown on the municipal tax map of \_\_\_\_\_ County \_\_\_\_\_

As Lot \_\_\_\_\_ Block \_\_\_\_\_ Approximate size of lot \_\_\_\_\_

THE WORDS "BUYER" AND "SELLER" INCLUDE ALL BUYERS AND SELLERS LISTED ABOVE.

2. PURCHASE PRICE: THE TOTAL PURCHASE PRICE IS: \$ \_\_\_\_\_

3. MANNER OF PAYMENT:

(A) Deposit paid by Buyer on signing of this Agreement to ☐ Listing Broker or ☐ Participating Broker, by ☐ cash or ☐ check, for which this is a receipt: \$ \_\_\_\_\_

(B) Additional deposit to be paid by Buyer on or before \_\_\_\_\_ (date): \$ \_\_\_\_\_

All initial and additional deposit monies paid by the Buyer shall be held in escrow in the NON-INTEREST BEARING TRUST ACCOUNT of \_\_\_\_\_, Escrowee, until closing of title, at which time all monies shall be paid over to the Seller. The deposit monies shall not be paid over to the Seller prior to the closing of title, unless agreed in writing by both the Buyer and Seller. In the event the Buyer and Seller cannot agree on the disbursement of these escrow monies, the Escrowee may place the deposit monies in Court requesting the Court to resolve the dispute.

(C) IF PERFORMANCE BY BUYER IS CONTINGENT UPON OBTAINING A MORTGAGE.

The Buyer agrees to apply immediately for a mortgage loan through any lending institution of the Buyer's choice or the office of the Listing Broker or the Participating Broker. The application shall be furnished by the Buyer in writing on an application form prescribed by the lending institution to which the application shall be submitted. Buyer shall also furnish, in a timely manner, such other documents and information as is usually required by said lending institution. Failure of Buyer to comply with the foregoing, in good faith, shall be deemed a breach of this Contract of Sale. The amount of mortgage loan required by the Buyer is \$ \_\_\_\_\_ and will be what is commonly known as the ☐ (F.H.A.) ☐ (V.A.) ☐ (Conventional) ☐ (A.R.M.)

Buyer's  
Initials: \_\_\_\_\_

Seller's  
Initials: \_\_\_\_\_

**Exhibit 10 - New Jersey Association of REALTORS® Contract - Continued**

48 \_\_\_\_\_ year direct reduction plan with interest at not more than \_\_\_\_\_ % and not more than  
 49 \_\_\_\_\_ Points. Buyer agrees to pay not more than \_\_\_\_\_ Points. Seller agrees  
 50 to pay not more than \_\_\_\_\_ Points. **IF THE MORTGAGE LOAN HAS NOT BEEN**  
 51 **ARRANGED, OR IF THE BUYER HAS NOT NOTIFIED SELLER OF BUYER'S DECISION TO**  
 52 **COMPLETE THE TRANSACTION WITHOUT OBTAINING A MORTGAGE COMMITMENT,**  
 53 **ON OR BEFORE \_\_\_\_\_ (DATE) THEN EITHER BUYER OR**  
 54 **SELLER MAY VOID THIS AGREEMENT BY WRITTEN NOTICE TO THE OTHER PARTY.** The  
 55 method of notifying the other party shall be in accordance with Section 21 of the Agreement. \$ \_\_\_\_\_  
 56  
 57 (D) **BALANCE OF PURCHASE PRICE.** The balance of the purchase price shall be paid by cash,  
 58 certified check or Attorney's Trust Account check on delivery of a \_\_\_\_\_  
 59 (Type of Deed). Title to the Property will be free from all claims or rights of others, except as described  
 60 in Sections 6, 7 and 8 of this Agreement. The deed shall contain the full legal description of the Property.  
 61 Payment of the balance of the purchase price by Buyer and delivery of the deed and affidavit of title by Seller  
 62 occur at the "Closing." The Closing will take place on or before \_\_\_\_\_, at  
 63 the office of \_\_\_\_\_ or such other place as the Seller and the Buyer  
 64 may agree. \$ \_\_\_\_\_  
 65  
 66 **TOTAL PURCHASE PRICE:** \$ \_\_\_\_\_  
 67  
 68 **4. BUYER FINANCIALLY ABLE TO CLOSE:**  
 69 Buyer represents that Buyer has sufficient cash available (together with the mortgage referred to in Section 3) to complete  
 70 this purchase.  
 71  
 72 **5. ACCURATE DISCLOSURE OF SELLING PRICE:**  
 73 The Buyer and Seller certify that this Contract accurately reflects the gross sale price as indicated on line sixty-six (66) of this Contract.  
 74 The Buyer and Seller **UNDERSTAND AND AGREE** that **THIS INFORMATION SHALL BE DISCLOSED** to the Internal Revenue  
 75 Service as required by law.  
 76  
 77 **6. TENANTS, IF ANY:**  
 78 This sale is made subject to the following tenancies. The Seller warrants that these tenancies are not in violation of existing Municipal,  
 79 County, State or Federal rules, regulations or laws.  
 80 

NAME	LOCATION	RENT	SECURITY DEPOSIT	TERM

 81  
 82  
 83  
 84  
 85 **7. QUALITY OF TITLE:**  
 86 This sale will be subject to easements and restrictions of record, if any, and such state of facts as an accurate survey might disclose.  
 87 Generally, an easement is a right of a person other than the owner of Property to use a portion of the Property for a special purpose. A  
 88 restriction is a recorded limitation on the manner in which a Property owner may use his/her/their Property. The Buyer does not have to  
 89 complete the purchase, however, if any easement, restriction, or facts disclosed by an accurate survey would substantially interfere with  
 90 the use of the Property for residential purposes. The sale will also be made subject to applicable zoning ordinances.  
 91 Title to the Property shall be good, marketable and insurable, at regular rates, by any title insurance company licensed to do business in  
 92 the State of New Jersey, subject only to the claims and rights described in this section and Section 6. Buyer agrees to order title insurance  
 93 commitment (title search) and survey if necessary and to furnish copies to Seller. In the event Seller's title shall contain any exceptions  
 94 other than as set forth in this paragraph, Buyer shall notify Seller and Seller shall have 30 days within which to eliminate those exceptions.  
 95 If Seller cannot remove those exceptions, Buyer shall have the option to void this Contract or to proceed with closing of title without  
 96 any reduction in the purchase price. If Buyer elects to void this Contract, as provided in the preceding sentence, the deposit money shall  
 97 be returned to Buyer and Seller shall reimburse Buyer for search and survey expenses not exceeding \_\_\_\_\_  
 98 dollars.  
 99  
 100 **8. BUILDING AND ZONING LAWS:**  
 101 The Buyer intends to use the Property as a \_\_\_\_\_ family home. The Seller states, to the best of the  
 102 Seller's knowledge, that this use does not violate any applicable zoning ordinance, building code or other law. The Seller will pay for and  
 103 obtain Certificate of Occupancy, Certificate of Land Use Compliance or other similar document required by law and will arrange and pay  
 104 for all inspections required to obtain such document. **SELLER AGREES TO CORRECT ALL VIOLATIONS, AT THE SELLER'S**

NJAR® Form-118-10/12 Page 3 of 10

 Serial#: 097139-200138-3570291  
 Prepared by: Barry Goodman | Greenbaum, Rowe, Smith | bgoodman@greenbaumlaw.com | 7325486600

 Buyer's  
 Initials: \_\_\_\_\_

 Seller's  
 Initials: \_\_\_\_\_

formsimplicity

**Exhibit 10 - New Jersey Association of REALTORS® Contract - Continued****OWN EXPENSE, PRIOR TO THE CLOSING OF TITLE.****9. ITEMS INCLUDED IN SALE:**

Gas and electric fixtures, cooking ranges and ovens, hot water heaters, linoleum, T.V. antenna, screens, storm sash, shades, blinds, awnings, radiator covers, heating apparatus and sump pump, if any, except where owned by tenants, are included in this sale. All of the appliances shall be in working order as of the closing of title. **This provision shall not survive closing of title.** This means that the Seller **DOES NOT GUARANTEE** the condition of the appliances **AFTER** the deed and affidavit of title have been delivered to the Buyer at the "Closing". **The following items are also specifically included:**

**10. ITEMS EXCLUDED FROM SALE:****11. ASSESSMENTS:**

All confirmed assessments and all unconfirmed assessments which may be imposed by the municipality for public improvements which have been completed as of the date of Closing are to be paid in full by the Seller or credited to the Buyer at the Closing. A confirmed assessment is a lien (legal claim) against the Property. An unconfirmed assessment is a potential lien (legal claim) which, when approved by the appropriate governmental body, will become a legal claim against the Property.

**12. FINAL INSPECTION:**

Seller agrees to permit the Buyer or the Buyer's duly authorized representative to examine the interior and exterior of the Property at any reasonable time immediately before Closing.

**13. NEW JERSEY HOTEL AND MULTIPLE DWELLING HEALTH AND SAFETY ACT:**

If the New Jersey Hotel and Multiple Dwelling Health and Safety Act applies to the Property, the Seller represents that the Property complies with the requirements of the Act.

**14. NO ASSIGNMENT:**

This Agreement shall not be assigned without the written consent of the Seller. This means that the Buyer may not transfer to anyone else his/her/their rights under this Agreement to buy the Property.

**15. RISK OF LOSS:**

The risk of loss or damage to the Property by fire or otherwise, except ordinary wear and tear, is on the Seller until the Closing.

**16. ADJUSTMENTS AT CLOSING; RIGHTS TO POSSESSION:**

Rents, water charges, sewer charges, real estate taxes, interest on any existing mortgage to be assumed by Buyer, and fuel are to be apportioned as of the date of actual closing of title. The Buyer shall be entitled to possession of the Property and any rents or profits from the Property, immediately upon the delivery of the deed and closing of title. The Seller shall have the privilege of paying off any person with a claim or right affecting the Property from the proceeds of this sale at the time of Closing.

**17. MAINTENANCE AND CONDITION OF PROPERTY:**

The Seller agrees to maintain the grounds, buildings and improvements, in good condition, subject to ordinary wear and tear. The premises shall be in "broom clean" condition and free of debris on the date of Closing. Seller represents that all electrical, plumbing, heating and air conditioning systems (if applicable), together with all fixtures included within the terms of the Agreement now work and shall be in proper working order at the time of Closing. Seller further states, that to the best of Seller's knowledge, there are currently no leaks or seepage in the roof, walls or basement **UNLESS OTHERWISE INDICATED IN THE ADDITIONAL CONTRACTUAL PROVISIONS SECTION (SECTION 36) OF THIS AGREEMENT. ALL REPRESENTATIONS AND/OR STATEMENTS MADE BY THE SELLER, IN THIS SECTION, SHALL NOT SURVIVE THE CLOSING OF TITLE.** This means that the seller **DOES NOT GUARANTEE** the condition of the premises after the deed and affidavit of title have been delivered to the Buyer at the "Closing".

**18. LEAD-BASED PAINT DOCUMENT ACKNOWLEDGMENT: (Applies to dwellings built before 1978)**

Buyer acknowledges receipt of the EPA pamphlet entitled "Protect Your Family From Lead In Your Home." Moreover, a copy of a document entitled "Disclosure of Information and Acknowledgment Lead-Based Paint and Lead-Based Paint Hazards" has been fully completed and signed by Buyer, Seller and Broker(s) and is appended to this Agreement as Addendum "A" and is part of this Agreement.

NJAR® Form-118-10/12 Page 4 of 10

Buyer's  
Initials: \_\_\_\_\_

Seller's  
Initials: \_\_\_\_\_

Serial#: 007139-200139-3670291  
Prepared by: Barry Goodman | Greenbaum, Rowe, Smith | bgoodman@greenbaumrslaw.com | 7325495600

formsimplicity

## Exhibit 10 - New Jersey Association of REALTORS® Contract - Continued

## 19. LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARD CONTINGENCY CLAUSE:

(This paragraph is applicable to all dwellings built prior to 1978. The law requires that unless the Buyer and Seller agree to a longer or shorter period, Seller must allow Buyer a ten-day (10) period within which to complete an inspection and/or risk assessment of the Property. Buyer, however, has the right to waive this clause in its entirety.)

This Agreement is contingent upon an inspection and/or risk assessment (the "Inspection") of the Property by a certified inspector/risk assessor for the presence of lead-based paint and/or lead-based paint hazards. The Inspection shall be ordered and obtained by the Buyer at the Buyer's expense, within ten (10) calendar days after the termination of the Attorney Review period set forth in Section 25 of this Agreement (the "Completion Date"). If the Inspection indicates that no lead-based paint or lead-based paint hazard is present at the Property, this contingency clause shall be deemed to be null and void. If the Inspection indicates that lead-based paint or lead-based paint hazard is present at the Property, this contingency clause will terminate at the time set forth above unless within (5) days from the Completion Date, the Buyer delivers a copy of the inspection and/or risk assessment report to the Seller and Broker(s) and (a) advises Seller and Broker(s), in writing, that Buyer is voiding this Agreement; or (b) delivers to Seller and Broker(s) a written amendment (the "Amendment") to this Agreement listing the specific existing deficiencies and corrections required by the Buyer. The Amendment shall provide that the Seller agrees to (a) correct the deficiencies; and (b) furnish the Buyer with a certification from a certified inspector/risk assessor that the deficiencies have been corrected, before the date of Closing. The Seller shall have \_\_\_\_\_ days after receipt of the Amendment to sign and return it to Buyer or send a written counter-proposal to Buyer. If Seller does not sign and return the Amendment or fails to offer a counter-proposal, this Agreement shall be null and void. In the event Seller offers a counter-proposal, Buyer shall have \_\_\_\_\_ days after receipt of the counter-proposal to accept it. If the Buyer fails to accept the counter-proposal within the time limit provided, this Agreement shall be null and void.

## 20. INSPECTION CONTINGENCY CLAUSE:

## (a) Responsibilities of Home Ownership

The Buyer and Seller acknowledge and agree that because the purchase of a home is one of the most significant investments a person can make in a lifetime, all aspects of this transaction require considerable analysis and investigation by Buyer before closing title to the Property. While the Broker(s) and Salesperson(s) who are involved in this transaction are trained as licensees under the License Law of the State of New Jersey, they readily acknowledge that they have had no special training or experience with respect to the complexities pertaining to the multitude of structural, topographical and environmental components of this Property. For example, and not by way of limitation, the Broker(s) and Salesperson(s) have no special training, knowledge or experience with regard to discovering and/or evaluating physical defects including structural defects, roof, basement, mechanical equipment such as heating, air conditioning, electrical systems, sewage, plumbing, exterior drainage, termite and other types of insect infestation or damage caused by such infestation. Moreover, the Broker(s) and Salesperson(s) similarly have no special training, knowledge or experience with regard to evaluation of possible environmental conditions which might affect the Property pertaining to the dwelling such as the existence of radon gas, formaldehyde gas, airborne asbestos fibers, toxic chemicals, underground storage tanks, lead, mold or other pollutants in the soil, air or water.

## (b) Radon Testing, Reports and Mitigation

(Radon is a radioactive gas which results from the natural breakdown of uranium in soil, rock and water. It has been found in homes all over the United States and is a carcinogen. For more information on radon go to [www.epa.gov/radon/pubs/citguide.html](http://www.epa.gov/radon/pubs/citguide.html) and [www.nj.gov/dep/rpp/radon](http://www.nj.gov/dep/rpp/radon) or call the NJ Radon Hot Line at 1-800-648-0394 or 1-609-984-5425)

If the Property has been tested for radon prior to the date of this Agreement, Seller agrees to provide to the Buyer, at the time of the execution of this Agreement, a copy of the result of the radon test(s) and evidence of any subsequent radon mitigation or treatment of the Property. In any event, Buyer shall have the right to conduct a radon inspection/test as provided and subject to the conditions set forth in subparagraph (C) below. If any test results furnished or obtained by Buyer indicate a concentration level of 4 picocuries per liter (4.0 pCi/L) or more in the subject dwelling, Buyer shall then have the right to void this Agreement by notifying the Seller in writing within seven (7) calendar days of the receipt of any such report. For the purposes of this Paragraph 20, Seller and Buyer agree that in the event a radon gas concentration level in the subject dwelling is determined to be less than 4 picocuries per liter (4.0 pCi/L) without any remediation, such level of radon gas concentration shall be deemed to be an acceptable level ("Acceptable Level") for the purposes of this Agreement. Under those circumstances, the Seller shall be under no obligation to remediate, and this contingency clause as it relates to radon shall be deemed fully satisfied.

If the Buyer's qualified inspector reports that the radon gas concentration level in the subject dwelling is four picocuries per liter (4.0 pCi/L) or more, Seller shall have a seven (7) calendar day period after receipt of such report to notify Buyer in writing that the Seller agrees to remediate the gas concentration to an Acceptable Level (unless the Buyer has voided this Agreement as provided in the preceding paragraph). Upon such remediation, the contingency in this Agreement which relates to radon shall be deemed fully satisfied. If Seller fails to notify Buyer of Seller's agreement to so remediate, such failure to so notify shall be deemed to be a refusal by Seller to remediate the radon level to an Acceptable Level, and Buyer shall then have the right to void this Agreement by notifying the Seller in writing within seven (7) calendar days thereafter. If Buyer shall fail to void this Contract within the seven (7) day period, the Buyer shall have waived his right to cancel this Contract, and this Contract shall remain in full force and effect, and Seller shall be under no obligation

Buyer's  
Initials: \_\_\_\_\_

Seller's  
Initials: \_\_\_\_\_

formsimplicity

**Exhibit 10 - New Jersey Association of REALTORS® Contract - Continued**

to remediate the radon gas concentration. If Seller shall agree to remediate the radon to an Acceptable Level, such remediation and associated testing shall be completed by Seller prior to the closing of title.

**(c) Buyer's Rights to Inspections**

The Buyer acknowledges that the Property is being sold in an "AS IS" condition and that this Agreement is entered into based upon the knowledge of the Buyer as to the value of the land and whatever buildings are upon the Property, and not on any representation made by the Seller, the named Broker(s) or their agents as to character or quality. Therefore, the Buyer, at the Buyer's sole cost and expense, is granted the right to have the dwelling and all other aspects of the Property, inspected and evaluated by "qualified inspectors" (as the term is defined in paragraph (f) below) for the purpose of determining the existence of any physical defects or environmental conditions such as outlined above. If Buyer chooses to make the inspections referred to in this paragraph, such inspections must be completed, and written reports must be furnished to the Seller listed in Section 1 and Broker(s) listed in Section 27 of this Agreement within \_\_\_\_\_ calendar days after the end of the Attorney Review Period set forth in Section 25 of this Agreement. If Buyer shall fail to furnish such written reports to the Seller and Broker(s) within the time period specified in this paragraph, this contingency clause shall be deemed waived by Buyer, and the Property shall be deemed acceptable by Buyer. The time period for furnishing the inspection reports is referred to as the "Inspection Time Period."

**(d) Responsibilities to Cure**

If any physical defects, or environmental conditions (other than radon) are reported by the qualified inspectors to the Seller within the Inspection Time Period, the Seller shall then have seven (7) calendar days after the receipt of such reports to notify the Buyer in writing that the Seller shall correct or cure any of the defects set forth in such reports. If Seller shall fail to notify Buyer of Seller's agreement to so cure and correct, such failure to so notify shall be deemed to be a refusal by Seller to cure or correct such defects. If Seller shall fail to agree to cure or correct such defects within said seven (7) day period, or if any part of the dwelling is found to be located within a flood hazard area, or if the environmental condition at the Property (other than radon) is incurable and is of such significance as to unreasonably endanger the health of the Buyer, the Buyer shall then have the right to void this Contract by notifying the Seller in writing within seven (7) calendar days thereafter. If Buyer shall fail to void this Contract within the seven (7) day period, the Buyer shall have waived his right to cancel this Contract and this Contract shall remain in full force, and Seller shall be under no obligation to correct or cure any of the defects set forth in the inspections. If Seller shall agree to correct or cure such defects, all such repair work shall be completed by Seller prior to the closing of title. Radon at the Property shall be governed by the provisions of Paragraph (b), above.

**(e) Flood Hazard Area (check if not applicable ☐ )**

Buyer acknowledges that the Property is within a flood hazard area, and Buyer waives Buyer's right to void this Agreement for such reason.

**(f) Qualifications of Inspectors**

Where the term "qualified inspectors" is used in this Contract, it is intended to refer to persons or businesses that are licensed or certified by the State of New Jersey for such purpose.

**21. NOTICES:**

All notices as required in this Contract must be in writing. All notices shall be by certified mail, by telegram, telefax or by delivering it personally. The telegram, certified letter or telefax will be effective upon sending. The personal delivery will be effective upon delivery to the other party. Notices to the Seller shall be addressed to the address that appears on line thirteen (13) of this Contract. Notice to the Buyer shall be addressed to the address that appears on line five (5) of this Contract.

**22. MEGAN'S LAW STATEMENT:**

UNDER NEW JERSEY LAW, THE COUNTY PROSECUTOR DETERMINES WHETHER AND HOW TO PROVIDE NOTICE OF THE PRESENCE OF CONVICTED SEX OFFENDERS IN AN AREA. IN THEIR PROFESSIONAL CAPACITY, REAL ESTATE LICENSEES ARE NOT ENTITLED TO NOTIFICATION BY THE COUNTY PROSECUTOR UNDER MEGAN'S LAW AND ARE UNABLE TO OBTAIN SUCH INFORMATION FOR YOU. UPON CLOSING, THE COUNTY PROSECUTOR MAY BE CONTACTED FOR SUCH FURTHER INFORMATION AS MAY BE DISCLOSABLE TO YOU.

**23. NOTICE ON OFF-SITE CONDITIONS: (Applicable to all resale transactions)**

PURSUANT TO THE NEW RESIDENTIAL CONSTRUCTION OFF-SITE CONDITIONS DISCLOSURE ACT, P.L. 1995, C. 253, THE CLERKS OF MUNICIPALITIES IN NEW JERSEY MAINTAIN LISTS OF OFF-SITE CONDITIONS WHICH MAY AFFECT THE VALUE OF RESIDENTIAL PROPERTIES IN THE VICINITY OF THE OFF-SITE CONDITION. PURCHASERS MAY EXAMINE THE LISTS AND ARE ENCOURAGED TO INDEPENDENTLY INVESTIGATE THE AREA SURROUNDING THIS PROPERTY IN ORDER TO BECOME FAMILIAR WITH ANY OFF-SITE CONDITIONS WHICH MAY AFFECT THE VALUE OF THE PROPERTY. IN CASES WHERE A PROPERTY IS LOCATED NEAR THE

**Exhibit 10 - New Jersey Association of REALTORS® Contract - Continued**

**BORDER OF A MUNICIPALITY, PURCHASERS MAY WISH TO ALSO EXAMINE THE LIST MAINTAINED BY THE NEIGHBORING MUNICIPALITY.**

**24. BULK SALES:**

The New Jersey Bulk Sales Law, N.J.S.A. 54:50-38, (the "Law") applies to the sale of certain residential property. Under the Law, the Buyer may be liable for taxes owed by the Seller if the Law applies and the Buyer does not deliver to the Director of the New Jersey Division of Taxation (the "Division") a copy of this Contract and a notice on a form required by the Division (the "Tax Form") at least 10 business days prior to the Closing. If the Buyer decides to deliver the Tax Form to the Division, the Seller shall cooperate with the Buyer by promptly providing the Buyer with any information that the Buyer needs to complete and deliver the Tax Form in a timely manner. The Buyer promptly shall deliver to the Seller a copy of any notice that the Buyer receives from the Division in response to the Tax Form.

The Law does not apply to the sale of a simple dwelling house, or the sale or lease of a seasonal rental property, if the Seller is an individual, estate or trust. A simple dwelling house is a one or two family residential building, or a cooperative or condominium unit used as a residential dwelling, none of which has any commercial property. A seasonal rental property is a time share, or a dwelling unit that is rented for residential purposes for a term of not more than 125 consecutive days, by an owner that has a permanent residence elsewhere.

If, prior to the Closing, the Division notifies the Buyer to withhold an amount (the "Tax Amount") from the purchase price proceeds for possible unpaid tax liabilities of the Seller, the Buyer's attorney or the Buyer's title insurance company (the "Escrow Agent") shall withhold the Tax Amount from the closing proceeds and place that amount in escrow (the "Tax Escrow"). If the Tax Amount exceeds the amount of available closing proceeds, the Seller shall bring the deficiency to the Closing and the deficiency shall be added to the Tax Escrow. If the Division directs the Escrow Agent or Buyer to remit funds from the Tax Escrow to the Division or some other entity, the Escrow Agent or Buyer shall do so. The Escrow Agent or Buyer shall only release the Tax Escrow, or the remaining balance thereof, to the Seller (or as otherwise directed by the Division) upon receipt of written notice from the Division that it can be released, and that no liability will be asserted under the Law against the Buyer.

**25. ATTORNEY REVIEW CLAUSE:****(1) Study by Attorney**

The Buyer or the Seller may choose to have an attorney study this Contract. If an attorney is consulted, the attorney must complete his or her review of the Contract within a three-day period. This Contract will be legally binding at the end of this three-day period unless an attorney for the Buyer or the Seller reviews and disapproves of the Contract.

**(2) Counting the Time**

You count the three days from the date of delivery of the signed Contract to the Buyer and Seller. You do not count Saturdays, Sundays or legal holidays. The Buyer and the Seller may agree in writing to extend the three-day period for attorney review.

**(3) Notice of Disapproval**

If an attorney for the Buyer or the Seller reviews and disapproves of this Contract, the attorney must notify the REALTOR®(S) and the other party named in this Contract within the three-day period. Otherwise this Contract will be legally binding as written. The attorney must send the notice of disapproval to the REALTOR®(S) by certified mail, by telegram, or by delivering it personally. The telegram or certified letter will be effective upon sending. The personal delivery will be effective upon delivery to the REALTOR®(S) office. The attorney may also, but need not, inform the REALTOR®(S) of any suggested revision(s) in the Contract that would make it satisfactory.

**26. ENTIRE AGREEMENT; PARTIES LIABLE:**

This Agreement contains the entire agreement of the parties. No representations have been made by any of the parties, the Broker(s) or his/her/their agents except as set forth in this Agreement. This Agreement is binding upon all parties who sign it and all who succeed to their rights and responsibilities.

**27. BROKER'S COMMISSION:**

The commission, in accord with the previously executed listing agreement, shall be due and payable at the time of actual closing of title and payment by Buyer of the purchase consideration for the Property. The Seller hereby authorizes and instructs the Buyer's attorney, or the Buyer's title insurance company or whomever is the disbursing agent to pay the full commission as set forth below to the below mentioned Broker/Brokers out of the proceeds of sale prior to the payment of any such funds to the Seller. Buyer consents to the disbursing agent making the said disbursements.

Listing Broker

COMMISSION IN ACCORD WITH PREVIOUSLY EXECUTED LISTING AGREEMENT, LESS PARTICIPATING BROKER'S COMMISSION (IF ANY)

Address and Telephone #

Buyer's  
Initials:

Seller's  
Initials:

NJAR® Form-118-10/12 Page 7 of 10

Serial#: 097139-200138-3670291

Prepared by: Barry Goodman | Greenbaum, Rowe, Smith | bgoodman@greenbaumlaw.com | 7325495500

form simplicity

**Exhibit 10 - New Jersey Association of REALTORS® Contract - Continued**

335  
336 Participating Broker \_\_\_\_\_ Commission \_\_\_\_\_  
337  
338 Address and Telephone # \_\_\_\_\_  
339  
340 **28. FAILURE OF BUYER OR SELLER TO SETTLE:**  
341 In the event the Seller willfully fails to close title to the Property in accordance with this Contract, the Buyer may commence any legal  
342 or equitable action to which the Buyer may be entitled. In the event the Buyer fails to close title in accordance with this Contract, the  
343 Seller then may commence an action for damages it has suffered, and, in such case, the deposit monies paid on account of the purchase  
344 price shall be applied against such damages. In the event the Seller breaches this Contract, Seller will, nevertheless, be liable to the Broker  
345 for commissions in the amount set forth in this Contract.  
346  
347 **29. CONSUMER INFORMATION STATEMENT ACKNOWLEDGEMENT:**  
348 By signing below the sellers and purchasers acknowledge they received the Consumer Information Statement on New Jersey Real  
349 Estate Relationships from the brokerage firms involved in this transaction prior to the first showing of the property.  
350  
351 **30. DECLARATION OF LICENSEE BUSINESS RELATIONSHIP(S):**  
352  
353 (a) \_\_\_\_\_, (name of firm) AND  
354 \_\_\_\_\_ (name(s) of licensee(s)), AS ITS AUTHORIZED  
355 REPRESENTATIVE(S), ARE WORKING IN THIS TRANSACTION AS (choose one)  
356 ☐ SELLER'S AGENTS ☐ BUYER'S AGENTS ☐ DISCLOSED DUAL AGENTS ☐ TRANSACTION BROKERS.  
357  
358 (b) INFORMATION SUPPLIED BY \_\_\_\_\_ (name of other firm) HAS  
359 INDICATED THAT IT IS OPERATING IN THIS TRANSACTION AS A (choose one)  
360 ☐ SELLER'S AGENTS ☐ BUYER'S AGENTS ☐ DISCLOSED DUAL AGENTS ☐ TRANSACTION BROKERS.  
361  
362  
363 **31. NEW CONSTRUCTION RIDER:**  
364 If the property being sold consists of a lot and a detached single family home (the "House") to be constructed upon the lot by the Seller,  
365 the "Rider To Contract of Sale of Real Estate - New Construction" has been signed by Buyer and Seller and is appended to and made a  
366 part of this Agreement.  
367  
368 **32. NOTICE TO SELLER**  
369 (a) Private Well Testing  
370 (This section is applicable if the property's potable water supply is provided by a private well located on the property (or  
371 the potable water supply is a well that has less than 15 service connections or does not regularly serve an average of at least 25  
372 individuals daily at least 60 days a year).)  
373 Pursuant to the Private Well Testing Act (N.J.S.A. 58:12A-26 to 37) and regulations (N.J.A.C. 7:9E - 3.1 to 5.1), if this Contract is for  
374 the sale of real property whose potable water supply is provided from a private well and the analytical results of prior water tests no longer  
375 are valid, a test on the water supply must be performed by a laboratory certified by NJDEP. Seller agrees to procure the test, at Seller's  
376 sole cost and expense and to provide a copy of the test results to Buyer within seven (7) calendar days after receiving the report(s). Seller  
377 shall order the new test or, if applicable, provide Buyer with the valid prior water test within seven (7) calendar days after the end of the  
378 Attorney Review Period set forth in Section 25 of this Agreement. The test shall cover the parameters set forth in the Act and regulations.  
379 As required in the Act, prior to closing of title, Seller and Buyer shall each certify in writing that they have received and read a copy of  
380 the water test results.  
381 If any of the water tests do not meet applicable standards at the time Seller provides the water test results to the Buyer, Seller shall  
382 notify Buyer, in writing, that Seller agrees to cure or correct said conditions in the water test results. If Seller shall fail to notify Buyer of  
383 Seller's agreement to cure or correct, such failure to so notify shall be deemed to be a refusal by Seller to cure or correct. If Seller shall  
384 fail to agree to cure or correct any of the conditions set forth in the water test results within seven (7) calendar days or if the condition is  
385 incurable and is of such significance as to unreasonably endanger the health of the Buyer, the Buyer shall then have the right to void this  
386 Contract by notifying the Seller in writing within seven (7) calendar days thereafter. If Buyer shall fail to void this Contract within the  
387 seven (7) day period, the Buyer shall have waived his right to cancel this Contract and this Contract shall remain in full force, and the  
388 Seller shall be under no obligation to correct or cure any of the conditions set forth in the water test results. If Seller shall agree to correct  
389 or cure such conditions, all such remediation shall be completed by Seller prior to the closing of title.  
390 (b) Point-of-Entry Treatment (POET) Systems

Buyer's  
Initials: \_\_\_\_\_Seller's  
Initials: \_\_\_\_\_

formsimplicity

**Exhibit 10 - New Jersey Association of REALTORS® Contract - Continued**

Pursuant to N.J.A.C. 7:13-2.5 (c), the seller of a property with a POET system that was installed and maintained at the expense of the Spill Fund must notify the Department of Environmental Protection within 30 days of executing a binding contract that the property is to be sold.

**(c) Cesspool Requirements.**

**(This section is applicable if the Property has a cesspool, except in certain limited circumstances set forth in N.J.A.C. 7:9A-3.16.)**

Pursuant to New Jersey's Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A (the "Standards"), if this Contract is for the sale of real property at which any cesspool, privy, outhouse, latrine or pit toilet (collectively "Cesspool") is located, the Cesspool must be abandoned and replaced with an individual subsurface sewage disposal system at or before the time of the real property transfer, except in limited circumstances.

(i) Seller has represented and continues to represent to Buyer that ☐ no Cesspool is located at or on the Property, or ☐ one or more Cesspools are located at or on the Property. **[If there are one or more Cesspools, then also check EITHER Box 1 or 2 below.]**

1. ☐ Seller agrees that, prior to closing of title and at its sole cost and expense, Seller shall abandon and replace any and all Cesspools located at or on the Property and replace such Cesspools with an individual subsurface sewage disposal system ("System") meeting all the requirements of the Standards. At or prior to closing of title, Seller shall deliver to Buyer a certificate of compliance ("Certificate of Compliance") issued by the administrative authority ("Administrative Authority") (as those terms are defined in N.J.A.C. 7:9A-2.1) with respect to the System. Notwithstanding the foregoing, if the Administrative Authority determines that a fully compliant system cannot be installed at the Property, then Seller shall notify Buyer in writing within three (3) calendar days of its receipt of the Administrative Authority's determination of its intent to install either a nonconforming System or a permanent holding tank, as determined by the Administrative Authority ("Alternate System"), and Buyer shall then have the right to void this Contract by notifying Seller in writing within seven (7) calendar days of receipt of the notice from Seller. If Buyer fails to timely void this Contract, Buyer shall have waived its right to cancel this Contract under this subparagraph, and Seller shall install the Alternate System and, at or prior to closing of title, deliver to Buyer such Certificate of Compliance or other evidence of approval of the Alternate System as may be issued by the Administrative Authority. The delivery of said Certificate of Compliance or other evidence of approval shall be a condition precedent to the closing of title; or

2. ☐ Buyer agrees that, at its sole cost and expense, Buyer shall take all actions necessary to abandon and replace any and all Cesspools located at or on the Property and replace such Cesspools with a System meeting all the requirements of the Standards or an Alternate System. Buyer shall indemnify and hold Seller harmless for any and all costs, damages, claims, fines, penalties and assessments (including but not limited to reasonable attorneys' and experts' fees) arising from Buyer's violation of this paragraph. This paragraph shall survive the Closing.

(ii) If at any time prior to the Closing, either Buyer or Seller becomes aware of any Cesspool at or on the Property that was not disclosed by Seller at or prior to execution of this Contract, the party with knowledge of the newly identified Cesspool shall promptly, but in no event later than three (3) calendar days after receipt of such knowledge, advise the other party of the newly identified Cesspool in writing. In such event, the parties in good faith shall agree, no later than seven (7) calendar days after sending or receiving the written notice of the newly identified Cesspool, or the day preceding the scheduled closing of title, whichever is sooner, to proceed pursuant to Section 32(c) (i) 1 or 2 above or such other agreement as satisfies the Standards, or either party may terminate this Contract.

**33. MEGAN'S LAW REGISTRY:**

Buyer is notified that New Jersey law establishes an Internet Registry of Sex Offenders that may be accessed at [www.njsp.org](http://www.njsp.org).

**34. SMOKE DETECTORS, CARBON MONOXIDE ALARM AND PORTABLE FIRE EXTINGUISHER COMPLIANCE:**

The Certificate of smoke detectors, carbon monoxide alarm and portable fire extinguisher compliance (CSDCMAPFEC) as required by law, shall be the responsibility of the Seller.

**35. NOTICE TO BUYERS CONCERNING INSURANCE:**

Buyers should obtain appropriate casualty and liability insurance for the Property. Your mortgage lender will require that such insurance be in place at time of closing. Occasionally there are issues and delays in obtaining insurance. Be advised that a "binder" is only a temporary commitment to provide insurance coverage and is not an insurance policy. You are therefore urged to contact a licensed insurance agent or broker to assist you in satisfying your insurance requirements.

**36. ADDITIONAL CONTRACTUAL PROVISIONS (IF ANY):**

**Exhibit 10 - New Jersey Association of REALTORS® Contract – Continued**

448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
468  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504

**37. INDEX:**

- |  |  |   |
|--|--|---|
| 1. PURCHASE AGREEMENT & PROPERTY DESCRIPTION           | 14. NO ASSIGNMENT                                | 28. FAILURE OF BUYER OR SELLER TO SETTLE          |
| 2. PURCHASE PRICE                                      | 15. RISK OF LOSS                                 | 29. CONSUMER INFORMATION STATEMENT                |
| 3. MANNER OF PAYMENT                                   | 16. ADJUSTMENTS AT CLOSING; RIGHTS TO POSSESSION | ACKNOWLEDGEMENT                                   |
| 4. BUYER FINANCIALLY ABLE TO CLOSE                     | 17. MAINTENANCE & CONDITION OF PROPERTY          | 30. DECLARATION OF LICENSEE BUSINESS RELATIONSHIP |
| 5. ACCURATE DISCLOSURE OF SELLING PRICE                | 18. LEAD-BASED PAINT DOCUMENT ACKNOWLEDGEMENT    | 31. NEW CONSTRUCTION RIDER                        |
| 6. TENANTS, IF ANY                                     | 19. LEAD-BASED PAINT CONTINGENCY CLAUSE          | 32. NOTICE TO SELLERS                             |
| 7. QUALITY OF TITLE                                    | 20. INSPECTION CONTINGENCY CLAUSE                | 33. MEGAN'S LAW REGISTRY                          |
| 8. BUILDING & ZONING LAWS                              | 21. NOTICES                                      | 34. SMOKE DETECTORS, CARBON MONOXIDE ALARM        |
| 9. ITEMS INCLUDED IN SALE                              | 22. MEGAN'S LAW STATEMENT                        | AND PORTABLE FIRE EXTINGUISHER                    |
| 10. ITEMS EXCLUDED FROM SALE                           | 23. OFF-SITE CONDITIONS                          | 35. NOTICE TO BUYERS CONCERNING INSURANCE         |
| 11. ASSESSMENTS  | 24. BULK SALES                                   | 36. ADDITIONAL CONTRACTUAL PROVISIONS             |
| 12. FINAL INSPECTION                                   | 25. ATTORNEY REVIEW CLAUSE                       | (IF ANY)  |
| 13. NJ HOTEL AND MULTIPLE DWELLING HEALTH & SAFETY ACT | 26. ENTIRE AGREEMENT; PARTIES LIABLE             | 37. INDEX   |
|  | 27. BROKER'S COMMISSION                          |   |

**IN THE PRESENCE OF:**

_____	Date	_____ BUYER _____ (L.S.)
_____	Date	_____ BUYER _____ (L.S.)
_____	Date	_____ SELLER _____ (L.S.)
_____	Date	_____ SELLER _____ (L.S.)

## EXHIBIT 11 - BROKER'S FORM OF CONTRACT

# Contract for Sale of Real Estate

THIS IS A LEGALLY BINDING CONTRACT THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND/OR CANCEL THE CONTRACT. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.

### TO BUYER AND SELLER:

#### READ THIS NOTICE BEFORE SIGNING THE CONTRACT

The law requires real estate brokers to give you the following information before you sign this contract. It requires us to tell you that you must read all of it before you sign. The purpose is to help you in this purchase or sale.

1. As a real estate broker, I represent ☐ the seller not the buyer; ☐ the buyer not the seller; ☐ both the seller and the buyer. The title company does not represent either the seller or the buyer.
2. You will not get any legal advice unless you have your own lawyer. Neither I nor anyone from the title company can give legal advice to either the buyer or the seller. If you do not hire a lawyer, no one will represent you in legal matters now or at the closing. Neither I nor the title company will represent you in those matters.
3. The contract is the most important part of the transaction. It determines your rights, risks, and obligations. Signing the contract is a big step. A lawyer would review the contract, help you understand it, and also help you to negotiate its terms.
4. The contract becomes final and binding unless your lawyer cancels it within the following three business days. If you do not have a lawyer, you cannot change or cancel the contract unless the other party agrees. Neither can the real estate broker nor the title insurance company change the contract.
5. Another important service of a lawyer is to order a survey, title report, or other important reports. The lawyer will review them and help to resolve any questions that may arise about the ownership and condition of the property. These reports and survey can cost you a lot of money. A lawyer will also prepare the documents needed to close title and represent you at the closing.
6. A buyer without a lawyer runs special risks. Only a lawyer can advise a buyer about what to do if problems arise concerning the purchase of this property. The problems may be about the seller's title, the size and shape of the property, or other matters that may affect the value of the property. If either the broker or the title company knows about the problems, they should tell you. But they may not recognize the problem, see it from your point of view, or know what to do. Ordinarily, the broker and the title company have an interest in seeing that the sale is completed, because only then do they usually receive their commissions. So, their interests may differ from yours.
7. Whether you retain a lawyer is up to you. It is your decision. The purpose of the notice is to make sure that you have the information needed to make your decision.

**MEGAN'S LAW STATEMENT** – Under New Jersey law, the county prosecutor determines whether and how to provide notice of the presence of convicted sex offenders in an area. In their professional capacity, real estate licensees are not entitled to notification by the county prosecutor under Megan's Law and are unable to obtain such information for you. Upon closing the county prosecutor may be contacted for such further information as may be disclosable to you.

Dated: \_\_\_\_\_

Buyer \_\_\_\_\_

Dated: \_\_\_\_\_

Buyer \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

Seller \_\_\_\_\_

Dated: \_\_\_\_\_

Seller \_\_\_\_\_

Dated: \_\_\_\_\_

Selling Broker \_\_\_\_\_

Exhibit 11 - Broker's Form of Contract - Continued

# Contract for Sale of Real Estate

This Contract for Sale is made on  
**BETWEEN**

(Include Soc. Sec. No.)

whose address is

referred to as the "Seller,"  
**AND**

(Include Soc. Sec. No.)

whose address is

referred to as the "Buyer."

The words "Buyer" and "Seller" include all Buyers and all Sellers listed above.

**1. Purchase Agreement.** The Seller agrees to sell and the Buyer agrees to buy the property described in this contract.

**2. Property.** The property to be sold consists of: (a) the land and all the buildings, other improvements and fixtures on the land; (b) all of the Seller's rights relating to the land; and (c) all personal property specifically included in this contract. The real property to be sold is commonly known as

in the \_\_\_\_\_ of \_\_\_\_\_ in the County of \_\_\_\_\_  
and State of New Jersey. It is shown on the municipal tax map as lot \_\_\_\_\_ in block \_\_\_\_\_. This property is more fully described in the attached Schedule A.

**3. Purchase Price.** The purchase price is \$ \_\_\_\_\_

**4. Payment of Purchase Price.** The Buyer will pay the purchase price as follows:

Previously paid by the Buyer (initial deposit) \$ \_\_\_\_\_

Upon signing of this contract (balance of deposit) \$ \_\_\_\_\_

Amount of mortgage (paragraph 6) \$ \_\_\_\_\_

By assuming the obligation to pay the present mortgage according to its terms. This mortgage shall be in good standing at the closing. Either party may cancel this contract if the Lender does not permit the Buyer to assume the mortgage (estimated balance due). \$ \_\_\_\_\_

By the Seller taking back a note and mortgage for \_\_\_\_\_ years at \_\_\_\_\_ % interest with monthly payments based on a \_\_\_\_\_ year payment schedule. The Buyer will pay the Seller's attorney \$ \_\_\_\_\_ for the preparation of the necessary documents. The Buyer will also pay all recording costs and provide the Seller with an adequate affidavit of title. \$ \_\_\_\_\_

Balance to be paid at closing of title, in cash or by certified or bank cashier's check or Attorney's trust account check (subject to adjustment at closing). \$ \_\_\_\_\_

**5. Deposit moneys.** All deposit moneys will be held in trust by \_\_\_\_\_ until \_\_\_\_\_

**6. Mortgage Contingency.** The Buyer agrees to make a good faith effort to obtain a first mortgage loan upon the terms listed below. The Buyer has until \_\_\_\_\_, to obtain a commitment from a lender for this mortgage loan or to cancel this Contract by notice in accordance with paragraph 28. If Buyer does not cancel this Contract before this deadline and any agreed upon extensions, Buyer shall be deemed to have waived this contingency.

Type of Mortgage: ☐ conventional ☐ FHA ☐ VA ☐ other \_\_\_\_\_  
Amount of Loan: \$ \_\_\_\_\_ Interest Rate: \_\_\_\_\_ %

Length of Mortgage: \_\_\_\_\_ years with monthly payments based on a \_\_\_\_\_ year payment schedule.

Points: The Buyer agrees to pay \_\_\_\_\_ points for a total of \$ \_\_\_\_\_

The Seller agrees to pay \_\_\_\_\_ points for a total of \$ \_\_\_\_\_

**7. Time and Place of Closing.** The closing date cannot be made final at this time. The Buyer and Seller agree to make \_\_\_\_\_, the estimated date for the closing. Both parties will fully cooperate so the closing can take place on or before the estimated date. The closing will be held at the address of the first Realtor listed below (#29) or such other place as agreed to by the parties.

## Exhibit 11 - Broker's Form of Contract - Continued

**8. Transfer of Ownership** At the closing, the Seller will transfer ownership of the property to the Buyer. The Seller will give the Buyer a properly executed deed and an adequate affidavit of title. If the Seller is a corporation, it will also deliver a corporate resolution authorizing the sale.

**9. Type of Deed.** A deed is a written document used to transfer ownership of property. In this sale, the Seller agrees to provide and the Buyer agrees to accept a deed known as bargain and sale with covenants against grantors' acts.

**10. Personal Property and Fixtures.** Many items of property become so attached to a building or other real property that they become a part of it. These items are called fixtures. They include such items as fireplaces, patios and built-in shelving. All fixtures are **INCLUDED** in this sale unless they are listed below as being **EXCLUDED**.

- a. The following items are **INCLUDED** in this sale: gas and electric fixtures, chandeliers, wall-to-wall carpeting, linoleum, mats and matting in halls, screens, shades, awnings, storm windows and doors, television antenna, cables for cable television (to the extent not owned by the cable television company), water pump, sump pump, water softeners.

- b. The following items are **EXCLUDED** from this sale:

**11. Physical Condition of the Property.** This property is being sold "as is." The Seller does not make any claims or promises about the condition or value of any of the property included in this sale. The Buyer has inspected the property and relies on this inspection and any rights which may be provided for elsewhere in this contract. The Seller agrees to maintain the grounds, buildings and improvements subject to ordinary wear and tear. Seller agrees to leave the property in broom clean condition, free of debris.

**12. Inspection of the Property.** The Seller agrees to permit the Buyer to inspect the property at any reasonable time before the closing. The Seller will permit access for all inspections provided for in this contract.

**13. Building and Zoning Laws.** The Buyer intends to use the property as a family home. The Seller states that this use does not violate any applicable zoning ordinance building code or other law. The Seller will obtain and pay for all inspections required by law. This includes any municipal "Certificate of Occupancy." If the Seller fails to correct any violations of law at the Seller's own expense, the Buyer may cancel this contract.

**14. Flood Area.** The federal and state governments have designated certain areas as "flood areas." This means they are more likely to have floods than other areas. If this property is in a "flood area," the Buyer may cancel this contract within 30 days of the signing of this contract by all parties.

**15. Property Lines.** The Seller states that all buildings, driveways and other improvements on the property are within its boundary lines. Also, no improvements on adjoining properties extend across the boundary lines of this property.

**16. Ownership.** The Seller agrees to transfer and the Buyer agrees to accept ownership of the property free of all claims and rights of others, except for:

- a. the rights of utility companies to maintain pipes, poles, cables and wires over, on and under the street, the part of the property next to the street or running to any house or other improvement on the property;
- b. recorded agreements which limit the use of the property, unless the agreements: (1) are presently violated; (2) provide that the property would be forfeited if they were violated, or (3) unreasonably limit the normal use of the property; and
- c. all items included in Schedule A as part of the description of the property.

In addition to the above, the ownership of the Buyer must be insurable at regular rates by any title insurance company authorized to do business in New Jersey subject only to the above exception.

**17. Correcting Defects.** If the property does not comply with paragraphs 15 and/or 16 of this contract, the Seller will be notified and given 30 days to make it comply. If the property still does not comply after that date, the Buyer may cancel this contract or give the Seller more time to comply.

**18. Expert Inspection.** The Buyer is permitted to have the property inspected by an expert to determine the condition of the property, the presence of radon gas, the quality of the water, and if there is any damage or infestation caused by termites or other wood-destroying insects. If the Buyer chooses to have this inspection, the inspection must be completed and the Seller notified of the results within 10 days of the signing of this contract by all parties. The Buyer will pay for this inspection. If the Buyer is not satisfied with the results of any of the inspections and the parties do not agree on what corrective actions or repairs to be made by the Seller, either party may cancel this contract.

**19. Lead Paint Sale Contingency.** This contract is contingent upon a risk assessment or inspection of the Property for the presence of lead-based paint and/or lead-based paint hazards at the Buyer's expense until 9 p.m. on the tenth calendar-day after the signing of this contract by all parties for housing built before 1978. [Intact lead-based paint that is in good condition is not necessarily a hazard. See the EPA pamphlet, "Protect Your Family from Lead in Your Home," for more information.] This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within \_\_\_\_\_ days after delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs, or if the Seller makes a counter-offer, the Buyer shall have \_\_\_\_\_ days to respond to the counter-offer or remove this contingency and take the Property in "as is" condition or this contract shall become void. The Buyer may remove this contingency at any time without cause. (42 U.S.C. 4852d) (61FR 9064)

## Exhibit 11 - Broker's Form of Contract - Continued

**20. Private Well Testing Act (N.J.S.A. 58:12A-26 et seq.)**

(a) **Applicability:** If the property (i) has a potable water supply furnished by a private well located on the property, or (ii) the potable water supply is furnished by a well that has fewer than 15 service connections or that does not regularly service an average of at least 25 individuals daily at least 60 days out of the year, then the water supply must be tested as a condition of the sale.

(b) **Testing Parameters:** The water test must conform with the parameters established in the Private Well Testing Act and any additional parameters as required by the Department of Environmental Protection.

(c) **Disclosure:** Closing of title shall not occur unless both the Buyer and the Seller have received and reviewed a copy of the water test results. At closing, the Buyer and Seller shall certify in writing that they have received and reviewed the water test results.

**21. Risk of Loss.** The Seller is responsible for any damage to the property, except for normal wear and tear, until the closing. If there is damage, the Buyer can proceed with the closing and either:

a. require that the Seller repair the damage before the closing, or

b. deduct from the purchase price a fair and reasonable estimate of the cost to repair the property

In addition, either party may cancel this contract if the cost of repair is more than 10% of the purchase price.

**22. Cancellation of Contract.** If this contract is legally and rightfully canceled, the Buyer can get back the deposit and the parties will be free of liability to each other. However, if the contract is canceled in accordance with paragraphs 13, 14, 15, 16, 17, 18, 19 or 21 of this contract, the Seller will pay the Buyer for all title and survey costs.

**23. Assessments for Municipal Improvements.** Certain municipal improvements such as sidewalks and sewers may result in the municipality charging property owners for the improvement. All unpaid charges (assessments) against the property for work completed before the closing will be paid by the Seller at or before the closing. If the improvement is not completed before the closing, then only the Buyer will be responsible. If the improvement is completed, but the amount of the charge (assessment) is not determined, the Seller will pay an estimated amount at the closing. When the amount of the charge is finally determined, the Seller will pay any deficiency to the Buyer (if the estimate proves to have been too low), or the Buyer will return any excess to the Seller (if the estimate proves to have been too high).

**24. Adjustments at Closing.** The Buyer and Seller agree to adjust the following expenses as of the closing date: rents, municipal water charges, sewer charges, taxes, interest on any mortgage to be assumed and insurance premiums. If the property is heated by fuel oil, the Buyer will buy the fuel oil in the tank at the closing date. The price will be the current price at that time as calculated by the supplier. The Buyer or the Seller may require that any person with a claim or right affecting the property be paid off from the proceeds of this sale.

**25. Possession.** At the closing the Buyer will be given possession of the property. No tenant will have any right to the property unless otherwise agreed in this contract.

**26. Complete Agreement.** This contract is the entire and only agreement between the Buyer and the Seller. This contract replaces and cancels any previous agreements between the Buyer and the Seller. This contract can only be changed by an agreement in writing signed by both Buyer and Seller. The Seller states that the Seller has not made any other contract to sell the property to anyone else.

**27. Parties Liable.** This contract is binding upon all parties who sign it and all who succeed to their rights and responsibilities.

**28. Notices.** All notices under this contract must be in writing. The notices must be delivered personally or mailed by certified mail, return receipt requested, to the other party at the address written in this contract, or to that party's attorney.

**29. Realtor's Commission.** The Seller agrees in accordance with the previously executed listing agreement to pay the REALTOR(s) a commission for services rendered in procuring this sale as follows:

_____ Name of REALTOR	_____ Commission	
_____ Address	_____ Tel. No.	_____ Fax No.
_____ Name of REALTOR	_____ Commission	
_____ Address	_____ Tel. No.	_____ Fax No.

This commission will not be earned until the title is transferred and the purchase price is paid. This commission will be paid at the closing.

**30. Attorney Review (NJAC 11:5-6.2).**

a. **Study by Attorney.** The Buyer or the Seller may choose to have an attorney study this contract. If an attorney is consulted, the attorney must complete his or her review of the contract within a three-day period. This contract will be legally binding at the end of this three-day period unless an attorney for the Buyer or Seller reviews and disapproves of the contract.

### Exhibit 11 - Broker's Form of Contract - Continued

- b. **Counting the Time.** You count the three days from the date of delivery of the signed contract to the Buyer and the Seller. You do not count Saturdays, Sundays or legal holidays. The Buyer and the Seller may agree in writing to extend the three-day period for attorney review.
- c. **Notice of Disapproval.** If an attorney for the Buyer or the Seller reviews and disapproves of this contract, the attorney must notify the Broker(s) and the other party named in this contract within the three-day period. Otherwise this contract will be legally binding as written. The attorney must send the notice of disapproval to the Broker(s) by certified mail or by delivering it personally. The certified letter will be effective upon sending. The personal delivery will be effective upon delivery to the Broker's office. The attorney may, but need not also, inform the Broker(s) of any suggested revisions in the contract that would make it satisfactory.
- d. The names and full addresses of all persons to whom a Notice of Disapproval must be sent in order to be effective as provided in item "c" above of this Attorney Review Provision are as indicated on page 6 of this contract.

**31. RESIDENTIAL OFF-SITE CONDITION DISCLOSURE:**

(Check one of the following as per type of Residential Real Estate)

- ☐ The Property is newly constructed residential real estate. Pursuant to the "New Residential Construction Off-Site Conditions Disclosure Act," NJSA 46:3C-1 et seq., see the attached "Notification Regarding Off-Site Conditions" (see All-State Form #132)
- ☐ The Property is not newly constructed residential real estate. Pursuant to the above and NJAC 11:5-6.4(c), see the attached "Notice on Off-Site Conditions" (see All-State Form #133)

**32. CONSUMER INFORMATION STATEMENT ACKNOWLEDGMENT:** By signing below, the Buyer and Seller acknowledge that they have received the Consumer Information Statement on New Jersey Real Estate Relationships from the brokerage firms involved in this transaction prior to the first showing of the Property.

**33. DECLARATION OF LICENSEE BUSINESS RELATIONSHIP(s):**

a. I (name of licensee)  
AS AN AUTHORIZED REPRESENTATIVE OF (name of licensee firm)

AM WORKING IN THIS TRANSACTION AS (choose one):

- ☐ SELLER'S AGENT ONLY  
☐ BUYER'S AGENT ONLY  
☐ DISCLOSED DUAL AGENT  
☐ TRANSACTION BROKER

b. INFORMATION SUPPLIED BY (name of other firm)

HAS INDICATED THAT IT IS OPERATING IN THIS TRANSACTION AS A (choose one):

- ☐ SELLER'S AGENT ONLY  
☐ BUYER'S AGENT ONLY  
☐ DISCLOSED DUAL AGENT  
☐ TRANSACTION BROKER

**34. Other Terms.** Other terms ☐ are ☐ are not included on a rider attached to this contract.

**SIGNED AND AGREED TO BY:**

Witnessed or Attested by:

Date Signed:

	_____	Buyer
As to Buyer(s)	_____	Buyer
	_____	
	_____	Seller
As to Seller(s)	_____	Seller
	_____	

## **Exhibit 11 - Broker's Form of Contract - Continued**

### **OTHER TERMS**

30d. The names and addresses of all persons to whom a Notice of Disapproval must be sent are:

- i) Seller(s) (if Notice is given by attorney for Buyer(s)):
- ii) Buyer(s) (if Notice is given by attorney for Seller(s)):
- iii) Broker(s) (always must receive Notice):

As a reviewing attorney, four options exist after careful review of such a contract: a) approval of the contract *in toto* and without modification; b) disapproval of the contract with the statement that the party disapproving the contract would agree to its reinstatement upon the modification of the contract and the preparation of a letter agreement or rider setting forth the desired modifications (adding necessary provisions, deleting unnecessary ones and correcting any incorrect or poorly written ones); c) the disapproval of the contract in its entirety and the preparation and offering of an entirely new contract; or d) disapproval of the contract and cancellation of the transaction. The contract should be cancelled only after informing the client of the attorney's concerns and receiving the client's explicit approval and authorization to do so. The attorney on behalf of the client may reject the contract for any reason, such rejection not being subject to judicial review. *See Trenta v. Gay*, 191 N.J. Super. 617 (Law Div. 1983).

### **Section 3.2.2 Disclosures**

As discussed in Section 2.5.4, the Consumer Information Statement which appears as Exhibit 4 must be included as part of the contract prepared by a real estate broker. Also to be included as the cover page of any contract prepared by a broker is the notice to the seller and purchaser which is to be read before the party signs the contract. The notice appears as Exhibit 12.

The notice informs the seller and purchaser of the respective roles of the broker, title insurance company and lawyer in a real estate transaction, and the right of the seller and purchaser to retain the services of a lawyer. The receipt of the notice must be acknowledged in writing by the parties to the contract. A detailed discussion of the notice and the obligations of the broker in ensuring that the parties have received the notice appears in Section 8.4.

### **Section 3.2.3 Revisions to Contract**

As part of the review by the attorneys of a contract prepared by a broker, it may be necessary for the attorney for either the purchaser or seller to revise the contract to address the particular concerns of a party or to supplement the contract prepared by the broker. The manner in which such revisions are effectuated is by a rider to the contract signed by the parties to the contract or by a letter prepared by the attorney for the party seeking the revisions and countersigned by either the other party or that party's attorney. Frequently, the rider or letter agreement prepared by one of the attorneys is then supplemented with the comments of the attorney for the other party so that all comments are set forth in a single writing.

Appearing as Exhibit 13 is a rider prepared on behalf of a purchaser which amends and supplements a contract prepared by a broker. Exhibit 14 is a rider which similarly revises a contract prepared by a broker; however, it also addresses the fact that the property is subject to the condominium form of ownership. See Section 7.2 for a discussion of condominium and townhouse developments. Exhibit 15 is a form of letter agreement amending a contract prepared by a broker, which has been drafted for countersignature by the attorney for the other party.

**EXHIBIT 12 - BROKER'S NOTICE TO BUYER AND SELLER**

**NOTICE  
TO BUYER AND SELLER  
READ THIS NOTICE BEFORE SIGNING THE CONTRACT**

The Law requires real estate brokers to give you the following information before you sign this contract. It requires us to tell you that you must read all of it before you sign. The purpose is to help you in this purchase or sale.

1) As a real estate broker, I represent: ☐ the seller, not the buyer; ☐ the buyer, not the seller; ☐ both the seller and the buyer; ☐ neither the seller nor the buyer. The title company does not represent either the seller or the buyer.

2) You will not get any legal advice unless you have your own lawyer. Neither I nor anyone from the title company can give legal advice to either the buyer or the seller. If you do not hire a lawyer, no one will represent you in legal matters now or at the closing. Neither I nor the title company will represent you in those matters.

3) The contract is the most important part of the transaction. It determines your rights, risks, and obligations. Signing the contract is a big step. A lawyer would review the contract, help you to understand it, and to negotiate its terms.

4) The contract becomes final and binding unless your lawyer cancels it within the following three business days. If you do not have a lawyer, you cannot change or cancel the contract unless the other party agrees. Neither can the real estate broker nor the title insurance company change the contract.

5) Another important service of a lawyer is to order a survey, title report, or other important reports. The lawyer will review them and help to resolve any questions that may arise about the ownership and condition of the property. These reports and survey can cost you a lot of money. A lawyer will also prepare the documents needed to close title and represent you at the closing.

6) A buyer without a lawyer runs special risks. Only a lawyer can advise a buyer about what to do if problems arise concerning the purchase of this property. The problems may be about the seller's title, the size and shape of the property, or other matters that may affect the value of the property. If either the broker or the title company knows about the problems, they should tell you. But they may not recognize the problem, see it from your point of view, or know what to do. Ordinarily, the broker and the title company have an interest in seeing that the sale is completed, because only then do they usually receive their commissions. So, their interests may differ from yours.

7) Whether you retain a lawyer is up to you. It is your decision. The purpose of this notice is to make sure that you have the information needed to make your decision.

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Selling Broker

\_\_\_\_\_  
Date

**EXHIBIT 13 - RIDER TO BROKER'S FORM OF CONTRACT (PURCHASER)**

RIDER TO CONTRACT OF SALE  
BY AND BETWEEN

\_\_\_\_\_("BUYER")  
AND  
\_\_\_\_\_("SELLER")  
FOR  
\_\_\_\_\_, NEW JERSEY

**1. References.**

This Rider shall be referred to as "Rider". This Rider is attached to a pre-printed contract of sale which shall be referred to as "Contract". The Rider and Contract together shall be referred to as "Agreement". In the event of any conflict between the Contract and the Rider, the terms of this Rider shall govern.

**2. Time Periods.**

All time periods set forth in the Agreement shall commence as of the date both the Seller and Buyer have received fully executed copies of the Contract and the Rider.

**3. Manner of Payment.**

By way of amendment of Paragraph 2.B. of the Contract, the sum of \$20,500 shall be deleted and the sum of \$9,750 inserted in its stead.

By way of amendment of Paragraph 2.D. of the Contract, the sum of \$3,500 shall be deleted and the sum of \$14,250 inserted in its stead.

**4. Mortgage Contingency.**

Seller and Buyer agree that the Buyer shall have until \_\_\_\_\_ to obtain a mortgage commitment. In the event Seller does not receive a commitment by that date, Seller agrees to grant (a) reasonable extension(s) in the mortgage contingency period as long as the Buyer is diligently pursuing the mortgage commitment and no circumstances exist which indicate that the Buyer will not be successful in obtaining a mortgage commitment in a timely manner.

**Exhibit 13 - Rider to Broker's Form of Contract (Purchaser) - Continued**

**5. Title Work and Survey.**

In addition to the delivery of the documents mentioned in the Contract, Seller also agrees to execute such reasonable and customary documents as are required by Buyer's mortgage lender and title company.

By way of supplement to Paragraph 4 of the Contract, Buyer shall have the right, at its sole cost and expense, to procure a new survey and metes and bounds description prepared by a surveyor licensed in the State of New Jersey. In that event, Seller agrees to utilize the new metes and bounds description in its deed.

Seller represents, to the best of his knowledge, that all buildings, driveways and other improvements on the Property are within its boundary lines. Also, no improvements on adjoining properties extend across the boundary lines of this Property. In the event the survey performed by the Buyer discloses facts to the contrary, Buyer will accept the conditions reflected on the survey provided Seller is able to deliver the quality of title set forth in Paragraph 5 of this Rider.

**6. Quality of Title.**

By way of further supplement to Paragraph 4 of the Contract, title shall be good, marketable, valid of record and insurable at regular rates, subject only to the exceptions set forth in the Agreement. Buyer shall forward to Seller a copy of Buyer's preliminary title commitment issued by Buyer's title insurance company. Buyer shall advise Seller, in writing, of any defects in title which would prevent Seller from conveying title in the manner described in this Agreement. At or prior to closing, Seller shall remove the defects in a manner satisfactory to the Buyer's title insurance company. If Seller is unable to remove the defects, then Buyer shall have the right to accept such title as Seller can convey, or cancel this Agreement. If Buyer cancels this Agreement, Seller shall reimburse Buyer for all costs incurred by Buyer for the title search and examination, and survey.

**7. Items Included in Sale.**

By way of supplement to Paragraph 5A of the Contract, all existing light fixtures are included in the sale.

By way of further supplement to Paragraph 5A of the Contract, with respect to any personalty and fixtures which are included in the sale, Seller represents that such personalty and fixtures are owned free and clear of any encumbrances. Buyer agrees to accept the items listed in Paragraph 5A in "as is" condition.

**Exhibit 13 - Rider to Broker's Form of Contract (Purchaser) - Continued**

**8. Condition of Property.**

By way of supplement to Paragraph 6 of the Contract, Seller represents that, to the best of its knowledge, the current roof has never leaked and the basement is free of any water penetration, infiltration, or damage. Seller represents that the heating, cooling, plumbing, electrical, hot water and water supply systems and all appliances included in the sale will be in the same working order at the time of closing, normal wear and tear excepted, as existed as of the date of the house inspection.

**9. Payment of Claims.**

By way of supplement to Paragraph 7, in the event any mortgage lien encumbering the Property is held by a non-institutional lender, Seller shall present at closing a discharge or canceled mortgage properly executed and prepared for recording. In the event of any mortgage lien, whether or not held by an institutional lender, the present principal balance of which is in excess of the amount due at closing after all adjustments and credits have been made, Seller shall present at closing a discharge or canceled mortgage properly executed and prepared for recording.

**10. Risk of Loss.**

By way of supplement to Paragraph 12 of the Contract, if the cost of any loss or damage exceeds \$10,000, Buyer may cancel the Agreement.

**11. Attorney Review.**

Paragraph 19 is deleted in its entirety.

**12. Realtor's Commission.**

By way of supplement to Paragraph 20 of the Contract, Seller will arrange for written statements of the commission amounts due to both \_\_\_\_\_ and \_\_\_\_\_ to issue to the Buyer's attorney prior to closing.

**13. Pest Inspection.**

Paragraph 21 is deleted in its entirety and replaced with the following:

**Exhibit 13 - Rider to Broker's Form of Contract (Purchaser) - Continued**

This Agreement is contingent upon the Buyer, at the Buyer's expense, obtaining the services of a reputable termite inspection company of the Buyer's choice, for an inspection for the presence of termite, carpenter ant, and other wood destroying insects and/damage therefrom in any structure or dwelling on the Property by no later than \_\_\_\_\_. Buyer shall provide the Seller with a copy of said report by \_\_\_\_\_. If such inspection shall indicate the absence of infestation or damage, this Agreement shall be binding with respect to this contingency. If the inspection shall reveal infestation or damage, then the Seller has the option to either treat the infestation and repair the damage or return the deposit monies to the Buyer. In the alternative, the Buyer may refuse the return of the deposit monies and waive the results of the report in writing within five (5) days, in which event, this Agreement shall remain binding. If Buyer fails to perform said inspection, this contingency shall be deemed waived. In spite of anything to the contrary in this Paragraph, if the cost of extermination and/or repair exceeds \$500, Buyer shall have the right to cancel the Agreement, at which time the Seller shall return to Buyer all deposit monies paid by Buyer.

**14. Physical Inspection.**

Paragraph 22 is deleted in its entirety and replaced with the following:

This Agreement is contingent upon Buyer obtaining a home inspection and written report from a reputable company of the Buyer's choice. The said inspection shall be at the sole expense of the Buyer and shall be completed by \_\_\_\_\_. In the event the inspection reveals the existence of any structural defects, physical defects or operational defects affecting the Property including, but not limited to, the electrical, plumbing, heating, and sewer, or the presence of environmental contaminants including, but not limited to, asbestos and Urea-Formaldehyde, the Buyer shall present the Seller with a copy of the inspection report by \_\_\_\_\_. Seller shall then have the option to either: (1) make the repairs required by the Buyer, or (2) return all deposit monies immediately to the Buyer. If the Buyer accepts the return of the deposit, the Agreement shall become null and void. Buyer may refuse the return of the deposit and waive the results of the report in writing within five (5) days, in which event this Agreement shall remain binding. In spite of anything to the contrary in this Paragraph, if the cost to correct any single defect exceeds \$1,000.00 or to correct defects in the aggregate exceeds \$2,500.00, Buyer shall have the right to cancel the Agreement, at which time the Seller shall return to Buyer all deposit monies paid by Buyer. Furthermore, the Buyer shall have the right to terminate the Agreement in the event the report indicates that roof is in a condition other than a good condition without any reservations or concerns by the inspector.

**Exhibit 13 - Rider to Broker's Form of Contract (Purchaser) - Continued**

**15. Radon.**

Paragraph 23 is deleted in its entirety and replaced with the following:

This Agreement is made contingent upon the Buyer obtaining a radon test of the Property from a reputable testing service by \_\_\_\_\_. The Buyer shall then have until \_\_\_\_\_ to provide the Seller with a written copy of the radon report. The New Jersey Department of Environmental Protection has established the acceptable radon level as being 4.0 picocuries per liter. The parties agree that if the radon level exceeds the acceptable level as established by the New Jersey Department of Environmental Protection, the Seller shall have the option to: (1) return all deposit monies immediately to Buyer, or (2) remediate. Once remediation has been completed, the Buyer shall have the right to retest. If the radon level still exceeds the acceptable level, the Buyer shall have the right to cancel this Agreement. If Buyer fails to perform said inspection, this contingency will be deemed waived. In spite of anything to the contrary in this Paragraph, if the radon level exceeds 6 picocuries per liter, the cost to remediate exceeds \$1,000, Buyer shall have the right to cancel the Agreement, at which time the Seller shall return to Buyer all deposit monies paid by Buyer.

**16. Flood Clause.**

By way of supplement to Paragraph 24 of the Contract, if the Property is in a "flood area" as designated by the federal and state government, the Buyer may cancel the Agreement by \_\_\_\_\_.

**17. Cancellation of Agreement.**

If the Agreement is legally canceled pursuant to its terms, the deposit shall be returned to the Buyer and neither party shall have any rights against or obligations to the other.

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Buyer

\_\_\_\_\_

\_\_\_\_\_  
Buyer

\_\_\_\_\_

\_\_\_\_\_  
Seller

\_\_\_\_\_

\_\_\_\_\_  
Seller

**EXHIBIT 14 - CONDOMINIUM RIDER TO BROKER'S FORM OF CONTRACT**

FIRST RIDER TO CONTRACT FOR SALE OF REAL ESTATE  
BY AND BETWEEN

\_\_\_\_\_("SELLER")  
AND  
\_\_\_\_\_("BUYER")  
FOR  
\_\_\_\_\_("PROPERTY")

This Rider shall be referred to as "Rider". This Rider is attached to a pre-printed contract of sale which shall be referred to as "Contract". The Rider and Contract together shall be referred to as "Agreement". In the event of any conflict between the Contract and this Rider, the terms of this Rider shall govern.

1. By way of clarification of Paragraph 2 (PROPERTY), the correct tax lot and block designation for the Property is Lot 12.19 in Block 3.

2. Paragraph 4 (PAYMENT OF PURCHASE PRICE) is amended to provide that the payment of the Purchase Price, including the payment for the personal property set forth on the addendum to the Contract, may be in the form of one or more attorney trust account checks.

3. Paragraph 5 (DEPOSIT MONIES) is amended to provide that all deposit monies shall be held in an interest bearing trust account by the attorney for the Seller.

4. Paragraph 6 (MORTGAGE CONTINGENCY) is supplemented by the addition of the following at the end the second sentence in that paragraph:

"The mortgage commitment shall be for a conventional loan with an interest rate not in excess of 6% and provide for a term of 30 years with payments based on a 30 year payment schedule. Buyer shall not be required to pay in excess of 3 points for the loan.

In the event the mortgage commitment issued by the lender is conditioned upon the sale of the home currently occupied by either Buyer, Buyer agrees to waive the rights under the mortgage contingency; however, nothing herein shall require the Buyer to accept any mortgage commitment which imposes any other conditions which the Buyer cannot reasonably satisfy."

**Exhibit 14 - Condominium Rider to Broker's Form of Contract - Continued**

5. Paragraph 7 (TIME AND PLACE OF CLOSING) is amended to provide that the closing of title shall be held at the office of attorney for the Buyer, Greenbaum, Rowe, Smith & Davis LLP, Metro Corporate Campus I, 99 Wood Avenue South, Iselin, NJ 08830.

6. Paragraph 12 (CERTIFICATE OF OCCUPANCY, SEPTIC AND/OR WELL CERTIFICATE) is supplemented by the addition of the following at the end of that paragraph:

"Seller shall also be required to obtain a smoke detector certification for the Property. All certificates required under this Paragraph 12 shall be obtained by the Seller, at the Seller's sole cost and expense."

7. Paragraph 29 referencing the personal property reflected on the addendum is supplemented by the following:

"Seller agrees to deliver to Buyer at closing a Bill of Sale for the personal property listed in the addendum in the form attached to this Rider as Exhibit "A".

In spite of anything to the contrary in the Contract, the parties agree and acknowledge that the sum of \$30,230.00 set forth in the addendum is the consideration to be paid by Buyer for the personal property identified therein and is to be paid in addition to the Purchaser Price of \$500,000 set forth in Paragraph 2 of the Contract."

8. The following is added to the Contract as Paragraph 30:

"30. ABC CONDOMINIUM ASSOCIATION, INC. Seller represents that the only common interest community association to which Buyer will be obligated to make payments is the ABC Condominium Association, Inc. (the "Association"). Seller represents that the monthly assessments imposed by the Association during calendar year \_\_\_\_\_ is \$450.00. Seller represents that there are no existing or proposed additional assessments including, but not limited to, general and/or special assessments. Seller, at its sole cost and expense, will provide Buyer at the closing of title with a written statement from the Association or its managing agent confirming the statements made in this Paragraph and that Seller is current in all payments due to the Association. Any amounts which may be due to the Association at the time of closing shall be paid by Buyer from the amounts due to Seller under the Agreement. Seller, at its sole cost and expense, will obtain and deliver at closing any approvals which must be obtained from the Association in order to transfer title to the Property."

**Exhibit 14 - Condominium Rider to Broker's Form of Contract - Continued**

9. The following is added to the Contract as Paragraph 31:

"31. LITIGATION. Seller represents, to the best of its knowledge, that no litigation has been either threatened or in existence which involves or affects the Association which is not covered by the Association's liability insurance.

The representations in this Paragraph shall survive the closing of title."

10. The following is added to the Contract as Paragraph 32:

"32. WINDOWS. Seller represents that the windows of the dwelling have experienced water penetration due to faulty construction and the Association commenced a lawsuit against the developer of the development for repair of the windows. Seller represents that any and all amounts due from Seller in connection with the lawsuit have been fully paid by Seller. Seller represents that there are no other expenses, either for legal fees or the replacement and/or repair of the windows or any related structural components of the dwelling, for which Buyer will be responsible. Seller is also unaware of any other proposed litigation against the developer or any other party in connection with the windows or related structural components of the dwellings within the development.

Seller represents that the windows of the dwelling was repaired by \_\_\_\_\_ on \_\_\_\_\_ and that all costs associated with the repairs were fully paid by Seller. Seller will assign to Buyer any unexpired warranties given in connection with the repairs. Seller is unaware of any other required or proposed repairs or replacement of the windows or related structural components of the dwellings.

The representations in this Paragraph shall survive the closing of title."

11. The following is added to the Contract as Paragraph 33:

"33. GOVERNING DOCUMENTS. Seller represents that the Public Offering Statement of ABC Condominium reflecting an effective date of \_\_\_\_\_ and amended through \_\_\_\_\_ includes complete copies of the Master Deed and By-Laws of the Association and all amendments thereto, as well as all resolutions, rules and regulations of the Association. Seller has also delivered to Buyer the current operating budget of the Association and the financial statement of the Association for the year ended December 31, \_\_\_\_\_, which the most recent financial statement for the Association."

**Exhibit 14 - Condominium Rider to Broker's Form of Contract - Continued**

Except as amended by this Rider, the terms and conditions the Contract shall remain as stated.

_____	_____
Buyer	Date

_____	_____
Buyer	Date

_____	_____
Seller	Date

_____	_____
Seller	Date

**EXHIBIT 15 - LETTER AGREEMENT AMENDING BROKER'S FORM OF CONTRACT**

**LETTERHEAD OF SELLER'S ATTORNEY**

[Date]

**VIA TELECOPY and CERT. MAIL (R.R.R.)**

[Name and Address of  
Attorney for Purchaser]

Re:     **Susan Seller - to- Patrick Purchaser**  
          **1 Property Way**  
          **Municipality, New Jersey**

Dear Mr. Attorney for Purchaser:

Please be advised that this firm represents Susan Seller in the above-referenced transaction. I have discussed the terms of the Contract with Ms. Seller. The Contract is disapproved in its present form. However, the Contract will be acceptable with the following revisions:

1. All deposit monies shall be held in the non-interest bearing account of Seller's attorney.
2. Line 89 is revised to delete payment of the purchase price in cash.
3. The Contract states that it is contingent upon the sale of the Buyer's home. The Contract references that the contingency must be satisfied by \_\_\_\_\_. Please advise whether this contingency has been met.
4. Line 152 is revised to specifically exclude from the sale the fan in the living room and the dining room chandelier.
5. In lines 187, 197 and 205, all references to physical defects shall be revised to reflect that the defects must be structural in nature.
6. All warranties and representations of the Seller contained in the Contract are made to the best of Seller's knowledge.
7. Line 271 is revised to provide for a 10-day period in which the termite inspection must be completed and reports returned to the Seller.
8. Line 321 is revised to provide for a 10-day period in which Buyer completes the due diligence review on laws affecting the property.

**Exhibit 15 - Letter Agreement Amending Broker's Form of Contract - Continued**

9. Line 332 is revised to include common expense assessments as an adjustment at closing.
10. Lines 362 through 364 regarding liability for brokers' commissions upon breach of contract is deleted in its entirety.
11. Line 369 is revised to reflect that the commission is earned upon closing of title.
12. Lines 370 through 372 and lines 376 through 379 are deleted in their entirety.
13. Lines 396 through 399 are revised to reflect that, if Seller is unable to deliver marketable title, Seller shall return the deposit, and the actual cost of title search and survey fees incurred by Buyer.
14. In line 405, the phrase "continue as" is changed to "be".
15. Lines 464 through 475 are deleted in their entirety.
16. Lines 481 through 482 are revised to reflect that the Buyer shall be responsible for any application fees charged by the Homeowners Association for approval.
17. Line 508 is revised to provide for a 10-day time period for an environmental review of the property.

If these revisions are acceptable to you and your client, please either arrange for your client to sign or sign the extra copy of this letter which I have enclosed and return same to me. If you have any questions, please feel free to call me. Thank you.

Very truly yours,

Attorney for Seller

cc: Ms. Susan Seller

AGREED TO AND ACCEPTED

THIS \_\_\_\_\_ DAY OF

\_\_\_\_\_, \_\_\_\_\_

By: \_\_\_\_\_

Patrick Purchaser

### **Section 3.3 Issues in the Preparation or Review of the Contract**

The preparation of a real estate contract, either based upon a form or specially drafted, or the review of a contract which has been prepared by a real estate broker brings into play a vast body of real estate law. Even when a fairly detailed and extensive form of agreement is used, an awareness of the real estate contract law concepts upon which the contract is based is important so that the attorney will know when the form of contract is deficient or inappropriate, and amendment to incorporate provisions which address the particular situation at hand is warranted.

It should be noted that courts are shying away from the 19th century doctrine of "let the buyer beware" and are affording greater protections to purchasers. The obligation of the seller, real estate brokers, and lawyers to disclose known defects is part of the developing case law. Accordingly, it is important for an attorney to counsel a seller to disclose potentially adverse conditions and dangers, including environmental and structural conditions, which may have an impact upon the property and its use and enjoyment by the purchaser, and to take those conditions into consideration in drafting a contract.

#### **Section 3.3.1 Capacity to Contract**

It is important to make certain that both parties to the contract have the legal capacity to execute the contract and engage in the transaction. The following is a list of issues of which to be particularly aware:

(a) **Infancy** - Pursuant to *N.J.S.A.* 9:17B-1(a), all persons 18 years of age (the legal age of majority) and older possess the right to contract. Proof of age should be obtained if any question exists.

(b) **Aliens** - *N.J.S.A.* 46:3-18 provides, in pertinent part, that "[a]lien friends shall have the same rights powers and privileges and be subject to the same burdens, duties, liabilities and restrictions in respect of real estate situate in this State as native-born citizens." The term "alien friends" refers to "the subject of a foreign state at peace with the United States; an alien enemy is the subject of a foreign state at war with the United States." *Caparell v. Goodbody*, 132 N.J. Eq. 559, 568 (1943). Pursuant to *N.J.S.A.* 46:3-18, only the former have unrestricted rights, whereas property owned by alien enemies may be seized by the government. Therefore, during time of war, it is important to determine the status of an alien party to a transaction and further determine whether the real estate is subject to a government taking.

(c) **Mental Incompetency** - *N.J.S.A.* 3B:1-2 defines a mental incompetent as "a person who is impaired by reason of mental illness or mental deficiency to the extent that he lacks sufficient capacity to govern himself and manage his affairs." The term "is also used to designate a person who is impaired by the chronic use of drugs, chronic alcoholism or other cause (except minority) to the extent that he lacks sufficient capacity to govern himself and manage his affairs."

Contracts made with a mental incompetent are generally voidable either by the incompetent party's legal guardian or heirs or by such parties themselves once their competency is restored. *See, e.g. Goldberg v. West End Homestead Co.*, 78 N.J.L. 70 (Sup. Ct. 1909); *Todd v. Mut. Aid Savings and*

*Loan Ass'n*, 19 N.J. Super. 532 (Law Div. 1952); *Coombs v. Witte*, 104 N.J.L. 519 (E. & A. 1928). Also, where the other party knows or should have known of the incompetent's condition and takes advantage of it, the contract will be nullified. See *Peter v. Englert*, 118 N.J. Eq. 456 (Ch. 1935).

The contracting party is under a duty to make an inquiry as to whether there are circumstances which would lead a prudent person to believe that the other party is incompetent. Failure to do so will lead to voiding of the contract. See *Manufacturers Trust Co. v. Podvin*, 10 N.J. 199 (1952). Thus, for example, if the seller is living in a nursing home or similar institution for reasons attributable to mental capacity, that arrangement might give rise to an inquiry to determine the seller's mental capacity. If the seller has been adjudicated incompetent, the state may appoint a legal guardian pursuant to *N.J.S.A.* 3B:12-24 *et seq.* who will be legally able to sell the property.

(d) **Marital Status, Dower and Curtesy** - The estates of dower for the wife and curtesy for the husband create an inchoate or possible future estate vesting upon the death of the owning spouse. At such time, the surviving, non-owning spouse is entitled to a life estate in one-half of all property acquired by the owning spouse during the marriage. [*N.J.S.A.* 3A:35 §§ 1,2].

Although the estates of dower and curtesy were statutorily abolished by *N.J.S.A.* 3A:35-5, this abolition is prospective and, therefore, applies only to those titles acquired on or after May 28, 1980. The law currently provides that the non-owning spouse has a right to "joint possession" during the marriage in the "principal matrimonial residence", which may not be alienated without consent of both spouses. Thus, if the property was acquired on or after May 28, 1980 by only one spouse and the property was not occupied as the principal marital residence, the non-owning spouse would have no dower or curtesy right in the property which would have to be relinquished or extinguished by the non-owning spouse at the time title is conveyed. That fact should be recited in the seller's deed and the affidavit of title. An appropriate recital would be "I have never occupied this property jointly with my spouse as our principal marital residence." Although all dower and curtesy rights are terminated by a valid divorce (See *e.g.* *Graham v. Onderdonk*, 33 N.J. 356 (1960)), an invalid divorce does not extinguish these rights (See *Flammis v. Maller*, 66 N.J. Super. 440 (App. Div. 1961) (Mexican mail order divorce invalid)).

Due to the fact that dower and curtesy can still very much affect the rights of parties to a real estate transaction, it is important to obtain the full marital history and present marital status of the seller. The seller's marital status should be reflected in the contract and, once it is determined that a possible dower or curtesy right exists, the spouse who has not released an inchoate right should sign the contract as well as the deed in order to release the right in accordance with *N.J.S.A.* 37:2-18.1. Any such release or deed must specifically provide that it is releasing such right.

(e) **Agents** - All deeds, sales and other conveyances made by virtue of duly executed and recorded letters of agency and powers of attorney are valid according to *N.J.S.A.* 46:6-1. One or both parties to a real estate transaction may authorize an agent to enter into the contract on the party's behalf. Under New Jersey law, "authority to sign a memorandum of agreement for the sale of lands (which is required to be in writing) need not be conferred by writing." *Monahan v. McEllegott*, 136, N.J. Eq. 307, 311 (Ch. 1944). This authority can "be established either by proof that it has been expressly conferred, or by proof of circumstances from which its grant may be reasonably inferred." *Id.* In contrast, pursuant

to *N.J.S.A.* 46:6-1, the agreement granting the authority to sign a deed conveying title must be in writing and be recorded prior to closing. See *Powers v. Lore*, 9 N.J. Super. 550 (1950).

When an agency is created, the principal may be fully disclosed, partially disclosed, or undisclosed. In *Looman Realty Corp. v. Broad Street Nat. Bank of Trenton*, 32 N.J. 461 (1960), the Court described each of these types of agency and how the status of the principal can affect the liability of the agent and the principal. The Court stated that "[i]n the disclosed principal situation, where the principal's identity is known to the other contracting party and where the agent expressly signs in a representative capacity, the principal, not the agent is liable on the contract." *Id.* at 476.

In comparison, when an agent is acting on behalf of a partially disclosed principal "the other contracting party knows that the agent is acting in another's behalf but the identity of the principal is not known," and such agent "is a party to a contract in the absence of an agreement to the contrary." *Id.* at 476-77. The word "agent" will typically follow the signature to indicate this form of agency. If possible, the other contracting party would want to ascertain the identity of the principal and deal directly with the principal.

Lastly, when the principal is undisclosed, the agent "is a party to a contract he signs in such a capacity, whether he intended this result or not." *Id.* at 476. However, the principal will become a party to the contract (able to sue and be sued) once the principal is discovered by the other party.

(f) **Power of Attorney** - A "power of attorney" is a written instrument by which an individual (the principal) grants authority to another (the "attorney-in-fact" or agent) to act on the principal's behalf with respect to specific powers. Such power will automatically extinguish upon the death or disability of the principal pursuant to *N.J.S.A.* 46:6-6 or it may be revoked by the principal or the principal's guardian. See *Maihack v. Mehl*, 141 N.J. Eq. 281 (Ch. 1948). Note, however, that pursuant to *N.J.S.A.* 46:2B-8, the principal may provide in the power of attorney that such power shall not be terminated by the disability of the principal or that it becomes effective only upon such disability. *N.J.S.A.* 46:2B-8(b) further provides that "[a] principal shall be under a disability if he is unable to manage his property and affairs effectively" and sets forth a list of possible causes.

The power of attorney specifies the powers which the agent is authorized to exercise on behalf of the principal. If the agent will be executing any documents which are to be recorded, the power of attorney must be in recordable form and recorded prior to or simultaneously with the instrument executed by the agent. The execution of a document pursuant to a power of attorney given by "Mary Doe" to "John Doe" will be signed by the Agent (John Doe) substantially as follows: "John Doe, as attorney-in-fact for Mary Doe". A form of power of attorney granted by a purchaser in a transaction for the purpose of acquiring the property and closing the mortgage appears as Exhibit 16.

**EXHIBIT 16 - POWER OF ATTORNEY FOR PURCHASER/MORTGAGOR**

Prepared by:

\_\_\_\_\_

**POWER OF ATTORNEY**

This Power of Attorney is made on \_\_\_\_\_, \_\_\_\_\_,

**Between:**

the Principal,

**Peter Principal**, residing at \_\_\_\_\_, referred to as "I",

**And:**

the Agent,

**Ann Agent**, residing at \_\_\_\_\_, referred to as "You".

**Grant of Authority.** I appoint You to act as my Agent (called an attorney in fact) to do each and every act which I could personally do for the following uses and purposes:

In connection with the financing and purchase of premises known as 123 Main Street, Municipality, New Jersey, you are authorized (i) to endorse the mortgage proceeds check and sign the Note, Mortgage, Affidavit of Title, HUD-1 Settlement Statement, and any and all other mortgage related documents with regard to a mortgage loan from the Best Bank in the sum of \$ \_\_\_\_\_; (ii) to attend closing of title and execute any and all documents required to consummate the purchase of the within premises, including but not limited to a Deed and Title Closing Statement; (iii) to agree to all customary adjustments between purchaser and seller; (iv) to deliver the proceeds of sale; and (v) to perform any other act on my behalf which you may consider necessary or advisable in order to finance or purchase the premises.

**Powers.** I give You all the power and authority which I may legally give to You. You may revoke this Power of Attorney or appoint a new Agent in your place. I approve and confirm all that You or your substitute may lawfully do on my behalf.

**Signatures.** By signing below, I acknowledge that I have received a copy of this Power of Attorney and that I understand its terms.

Witness:

\_\_\_\_\_

\_\_\_\_\_  
Peter Principal

**RECORD AND RETURN TO:**  
Greenbaum, Rowe, Smith & Davis LLP  
Metro Corporate Campus I  
P.O. Box 5600  
Woodbridge, N.J. 07095

(g) **Corporations** - If the seller is a corporation, verification should be obtained from the Secretary of State's office, the title insurance company, or the seller that the corporation was legally incorporated pursuant to *N.J.S.A. 14A:2-1 et seq.*; that the certificate of incorporation and the bylaws do or do not permit the corporation to purchase and sell real estate; if so permitted, the special requirements imposed by those documents to so in the proposed transaction; whether or not the consent of shareholders is required; and whether the State has imposed any liens for unpaid corporation franchise taxes pursuant to *N.J.S.A. 54:10A-1 et seq.*

*N.J.S.A. 54:10A-1* provides that a corporation's charter will be declared void in the event that such corporation fails to pay a state tax for more than two consecutive years. Consequently, until the corporation reinstates its charter by repaying the delinquent taxes in accordance with *N.J.S.A. 54:11-5*, the majority of its actions will remain invalid. See *Higi v. Elm Tree Village*, 114 N.J. Super. 88 (Ch. Div. 1971). However, the corporation will be permitted to convey assets which "are not to be distributed in kind to its shareholders." *N.J.S.A. 14A:12-9*.

Perhaps the most important rule to remember when dealing with a corporate seller is that "[a] corporation is bound by the act of an officer or agent only to the extent that the power to do the act has been conferred upon such officer or agent expressly by the charter, by-laws or corporate action of its stockholders or board of directors." *Aerial League of Am. v. Aircraft, & c., Corp.*, 97 N.J.L. 530, 533 (E. & A. 1922). Thus, "by virtue of his office alone, no executive officer of a corporation has any authority to sell or make a contract for the sale of real estate of the corporation." *Beck v. Edwards & Lewis, Inc.*, 141 N.J. Eq., 326, 331 (Ch. 1948). As a result, a true copy of a resolution of the board of directors, sealed and certified, which expressly authorizes specific officers to act as agents for the corporation in the sale, is a document that the corporation should be required to produce.

(h) **Partnerships** - As defined by *N.J.S.A. 42:1A-2*, a "Partnership" means an association of two or more persons to carry on as co-owners a business for profit...". The statutory provisions for determining the existence of a partnership are set forth in *N.J.S.A. 42:1A-10*; however, they are fairly vague. Unlike the statute governing corporations, the partnership statute does not include a provision for filing a partnership agreement or a certificate of partnership. Thus, a partnership contract may be implied and an oral agreement between two people "to carry on a common business and to divide the profits" has been held sufficient to constitute a partnership. *Braveman v. Munzer*, 104 N.J. Eq. 477, 479 (Ch. 1929).

Once the legal existence of the partnership has been established, ownership of the property by the partnership must be determined. Pursuant to *N.J.S.A. 42:1A-12*, "[p]roperty is partnership property if acquired in the name of: (1) the partnership; or (2) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership." Although there is no set standard for recording property owned by a partnership, the name of the partnership should appear somewhere on the record, with or without the names of any partners.

It should be verified that the partner(s) acting and signing on behalf of the partnership has the authority to bind the partnership. A copy of the partnership agreement, and any amendments should be obtained and examined to determine that authority. *N.J.S.A. 42:1A-14* provides that "partnership

property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name, subject to the effect of a statement of partnership authority under *N.J.S.A. 42:1A-14*, et seq. Such an act must be for "apparently carrying on in the usual business of the partnership." *Id.*, (1).

The best practice is to require that the contract of sale and deed be executed by all possible parties in interest including all living partners and their spouses as well as the legal representatives and spouse of any deceased partner. The documents should recite that the non-parties are signing as such, "only for the purpose of releasing and transferring any rights which they may have in the property, and for no other purpose." Arthur S. Horn, *Residential Real Estate Law and Practice in New Jersey*, 1:60 (6<sup>th</sup> ed. 2008).

(i) **Limited Liability Companies** - The New Jersey Limited Liability Company Act, *N.J.S.A. 42:2B-1 et seq.* authorizes the formation of limited liability companies in New Jersey. A limited liability company ("LLC") is a hybrid entity incorporating features of general partnerships, limited partnerships and corporations. The owners of the LLC are referred to as members and the party responsible for the operation of the LLC's business is referred to as the manager or managing member.

Confirmation should be obtained from the Secretary of State's office, the title insurance company, or the seller that the corporation was formed by the filing of a certificate of formation with the New Jersey Secretary of State in accordance with *N.J.S.A. 42:2B-11*. While there is no express requirement in the Act, the LLC may have an operating agreement governing the management and affairs of the LLC. The operating agreement should be examined to determine the members with authority to act on behalf of the LLC and any limitations on the transaction of business by the LLC.

### **Section 3.3.2 Identification of Parties**

The proper identification of the seller and purchaser in the contract is crucial since that information will be relied upon throughout the transaction, such as in the ordering of title work, the performance of judgment searches against the parties in the transaction, and the preparation of the deed vesting title in the purchaser. In preparing the contract, the seller should be identified as its name appears on the deed by which the seller took title to the property. The attorney representing the seller should obtain from the seller a copy of the deed, confirming that title is vested in the seller, at the time the contract is prepared. The name of the purchaser should appear in the contract in the manner which the purchaser wishes to take title to the property. The attorney for the seller will then be able to rely on the manner in which the purchaser is identified in the contract in preparing the deed. The identification of the purchaser should also be accompanied by the form of ownership in which the purchaser intends to take title to the property.

### Section 3.3.3 Form of Ownership

In the context of residential property, title is usually held by individuals rather than by an entity such as a corporation or partnership. The focus of this discussion will be on the forms of ownership of real property by individuals.

(a) **Joint Tenants.** A joint tenancy exists when property is owned by two or more persons and four unities exist: (i) the interest of each person must be of the same duration; (ii) the time of the vesting of title must be the same; (iii) title must arise from the same conveyance; and (iv) each must have equal and undivided possession. A right of survivorship exists in a joint tenancy. Thus, if one joint tenant dies, the interest of that tenant vests in the other joint owner(s) and does not pass to the heirs of the decedent.

(b) **Tenants in Common.** No right of survivorship exists among tenants in common. The interest of a co-tenant passes to the co-tenant's heirs who then hold the property as tenants in common with the survivors. *N.J.S.A. 46:3-17* provides that ownership is presumed to be as tenants in common unless a joint tenancy is specified.

(c) **Tenancy by the Entirety.** A tenancy by the entirety is the tenancy held by a husband and wife by virtue of the joint acquisition of title by them after marriage. A tenancy by the entirety requires the same four unities as a joint tenancy plus the unity of marriage. Upon the death of either spouse, the survivor receives the remainder in fee. It should be noted that the form of ownership of an unmarried man and woman who are subsequently married to each other is not automatically transformed into a tenancy by the entirety. After marriage, the parties must convey title to themselves by deed in order to create a tenancy by the entirety.

### Section 3.3.4 Identification of the Property

In preparing the contract, it is beneficial to have a copy of the deed by which the seller took title to the property in order to confirm the property description. For the purposes of preparing the contract, the property may be identified by one or more of the following:

- (a) Street address.
- (b) Municipal tax map, lot and block reference. Note that tax lot and block reference set forth in the deed by which the seller took title to the property may change if the municipality updates and revises its tax map.
- (c) Filed map lot and block reference. This reference is that which appears on the map which was filed to effect the subdivision of the lands of which the property is a part. This reference differs from the tax lot and block reference assigned to the property.
- (d) Legal (metes and bounds) description. The property may be described by the attachment of a separate sheet captioned "Schedule A" setting forth the legal

description of the property as it appears in the deed by which the seller took title to the property.

- (e) **Unit designation.** If the property consists of a unit in a condominium, the property will be identified by its unit number or letter and, if applicable, the building in which it is located. The unit will also reference its appurtenant percentage interest in the common elements of the condominium.

Describe the property with as much precision or detail as possible. However, at the contract stage, there might not be much more available for use than the street address of the property as the means of identifying the property.

### **Section 3.3.5 Purchase Price**

The contract must state the consideration which the purchaser will be paying for the property. The consideration will be in the form of the purchase price paid by the purchaser which may consist of the following categories of payment:

- (a) **Initial Deposit.** The purchaser may have been requested to place a nominal deposit, e.g. \$500 or \$1,000, at the time the contract was signed as an indication that the purchaser intends to proceed in good faith. This nominal deposit is usually paid to the selling broker at the time the broker prepares the contract for signature by the purchaser, which contract is subsequently presented to the seller for signature.

- (b) **Balance of Deposit.** The balance of the deposit is placed when the contract has been finalized, or on a date shortly thereafter specified in the contract in those cases where the availability of the deposit monies are delayed, e.g. where the purchaser is waiting for a certificate of deposit to mature and the seller is willing to postpone the placement of the balance of the deposit for a short period of time so that the purchaser is not penalized. The finalization of the contract is usually evidenced by the delivery to both the seller and the purchaser of the fully executed rider(s) to the contract.

The total deposit, as represented by any initial deposit which may have been placed as well as the balance of the deposit, is intended to compensate the seller for any loss or expenses incurred by the seller should the purchaser default. The standard deposit placed in the case of a contract for residential property is ten percent (10%) of the purchase price. However, special circumstances may dictate the placement of a smaller deposit, e.g. the need of the purchaser to finance a large part of the purchase price or the unavailability at the time of the signing of the contract of funds which the purchaser intends to have available at the time of closing by way of savings or liquidation of assets. Should the seller decide to accept less than a ten percent (10%) amount as the deposit, the seller should exercise due diligence in determining that the purchaser does have the financial wherewithal to consummate the closing; otherwise, if the purchaser defaults and the deposit placed by the purchaser is insufficient to compensate the seller for damages incurred, the seller will have no alternative but to commence a lawsuit against the purchaser for compensation for damages incurred.

The contract will identify the party which is to hold the deposit in escrow, i.e. the escrow agent, and the length of time for which the deposit is to be held in escrow. The contract may specify that the deposit is to be held by (i) a real estate broker involved in the transaction; (ii) the attorney for the seller; or (iii) the attorney for the purchaser. Some broker's forms of contract specify that the broker will hold the deposit in escrow in an account maintained at the office of the broker. However, if there is a preference for the deposit to be held by an attorney, the custom is for the deposit to be held by the attorney representing the seller, rather than the purchaser, since the funds have been placed to protect the interests of the seller should the purchaser default.

The contract should also specify whether the parties intend for the deposit to accrue interest. Absent such stipulation in the contract, the deposit will be placed in a non-interest account. If the deposit monies are not substantial or will not be held in escrow for a significant period of time, the parties will agree that the escrow be placed in a non-interest bearing account because of the significant administrative effort required to establish an interest-bearing account and the relatively small return for that effort. However, if the deposit is substantial and a significant period of time is contemplated to pass between contract and closing, the parties will usually ask that the deposit be placed in an interest-bearing account. By contract provision, the parties may agree that the interest is to be paid exclusively to one party or that the interest is to be divided equally between them. Depending on the payment or allocation of the interest, the escrow agent opening the account will be required to secure the social security number(s) of the party(ies) to benefit from the interest for the purpose of reporting the interest as income to that party.

It is in the best interests of the purchaser to include a provision in the contract that the deposit is to be held until the closing of title or the termination of the contract in accordance with its terms. For example, the purchaser would be entitled to the return of the deposit monies in the event that the contract is cancelled due to the purchaser's inability to obtain a mortgage commitment. The seller, however, may attempt to negotiate for the release of the deposit at the time all contingencies under the contract have been met by the purchaser. The interests of the purchaser, however, are best protected by ensuring that the deposit is held in escrow until closing to protect the purchaser against a potential default by the seller.

The retention of deposit monies may be addressed differently when the subject of the contract is a newly constructed home and the builder wishes to use the deposit monies to cover construction costs. The placement of the deposit in that instance is discussed in Section 7.1.

(c) **Mortgage Amount.** This is the amount in which the purchaser intends to obtain a loan. The mortgage which is given by the purchaser to the lender to secure the repayment of all or a portion of the purchase price is known as a purchase money mortgage. The purchaser may be seeking a purchase money mortgage from an institutional lender or the seller in the transaction may agree to provide financing by "taking back a mortgage" or "taking back paper". Associated with the amount of the mortgage inserted in the contract will be a mortgage contingency setting forth the terms of the mortgage which the purchaser is seeking and providing that the purchaser will be entitled to cancel the contract and seek the return of the deposit monies placed in the event that the purchaser is unable to obtain the amount and type of mortgage described.

(d) **Assumption of Mortgage.** If the purchaser will be assuming the existing mortgage on the property as a means of paying part of the purchase price, the contract will state the amount of the obligation which the purchaser will be assuming. Prior to agreeing to assume any existing mortgage debt on the property, the attorney for the purchaser should examine the recorded mortgage and the note or bond evidencing the indebtedness in order to confirm that the terms are acceptable to the purchaser. If the purchaser intends to secure purchase money mortgage financing in addition to the mortgage being assumed, the attorney should find out from the lender under the mortgage being sought if the assumed mortgage must be subordinated to the mortgage. The mortgage should be examined to determine if, by its express terms, the assumption of the mortgage is permitted or, in the alternative, the lender has the right to accelerate the mortgage and to demand all outstanding amounts to be paid in full. At a minimum, the contract being signed by the purchaser will provide that the contract may be cancelled by either the seller or the purchaser in the event that the consent of the lender to the assumption is not given. However, the better alternative is to obtain the consent of the lender to the assumption of the mortgage prior to the signing of the contract by the parties.

In representing the seller in a transaction where the mortgage given by the seller to the lender is being assumed, the seller may continue to be held primarily liable for the amount of the outstanding obligation under the mortgage. In such event, the seller should attempt to seek from the lender a release from the obligations created by the note and mortgage. Since it is unlikely that such a release will be given by the lender, the seller might consider obtaining an indemnification from the purchaser from any claims which the lender might assert against the seller. In so proceeding, the seller should realize the value of such an indemnification may be limited due to such factors as the financial position of the purchaser and the potential for the seller to incur legal costs to enforce the indemnification.

(e) **Purchase Money Mortgage to Seller.** A purchase money mortgage is a mortgage given for a loan which is used as part of the consideration for the purchase of the property. When the seller agrees to give the purchaser a loan and the purchaser gives a mortgage to the seller, the seller is "taking back a mortgage" or "taking back paper" as part of the payment received from the purchaser.

At a minimum, the terms of the mortgage loan should be reflected in the contract. Important terms include the interest rate and any future adjustment in the rate, the length of the term, the manner in which the monthly payments will be calculated, e.g. interest only, amortized payments. Ideally, the proposed form of note and mortgage completed to the extent their terms can be determined and to be further completed and signed by the purchaser at closing should be attached to the contract. Since it might not be possible for the note and mortgage to be prepared and attached to the contract at the time the contract is signed, an alternative would be for reference to be made in the contract to a preprinted form of note and mortgage agreement which the parties agree to use. In that case, only the salient provisions which will be used in completing the preprinted forms will be identified in the contract itself. Forms of note and mortgage which appear as Exhibits 17 and 18, respectively, set forth terms and provisions which may be incorporated into the purchase money mortgage clause or negotiated as part of the contract.

EXHIBIT 17 - MORTGAGE NOTE (ALL-STATE FORM 2004)

# Mortgage

This mortgage is made on July 15, 2010

BETWEEN the Borrower(s) Patrick A. Martin

Lauren B. Martin

Husband and Wife

whose address is 40 West Dudley Ave, Westfield, NJ 07090

referred to as "I,"

AND the Lender Pinnacle Mortgage Company

whose address is 1233 Broad Street, East Hanover, NJ 07936

referred to as the "Lender."

If more than one Borrower signs this Mortgage, the word "I" shall mean each Borrower named above. The word "Lender" means the original Lender and anyone else who takes this Mortgage by transfer.

1. **Mortgage Note.** In return for a loan that I received, I promise to pay \$ 136,000.00 (called "Principal"), plus interest in accordance with the terms of a Mortgage Note (referred to as the "Note") dated 07/15/10. The Note provides for monthly payments of \$ 892.00 and a yearly interest rate of 7 %. All sums owed under the Note are due no later than August 1, 2040. All terms of the Note are made part of this Mortgage.

2. **Property Mortgaged.** The property mortgaged (called the "Property") to the Lender is located in the Town of Westfield County of Union and State of New Jersey. The Property includes: (a) the land; (b) all buildings that are now, or will be, located on the land; (c) all fixtures that are now, or will be, attached to the land or building(s) (for example, furnaces, bathroom fixtures and kitchen cabinets); (d) all condemnation awards and insurance proceeds relating to the land and building(s); and (e) all other rights that I have, or will have, as owner of the Property. The legal description is:

☐ Please see attached Legal Description annexed hereto and made a part hereof (check box if applicable).  
**BEGINNING** at a point in the southeasterly sideline of West Dudley Avenue, distant 246.80 feet northeasterly along said sideline from the intersection of the prolongation of said sideline with the prolongation of the northerly sideline of North Avenue, said beginning point; running thence

1) North 38 degrees 02 minutes East along ssaid sideline of West Dudley Avenue, 60.00 feet to a point; thence

2) South 51 degrees 58 minutes East, 117.25 feet to a point; thence

3) South 58 degrees 57 minutes West, 64.23 feet to a point; thence

4) North 51 degrees 58 minutes West, 94.32 feet to a point or place of BEGINNING.

(For Recorder's Use Only)

## EXHIBIT 18 - MORTGAGE (ALL-STATE FORM 204)

### Mortgage

This mortgage is made on July 15, 2010

BETWEEN the Borrower(s) Patrick A. Martin and Lauren B. Martin, Husband and Wife

whose address is 40 West Dudley Ave, Westfield, NJ 07090

referred to as "I,"

AND the Lender John T. Johnson and Barbara A. Johnson, Husband and Wife

whose address is 16 Locust Way, Franklin, NJ 07033

referred to as the "Lender."

If more than one Borrower signs this Mortgage, the word "I" shall mean each Borrower named above. The word "Lender" means the original Lender and anyone else who takes this Mortgage by transfer.

1. **Mortgage Note.** In return for a loan that I received, I promise to pay \$ 135,000.00 (called "Principal"), plus interest in accordance with the terms of a Mortgage Note (referred to as the "Note") dated 07/15/10. The Note provides for monthly payments of \$ 892.00 and a yearly interest rate of 7 %. All sums owed under the Note are due no later than August 1, 2040. All terms of the Note are made part of this Mortgage.

2. **Property Mortgaged.** The property mortgaged (called the "Property") to the Lender is located in the Town of Westfield, County of Union and State of New Jersey. The Property includes: (a) the land; (b) all buildings that are now, or will be, located on the land; (c) all fixtures that are now, or will be, attached to the land or building(s) (for example, furnaces, bathroom fixtures and kitchen cabinets); (d) all condemnation awards and insurance proceeds relating to the land and building(s); and (e) all other rights that I have, or will have, as owner of the Property. The legal description is:

☐ Please see attached Legal Description annexed hereto and made a part hereof (check box if applicable).  
**BEGINNING at a point in the southeasterly sideline of West Dudley Avenue, distant 246.80 feet northeasterly along said sideline from the intersection of the prolongation of said sideline with the prolongation of the northerly sideline of North Avenue, said beginning point; running thence**

**1) North 38 degrees 02 minutes East along said sideline of West Dudley Avenue, 60.00 feet to a point; thence**

**2) South 51 degrees 58 minutes East, 117.25 feet to a point; thence**

**3) South 58 degrees 57 minutes West, 64.23 feet to a point; thence**

**4) North 51 degrees 58 minutes West, 94.32 feet to a point or place of BEGINNING.**

(For Recorder's Use Only)

## Exhibit 18 - Mortgage (All-State Form 204) - Continued

BEING known and designed on a certain map entitle "Map of Forest Park, Westfield, N.J." as Lot 37, which said map was filed May 26, 1923 as Map 96D.

BEING also known and designated as Tax Lot 3 in Block 806 on the Tax Map for the Town of Westfield.

The above description is drawn in accordance with a survey made by Sailer & Sailer dated July 1, 2000.

BEING the same premises conveyed to Patrick A. Martin and Lauren B. Martin, husband and wife, by Deed from Aaron Anderson and Katherine Anderson, husband and wife, dated July 15, 2010 and about to be recorded simultaneously with this Mortgage.

The within Mortgage is a First Purchase Money Mortgage given to secure all or a portion of the purchase price paid for the above described premises.

3. **Rights Given to Lender.** I mortgage the Property to the Lender. This means that I give the Lender those rights stated in this Mortgage and also those rights the law gives to lenders who hold mortgages on real property. When I pay all amounts due to the Lender under the Note and this Mortgage, the Lender's rights under this Mortgage will end. The Lender will then cancel this Mortgage at my expense.

4. **Promises.** I make the following promises to the Lender:

a. **Note and Mortgage.** I will comply with all of the terms of the Note and this Mortgage.

b. **Payments.** I will make all payments required by the Note and this Mortgage.

c. **Ownership.** I warrant title to the premises (N.J.S.A. 46:9-2). This means I own the Property and will defend my ownership against all claims.

d. **Liens and Taxes.** I will pay all liens, taxes, assessments and other government charges made against the Property when due. I will not claim any deduction from the taxable value of the Property because of this Mortgage. I will not claim any credit against the Principal and interest payable under the Note and this Mortgage for any taxes paid on the Property.

e. **Insurance.** I must maintain extended coverage fire or property insurance on the Property. The Lender may also require that I maintain flood insurance or other types of insurance. The insurance companies, policies, amounts, and types of coverage must be acceptable to the Lender. I will notify the Lender in the event of any substantial loss or damage. The Lender may then settle the claim on my behalf if I fail to do so. All payments from the insurance company must be payable to the Lender under a "standard mortgage clause" in the insurance policy. The Lender may use any proceeds to repair and restore the Property or to reduce the amount due under the Note and this Mortgage. This will not delay the due date for any payment under the Note and this Mortgage.

f. **Repairs.** I will keep the Property in good repair, neither damaging nor abandoning it. I will allow the Lender to inspect the Property upon reasonable notice to me.

## Exhibit 18 - Mortgage (All-State Form 204) - Continued

- g. **Statement of Amount Due.** Upon request of the Lender, I will certify to the Lender in writing:  
(a) the amount due on the Note and this Mortgage, and  
(b) whether or not I have any defense to my obligations under the Note and this Mortgage.
- h. **Rent.** I will not accept rent from any tenant for more than one month in advance.
- i. **Lawful Use.** I will use the Property in compliance with all laws, ordinances and other requirements of any governmental authority.
5. **Eminent Domain.** All or part of the Property may be taken by a government entity for public use. If this occurs, I agree that any compensation be given to the Lender. The Lender may use this to repair and restore the Property or to reduce the amount owed on the Note and this Mortgage. This will not delay the due date for any further payment under the Note and this Mortgage. Any remaining balance will be paid to me.
6. **Tax and Insurance Escrow.** If the Lender requests, I will make regular monthly payments to the Lender of:  
(a) 1/12 of the yearly real estate taxes and assessments on the Property; and (b) 1/12 of the yearly cost of insurance on the Property. These payments will be held by the Lender without interest to pay the taxes, assessments and insurance premiums as they become due.
7. **Payments Made for Borrower(s).** If I do not make all of the repairs or payments as agreed in this Mortgage, the Lender may do so for me. The cost of these repairs and payments will be added to the Principal, will bear interest at the same rate provided in the Note and will be repaid to the Lender upon demand.
8. **Default.** The Lender may declare that I am in default on the Note and this Mortgage if:  
j. I fail to make any payment required by the Note and this Mortgage within 30 days after its due date;  
k. I fail to keep any other promise I make in this Mortgage;  
l. the ownership of the Property is changed for any reason;  
m. the holder of any lien on the Property starts foreclosure proceedings; or  
n. bankruptcy, insolvency or receivership proceedings are started by or against any of the Borrowers.
9. **Payments Due Upon Default.** If the Lender declares that I am in default, I must immediately pay the full amount of all unpaid Principal, interest, other amounts due on the Note and this Mortgage and the Lender's costs of collection and reasonable attorney fees.
10. **Lender's Rights Upon Default.** If the Lender declares that the Note and this Mortgage are in default, the Lender will have all rights given by law or set forth in this Mortgage. This includes the right to do any one or more of the following:  
o. take possession of and manage the Property, including the collection of rents and profits;  
p. have a court appoint a receiver to accept rent for the Property (I consent to this);  
q. start a court action, known as foreclosure, which will result in a sale of the Property to reduce my obligations under the Note and this Mortgage; and  
r. sue me for any money that I owe the Lender.
11. **Notices.** All notices must be in writing and personally delivered or sent by certified mail, return receipt requested, to the address given in this Mortgage. Address changes may be made upon notice to the other party.
12. **No Waiver by Lender.** Lender may exercise any right under this Mortgage or under any law, even if Lender has delayed in exercising that right or has agreed in an earlier instance not to exercise that right. Lender does not waive its right to declare that I am in default by making payments or incurring expenses on my behalf.
13. **Each Person Liable.** This Mortgage is legally binding upon each Borrower and all who succeed to their responsibilities (such as heirs and executors). The Lender may enforce any of the provisions of the Note and this Mortgage against any one or more of the Borrowers who sign this Mortgage.
14. **No Oral Changes.** This Mortgage can only be changed by an agreement in writing signed by both the Borrower(s) and the Lender.
15. **Signatures.** I agree to the terms of this Mortgage and have set my hand and seal hereto. If the Borrower is a corporation, its proper corporate officers sign and seal this mortgage.

Witnessed or Attested by:

\_\_\_\_\_  
Patrick A. Martin (Seal)

\_\_\_\_\_  
Christine F. Li, Esq.

\_\_\_\_\_  
Lauren B. Martin (Seal)

**Exhibit 18 - Mortgage (All-State Form 204) - Continued**

STATE OF NEW JERSEY, COUNTY OF MIDDLESEX SS:

I CERTIFY that on July 15, 2010

Patrick A. Martin

Lauren B. Martin

personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument; and,  
(b) executed this instrument as his or her own act.

Christine F. L I

An Attorney at Law of the State of New Jersey

*Print name and title below signature*

STATE OF NEW JERSEY, COUNTY OF \_\_\_\_\_ SS:

I CERTIFY that on \_\_\_\_\_

personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument;  
(b) was authorized to and did execute this instrument as \_\_\_\_\_  
of \_\_\_\_\_ the entity named in this instrument; and,  
(c) executed this instrument as the act of the entity named in this instrument.

*Print name and title below signature*

<b>Note Mortgage</b>	<b>Borrower(s)</b>  Patrick A. Martin Lauren B. Martin	<b>TO</b>  Pinnacle Mortgage Company	<b>Lender(s)</b>  DATED: July 15, 2010	<b>RECORD &amp; RETURN TO:</b>  Greenbaum, Rowe, Smith & Davis LLP Metro Corporate Campus I P.O. Box 5600 Woodbridge, New Jersey 07095

To the County Recording Officer of \_\_\_\_\_ County:

This Mortgage is fully paid. I authorize you to cancel it of record.

Dated \_\_\_\_\_ (Seal)  
\_\_\_\_\_, Lender

Beyond the terms of the note and mortgage themselves, it is customary for the seller's attorney to prepare the necessary documents and to receive payment from the purchaser of an agreed upon fee for that service. A typical fee for this service ranges from \$250 to \$500. A clause in the contract should also identify any other costs which the purchaser will be required to pay, such as recording fees, and other requirements which will be imposed upon the purchaser as a condition of the seller making the loan. This may include the requirement that the purchaser provide certain documentation supporting the purchaser's financial ability to pay the mortgage or submit to the performance of credit checks, or deliver at the purchaser's expense after closing a mortgagee's policy of title insurance insuring the seller's mortgage. The contract should also specify the documents which the purchaser will be required to sign at closing such as the note, mortgage and a mortgagor's affidavit of title.

(f) **Balance of Purchase Price.** This will be the amount which the purchaser is required to pay to the seller in addition to any of the other payments discussed in paragraphs (a) through (e) of this Section. The seller will want to receive the balance of the payment by means of a certified check or a bank cashier's check drawn payable directly to the seller and the form of check which the seller is willing to accept should be specified in the contract. The seller may also wish to specify that second party checks, i.e. checks drawn payable to the purchaser or some other party and then endorsed by the purchaser or that party to the order of the seller, are unacceptable.

Even if the form of funds is specified in the contract, it may be that the purchaser will be unable to deliver the form of funds reflected in the contract. It is not unusual for the balance of the purchase price to be paid by means of the uncertified trust account check of the attorney for the purchaser. This may be a practical necessity due to the fact that a larger check representing the funds of the purchaser, such as the mortgage proceeds check, must be disbursed to several payees at the time of the closing. The only way to accomplish this disbursement is to deposit the check into the attorney's trust account and for the attorney to then draw the appropriate attorney trust account checks. Accordingly, in order to accommodate the purchaser, it may be necessary to accept payment in the form of an attorney trust account check. In accepting that form of funds, the seller should realize that those funds will not be immediately negotiable as would be a certified check or a bank cashier's check.

Certain restrictions exist as to the ability of an attorney to draw on funds which have been deposited in, but which have not yet cleared, the trust account. There are also certain controls and ethical sanctions imposed upon an attorney should a check drawn on an attorney trust account check be returned due to insufficient funds in the account. A discussion appears in Section 8.3.

### **Section 3.3.6 Date and Time of Closing**

The contract should specify the date on which the closing is to occur. When a closing date is specified in the contract, the understanding is that the date is an estimated date since it is impossible to determine with any degree of certainty the amount of time both seller and purchaser will require to prepare for closing and to address unanticipated circumstances. If it is essential to either party that the closing occur on a specified date, the contract should stipulate that "time is of the essence" and both seller and purchaser should understand its significance. A discussion appears in Section 3.7.

### **Section 3.3.7 Place of Closing**

It is customary for the closing to be held in the office of the purchaser's attorney since the purchaser's attorney will bear the burden of preparing for and conducting the mortgage closing (when the purchaser reviews and signs the documentation for the mortgage loan and arranges for the disbursement of the mortgage proceeds) and the title closing (when the documents conveying title and the closing proceeds are exchanged). The parties and their respective attorneys, however, may agree for the closing to be conducted somewhere else, e.g. the office of the broker, seller's attorney, or at the site of the property in the event that location is more convenient.

In reviewing a contract for a newly constructed home or a dwelling in a planned residential development such as a condominium or fee simple townhouse development, the contract may require the closing to be held in the seller's attorney's office or at the site of the property, where a facility such as a sales office exists, due to the volume of closings arising out of the development. When representing the purchaser, carefully review that clause and, if it does provide that the closing is to be held at a location other than the purchaser's attorney's office, attempt to negotiate a modification of that clause, if possible.

### **Section 3.3.8 Contingencies**

The main reason that a substantial period of time elapses between the signing of a contract and the closing is to allow time for the parties to the contract to satisfy certain contingencies in the contract. It will only be if the party responsible for satisfying a particular contingency in the contract is able to perform and satisfy the contingency that the other party will then be required to perform as well. Since there are usually numerous contingencies in the contract, it is important that, as soon as the contract has been finalized, the party responsible for satisfying a contingency act immediately toward satisfying the contingency. Certain contingencies require relatively little effort to satisfy and involve little cost. Other contingencies require a greater amount of time and a greater expenditure of funds. The amount of time allowed in the contract for the satisfaction of each contingency reflects the time generally required for a contingency to be addressed.

Some of the contingencies relate to inspection and testing of the property to determine if there exist any adverse conditions, particularly of a structural or environmental nature, which may affect the ownership of the property. These contingencies are satisfied by the performance of the necessary tests and inspections by experts retained by the purchaser. The seller should be aware, however, that the conduct of such efforts by the purchaser does not relieve the seller of liability in the event the seller fails to disclose known defects or hazards which might affect the property.

Those contingencies requiring the least amount of time and cost to the purchaser should be addressed first so that if a contingency is not satisfied in a manner acceptable to the purchaser and, therefore, imposes an impediment to proceeding, the purchaser will be in a position to terminate the contract without having expended substantial or additional funds. Typically, the contract may contain several contingencies, the first in order of which is the attorney review provision. Once the attorney review has resulted in a fully executed, satisfactory contract, the following are additional contingencies

appearing in an order which generally takes into consideration priority and the cost that will be incurred by the purchaser. In practice, the satisfaction of the inspection and testing contingencies, and those which will subject the purchaser to minimal expense if the contract is terminated, e.g. the flood area contingency, is undertaken simultaneously.

(a) **Attorney Review.** The contract is contingent upon the review of the attorney within the three-day attorney review period as discussed in Section 3.2.1. Once the attorney review has been completed, then the parties would proceed with the satisfaction of the other contingencies.

(b) **Flood Area.** The contract will allow the purchaser to terminate the contract in the event the property is in a flood area. The contract may allow anywhere from ten (10) to thirty (30) days for the purchaser to satisfy this contingency. Typical means of satisfying the contingency include using a commercial flood certification company to issue a certificate for the property or obtaining a letter from the municipality in which the property is located advising if the property is in a flood area. A sample flood certification appears as Exhibit 19. The cost of such a certificate is approximately \$20.


Even if the property is in a flood area, the purchaser still may wish to purchase the property. The purchaser will be subject to the additional cost associated with obtaining flood insurance for the structural improvements and the contents of the home. The purchaser should confirm the availability of adequate flood insurance for real and personal property and its related cost and determine the requirements of the mortgage lender. A property located in a flood area may be subject to restrictions on the reconstruction of the home due to casualty and/or the expansion or enlargement of the structure even where no damage has occurred.

(c) **Termite Inspection.** The contract will usually include a provision which allows the purchaser, at the purchaser's sole cost and expense, to arrange for a reputable termite inspection company to determine if there is any damage or infestation caused by termites or other wood destroying insects. The time allowed for the termite inspection may range from one (1) week to three (3) weeks.

The distinction between termite infestation and termite damage should be understood in drafting and interpreting a termite contingency clause. Termite infestation may be relatively inexpensive to exterminate and, once completed, will give rise to little or no continuing concern. The correction of termite damage to a dwelling may be expensive for the seller and raise for the purchaser concerns relative to the structural integrity of the dwelling notwithstanding the repair of any damage. Sample termite inspection contract clauses appear as Exhibit 20.

(d) **Home Inspection.** The contract may allow a structural inspection to be performed by a reputable home inspection company and makes the contract contingent upon the receipt of a satisfactory structural and mechanical inspection of the home. One (1) to three (3) weeks is usually permitted for the performance of the home inspection and consideration of the written results. The cost of this inspection depends on several factors such as the age, size and type of the house. Sample home inspection contract clauses appear as Exhibit 21.

**EXHIBIT 19 - FLOOD CERTIFICATION**

DEPARTMENT OF HOMELAND SECURITY - FEDERAL EMERGENCY MANAGEMENT AGENCY		See The Attached Instructions		O.M.B No. 1660-0040 Expires Oct 31, 2008	
<b>STANDARD FLOOD HAZARD DETERMINATION</b>					
<b>SECTION I - LOAN INFORMATION</b>					
1. LENDER NAME AND ADDRESS World Savings			2. COLLATERAL (Building/Mobile Home/Personal Property) PROPERTY ADDRESS (Legal Description may be attached) WALL TOWNSHIP MONMOUTH NJ 2111 P: COURT 087200573 BLOCK: 826 LOT: 133 OWNER(S):		
3. LENDER ID. NO.	4. LOAN IDENTIFIER		5. AMOUNT OF FLOOD INSURANCE REQUIRED \$		
<b>SECTION II</b>					
<b>A. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) DATA AFFECTING BUILDING/MOBILE HOME</b>					
NFIP Community Name		County(ies)	State	NFIP Community Number	
WALL TOWNSHIP		MONMOUTH	NJ	340333-0003-A	
<b>B. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) DATA AFFECTING BUILDING/MOBILE HOME</b>					
NFIP Map Number or Community Panel Number (Community Name if not the same as "A")	NFIP Map Panel Effective/ Revised Date	LOMA/LOMR NFIP Community Name	Flood Zone	No NFIP Map	
	2/16/1977	----- Yes Date	C		
<b>C. FEDERAL FLOOD INSURANCE AVAILABILITY (Check all that apply)</b>					
<input checked="" type="checkbox"/> Federal Flood Insurance is available NFIP (community participates in NFIP). <input checked="" type="checkbox"/> Regular Program <input type="checkbox"/> Emergency Program of NFIP					
<input type="checkbox"/> Federal Flood Insurance is not available because community is not participating in the NFIP					
<input type="checkbox"/> Building/Mobile Home is in a Coastal Barrier Resources Area (CBRA) or Otherwise Protected Area (OPA). Federal Flood Insurance may not be available CBRA/OPA designation date:					
<b>D. DETERMINATION</b>					
<b>IS BUILDING/MOBILE HOME IN SPECIAL FLOOD HAZARD AREA (ZONES BEGINNING WITH LETTERS "A" OR "V")?</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
If yes, Flood insurance is required by the Flood Disaster Protection Act of 1973 If no, Flood insurance is not required by the Flood Disaster Protection Act of 1973					
<b>E. COMMENTS (Optional): BASIC FLOOD CERTIFICATION</b>					
FLOOD INSURANCE FOR THIS PROPERTY IS NOT MANDATED PER THE FLOOD DISASTER PROTECTION ACT OF 1973.  TRIDENT ABSTRACT TITLE AGENCY L.L.C.					
This determination is based on examining the NFIP map, any Federal Emergency Management Agency revisions to it, and any other information needed to locate the building/mobile home on the NFIP map.					
<b>F. PREPARER'S INFORMATION</b>					
NAME, ADDRESS, TELEPHONE NUMBER (If other than Lender)				Title/Order Number	
 <b>Data Trace</b> 300 Executive Drive, Suite 275 West Orange, NJ 07052 973-323-8200					
				DATE OF DETERMINATION	
				9/6/2007	
FEMA Form 81-93, DEC 05					

### Exhibit 19 - Flood Certification - Continued

Loan Number: \_\_\_\_\_  
 Order Number: **TA-108659\_0**  
 Determination Date: **9/6/2007**

**NOTICE IS GIVEN TO: World Savings**

The Flood Disaster Protection Act of 1973, as amended, requires that Federally regulated lending institutions shall not make, increase, extend, or renew any loan secured by improved real estate, or a mobile home located or to be located, in an area that has been identified by the Director of the Federal Emergency Management Agency (FEMA) as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, through the National Flood Insurance Program (NFIP), unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the Act with respect to the particular type of property, whichever is less.

**NOTICE TO BORROWER ABOUT SPECIAL FLOOD HAZARD AREA STATUS**

☐ *Notice of Property in Special Flood HazardArea (SFHA)*

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards. The area has been identified by the Director of FEMA as an SFHA using FEMA's Flood Insurance Rate Map or the Flood Hazard Boundary Map for the following community: WALL TOWNSHIP

This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a SFHA is 26 percent (26%). Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in an SFHA. If you would like to make such a request, please contact us for further information.

☒ *Notice of Property Not in Special Flood HazardArea (SFHA)*

The building or mobile home described in the attached instrument is not currently located in an area designated by the Director of FEMA as a SFHA. NFIP flood insurance is not required, but may be available. If, during the term of this loan, the subject property is identified as being in a SFHA, as designated by FEMA, you may be required to purchase and maintain flood insurance at your expense.

**NOTICE TO BORROWER ABOUT FEDERAL FLOOD DISASTER ASSISTANCE**

☒ *Notice in Participating Communities*

The community in which the property securing the loan is located participates in the NFIP. The Flood Disaster Protection Act of 1973, as amended, mandates federally insured or regulated lenders to require the purchase of flood insurance on all buildings being financed that are located in SFHAs of communities participating in the NFIP. The flood insurance must be maintained for the term of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance at your expense.

Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.

At a minimum, flood insurance purchased must cover the lesser of:

- (1) the outstanding principal balance of the loan; or
- (2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

☐ *Notice in Nonparticipating Communities*

Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the nonparticipating community has been identified for at least one year as containing an SFHA, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

Borrower's Signature \_\_\_\_\_ Date \_\_\_\_\_

Borrower's Signature \_\_\_\_\_ Date \_\_\_\_\_

Lending Institution \_\_\_\_\_

Lending Institution Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_

## EXHIBIT 20 - TERMITE INSPECTION CLAUSE

### SAMPLE TERMITE INSPECTION CLAUSES

By way of supplement to Paragraph 18 of the Contract [Termite Inspection Provision in All-State Long Form of Contract], the parties agree that the determination of whether all infestation has been exterminated and all damage repaired shall be made by the termite inspection agency selected by the Buyer. The Seller shall not be required to repair any damage in excess of \$1,000. If the cost of repair of damage is in excess of \$1,000, then Buyer shall have the option to cancel this Agreement. In the sole discretion of the Buyer, Seller shall be required to provide Buyer with a credit at closing for the cost of repair of any damage due to infestation by termites or other wood destroying insects.

\* \* \*

By way of supplement to Paragraph 18 of the Contract [Termite Inspection Provision in All-State Long Form of Contract], the parties agree that the determination of whether all infestation has been exterminated and all damage repaired shall be made by the termite inspection agency selected by the Buyer. If the cost of repair of damage is in excess of five (5%) percent of the purchase price, then Buyer shall have the option to cancel this Agreement.

\* \* \*

This Agreement is contingent upon the Buyer, at the Buyer's expense, obtaining a reputable termite inspection company of the Buyer's choice for an inspection for the presence of termite, carpenter ant, and other wood destroying insects and/or damage therefrom in the aforementioned dwellings, and outbuildings if any, by no later than \_\_\_\_\_. Buyer shall provide the Seller with a copy of said report by \_\_\_\_\_. If such inspection shall indicate the absence of infestation or damage, this Agreement shall be binding with respect to this contingency. If the inspection shall reveal infestation or damage, then the Seller has the option to either treat the infestation and repair the damage or return the deposit monies to the Buyer. In the alternative, the Buyer may refuse the return of the deposit monies and waive the results of the report in writing within five (5) days, in which event, this contract shall remain binding. If Buyer fails to perform said inspection, this contingency shall be deemed waive. In spite of anything to the contrary in this subparagraph, if the cost of extermination and/or repair exceeds \$1,000, Buyer shall have the right to cancel the Agreement at which time the Seller shall return to Buyer all deposit monies paid by Buyer.

**EXHIBIT 21 - HOME INSPECTION CLAUSE**

**SAMPLE HOME INSPECTION CLAUSES**

This Agreement is contingent upon Buyer obtaining a home inspection and written report from a reputable company of the Buyer's choice. The said inspection shall be at the sole expense of the Buyer and shall be completed by \_\_\_\_\_. In the event the inspection reveals the existence of any physical defects or operational defect affecting the Property including, but not limited to, the electrical, plumbing, heating, and sewer, or the presence of environmental contaminants, including but not limited to asbestos and Urea-Formaldehyde, the Buyer shall present the Seller with a copy of the inspection report by \_\_\_\_\_. Seller shall then have the option to either: (1) make the repairs required by the Buyer, (2) return all deposit monies immediately to the Buyer. If the Buyer accepts the return of the deposit, the Agreement shall become null and void. Buyer may refuse the return of the deposit and waive the result of the report in writing within five (5) days, in which event this Agreement shall remain binding. In spite of anything to the contrary in this subparagraph, if the cost to correct the defect(s) exceeds \$1,000, Buyer shall have the right to cancel the Agreement at which time the Seller shall return to Buyer all deposit monies paid by Buyer.

\* \* \*

This Agreement is contingent upon a satisfactory home inspection by a reliable home inspection agency to determine the structural integrity of the premises and the roof, the satisfactory condition of all heating, air conditioning, plumbing and electrical systems, the integrity of the surface water drainage system and the existence of any major defects to the property. This inspection shall be obtained by Buyer, at its sole cost and expense, by no later than twelve (12) days from the date of this Agreement. In the event such report reveals defects and unsatisfactory conditions, Buyer shall have the right to cancel this Agreement, in which event all deposit monies, together with interest, shall be returned to the Buyer.

\* \* \*

This Agreement is contingent upon a satisfactory home inspection by a reliable home inspection agency to determine the structural integrity of the premises and the roof, the satisfactory condition of all heating, air conditioning, plumbing and electrical systems, the integrity of the surface water drainage system and the existence of any major defects to the property. This inspection shall be obtained by Buyer, at its sole cost and expense, by no later than fifteen (15) days from the date of this Agreement. In the event such report reveals defects or unsatisfactory conditions the cost to which repair or replacement is in excess of \$1,000 for any single item or \$2,500 for all items in the aggregate, Buyer shall have the right to cancel this Agreement, in which event all deposit monies, together with interest, shall be returned to the Buyer. In the sole discretion of the Buyer, Seller will be required (i) to perform repairs or to effect the necessary replacements or (ii) to provide Buyer with a credit for any defects and unsatisfactory conditions, the cost of such repairs and/or credit not to exceed \$2,000. The cost of the repairs and/or replacements shall be determined in the sole discretion of the home inspection agency selected by the Buyer.

(e) **Radon Test.** The purchaser may want to make the contract contingent upon a satisfactory radon test being performed on the property. The radon test may require up to two weeks for both the performance of the test and the report of the results of the test.

Studies by the Environmental Protection Agency (EPA) and the New Jersey Department of Environmental Protection (DEP) have established that serious health risks are associated with exposure to elevated levels of radon gas which is emitted from the soil. The decomposure of this gas releases radioactivity. Unsafe levels of the gas have been discovered throughout the State; however, the State has been divided into regions or "tiers" according to the amount of radon typically found in each.

The Radon Hazard Subcode, *N.J.A.C. 5:23-10 et seq.* was promulgated pursuant to the State Uniform Construction Act, *N.J.S.A. 52:27D-119 et seq.* While the subcode sets forth standards applicable to the construction of new homes, it also includes guidelines which can be adopted for use in contracts for the sale of homes. In part, it provides that "[a]n elevated concentration is defined as being at or above the guideline of a 4 Pci/L or 0.002 WL average annual exposure." Pci/L stands for "picocurie per Liter" and is a measure of the concentration of radon gas in air. WL stands for "Working Level", a measure of radon decay product concentration. The 4 picocurie level has generally been incorporated in contract radon contingency clauses as an acceptable level. A level reported in excess of this amount would allow the purchaser further rights and remedies under the contract.

A radon contingency clause would provide that the purchaser has the right to hire a qualified radon gas company to test the property. The State has designated certain companies as certified testing and/or mitigation firms may be obtained from the State DEP Radon Section. If levels above those specified by the EPA and/or DEP are discovered through such inspection, the purchaser then has the option of either (i) voiding the contract or (ii) requesting that the seller either correct the problem prior to closing or credit the purchaser at closing the cost of reducing the level of radon gas in accordance with accepted safety standards. Sample radon contract clauses appear as Exhibit 22.

(f) **Well Inspection and Potability Test.** The Private Well Testing Act, *N.J.S.A. 58:12A-26 et seq.* requires that every contract for the sale of real property served by a private well located on the property, or a well with less than 15 service connections or that does not regularly serve an average of at least 25 individuals daily at least 60 days annually, must include a provision that requires the well water be tested as a condition of sale.

At a minimum, water-quality testing should cover bacteria, nitrates, iron, manganese, pH, lead and all volatile organic compounds for which maximum contaminant levels have been established. The sample results must conform to the requirements mandated by the law; however, the New Jersey Department of Environmental Protection ("NJDEP") may, by rule or regulation, also require additional parameters on a county-wide or area-specific basis. NJDEP also has the authority to exclude parameters it deems inappropriate in certain regions of New Jersey. A laboratory certified by the NJDEP in drinking water methods must perform the tests.

**EXHIBIT 22 - RADON CLAUSES**

**RADON CONTINGENCY CLAUSE**

[Purchaser Obligated to Proceed if seller  
Performs Work or Gives Credit]

The obligations of the purchaser under the Contract of Sale are contingent upon the Premises being free of elevated levels of naturally occurring radon gas. The seller and purchaser agree that the purchaser has the right, at his expense, to retain a qualified inspector to conduct and complete an investigation to test for elevated levels of naturally occurring radon gas on this property. Purchaser shall have \_\_\_\_\_ ( ) days from the date of this Agreement to have such radon tests conducted, using established testing procedures recommended by the New Jersey Department of Environmental Protection (DEP) and/or United States Environmental Protection Agency (EPA). In the event that the test results indicate levels of radon gas above four (4) picocuries, purchaser shall give seller, within three (3) days of receipt of the test results, a copy of the test results together with an estimate from a qualified individual or company of the cost to lower these levels to the four (4) picocurie level. If the estimated cost for lowering the radon gas levels is less than \$\_\_\_\_\_, seller shall be obligated to perform the required work at seller's expense. However, if the estimated cost of lowering the radon levels discovered exceeds \$\_\_\_\_\_, seller shall, in writing and within five (5) days of receipt of the estimated costs, either (i) agree to give a credit to purchaser at closing in the amount of the estimated mitigation costs, or (ii) notify purchaser of its unwillingness to allow such a credit. In the event seller shall be unwilling to allow such a credit, purchaser shall, within five (5) calendar days of such notice, (a) waive the above contingency and be responsible for the cost of mitigating the radon gas levels at his/her costs, or (b) void this Agreement in which event all deposit monies shall be returned to purchaser and all further obligations between the parties shall terminate. In the event the purchaser does not so notify the seller within the above time periods, purchaser waives his/her rights under this clause.

**Exhibit 22 - Radon Clauses - Continued**

[Purchaser Can Terminate Contract  
Due to Elevated Radon Level]

The obligations of the purchaser under the Contract of Sale are contingent upon the Premises being free of elevated levels of naturally occurring radon gas. Accordingly, the seller and purchaser agree that the purchaser has the right, at his expense, to retain a qualified inspector to conduct and complete an investigation to test for elevated levels of naturally occurring radon gas on this property. Purchaser shall have \_\_\_\_\_ ( ) days from the date of this Agreement to have such radon gas tests conducted, using established testing protocols recommended by the New Jersey Department of Environmental Protection (DEP) and/or United States Environmental Protection Agency (EPA). In the event that the test results indicate levels of radon gas above four (4) picocuries, purchaser shall, within three (3) days of receipt of the test results, give seller a copy of the test results together with an estimate from a qualified individual or company of the cost to lower these levels to the four (4) picocurie level. Purchaser, at the time of delivery of the test results to seller, shall determine whether he/she wishes to void this Agreement, in which event all deposit monies shall be returned to purchaser and all further obligations between the parties shall terminate. If purchaser chooses to go forward with this transaction, seller shall be obligated to go forward with this transaction and to undertake the required mitigation if the estimated cost for mitigating the radon gas levels is less than \$ \_\_\_\_\_. However, if the cost estimate to mitigate the radon gas levels exceeds \$ \_\_\_\_\_, seller shall, within five (5) calendar days of receipt of the estimated costs, either agree to give a credit to purchaser for the estimated mitigation costs at closing, or notify purchaser of its unwillingness to allow such a credit. In the event seller shall be unwilling to allow such a credit, purchaser shall, within five (5) calendar days of such notice, either (a) waive the above contingency and be responsible for the cost of mitigating the radon levels at his/her cost or (b) void this Agreement, in which event all deposit monies shall be returned to purchaser and all further obligations between the parties shall terminate. In the event the purchaser does not notify the seller within the above time periods, purchaser waives his rights under this clause.

Before closing, both the purchaser and seller must certify in writing that the tests were performed and that the results were received and reviewed by both parties. The law does not include any remedy for non-compliance. If contaminants are found in the well water, the purchaser and seller are free to negotiate a remedy, if desired, since the law does not require that any action be taken. In certain cases, remedies such as a filter may already be in place and no additional action may be necessary.

NJDEP's regulations under the law require that "raw" or untreated water be tested. This means that if there is a treatment system in place, the water sample must be taken before the water goes through any treatment. This sample represents the condition of the ground water in the aquifer, which may be different than how it comes out of the tap within the home. Residents may choose also to have the tap water tested after treatment to assure themselves that the filter or treatment is working effectively.

Laboratories performing drinking water analyses are required to submit all sampling data to the NJDEP electronically. The law and the regulations promulgated thereunder require the NJDEP to report all test failures to county health officials, or in some cases, municipal health officials within five days. These agencies may issue a general notice to owners of real property serviced by private wells located in the vicinity of the real property at which contamination was detected. The agency may suggest or recommend those individuals test their wells for the same failed parameters. The specific address or location of the failed well will not be identified in the notice or in any other manner.

Landlords who lease property with drinking water supplied by private wells must test and share the results with their tenants within 30 days of receiving the results. The landlord must also provide the results to each new tenant. The law requires landlords to test every five years.

(g) **Septic System Test.** If the property is served by a septic system, rather than by a public sewer system, the purchaser may wish to make the contract contingent upon the issuance of satisfactory results from a test of the septic system serving the property. Once again, a period of from one (1) week to three (3) weeks is usually allowed for the performance of the septic system test.

(h) **Home Heating Oil Tank Inspection.** If the property is serviced by home heating oil for the purposes of providing heat and hot water, the purchaser should be concerned that the oil tank, either underground (buried), aboveground or in the basement of the property, does not leak. While residential home heating tanks are not regulated by the New Jersey Department of Environmental Protection, the owner of a residential property may be liable for remediation costs resulting from a leak. Accordingly, a purchaser should seek evidence that the tank does not leak and is in good condition from an environmental consultant who will test the tank and sample the surrounding soils. Tank insurance is also frequently available from such consultants to cover costs associated with future pollution and tank replacement should the tank leak in the future.

If a tank is buried on the property but is no longer being used (due to its replacement by another tank in use or the conversion of the property to gas heat), the purchaser may seek the abandonment of the tank in its current location by filling it with an inert material such as sand or the removal of the tank.

Even if there is no knowledge or evidence that the property was ever heated by fuel oil or that there is a tank buried on the property, a purchaser may nonetheless want to test the property to ensure that a buried tank is not located on the property.

(i) **Lead Paint.** On March 6, 1996, the U.S. Department of Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA) released lead-based paint disclosure regulations, as required under Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4851 *et seq.* The regulations apply to any housing constructed prior to 1978. The regulations apply to both the sale and rental of certain properties.

Under the regulations, the following requirements must be met prior to the purchaser becoming obligated under the sales contract:

- (1) *The seller of most residential housing constructed before 1978 must disclose the presence of any known lead-based paint and/or lead-based paint hazards in the housing. Disclosure must be made based upon actual, not constructive, knowledge of the presence of lead-based paint or lead-based paint hazards in the property.*
- (2) *The seller must provide the purchaser with any available records or reports regarding the presence of lead-based paint and/or lead-based paint hazards. The seller is required to give the purchaser all records and reports which are in the seller's possession or which are reasonably obtainable by the seller at the time disclosure is made. The seller must provide the purchaser with copies of all relevant materials in this respect. In the context of multi-dwelling housing, reports made on some units within the housing project would be directly relevant to all other units within the housing project, so as to satisfy this requirement.*
- (3) *The seller must provide the purchaser with a federally approved lead-hazard information pamphlet. The EPA has developed a lead hazard information pamphlet entitled "Protect Your Family from Lead in Your Home". Delivery of this pamphlet or, if approved by EPA, a pamphlet developed by the State will satisfy the seller's obligation under this requirement.*
- (4) *Before a purchaser is obligated to proceed under or is bound by a contract for sale, the purchaser must be given a ten (10) day period in which to conduct an inspection of the housing to determine whether any lead-based paint and/or lead-based paint hazards are present. A purchaser is given the opportunity to conduct an inspection of the property prior to becoming obligated under the contract. The right to an inspection does not extend to lessees.*

The regulations provide the parties flexibility in developing the parameters for the inspection. The timeframe for these inspections may be lengthened or shortened through negotiations between the parties. A purchaser may also waive the right to conduct the inspection; however, the purchaser must still acknowledge receipt of notice of the opportunity to inspect the property. Exhibit 23 is a sample lead paint contract provision for the conduct of inspections and the remediation of lead paint conditions.

- (5) *All contracts for sale must include certain disclosure and acknowledgement language. A completed lead warning statement with acknowledgement language must be attached*

to all contracts. This statement documents the disclosure process, evidences the seller's compliance with the regulations and the purchaser's receipt of the disclosure materials. Appearing as Exhibit 24 is a sample lead paint warning statement, with an acknowledgement of receipt, to be included as part of the contract.

The seller and broker are required to maintain a copy of the completed disclosure and acknowledgement for a period of three (3) years from the date of the closing or the commencement of the lease, as applicable.

- (6) *The seller's broker must ensure compliance with the requirements of the regulations.* Brokers satisfy their obligations by informing the seller of the responsibilities under the law and by making sure that the seller's responsibilities have been performed either by the seller or by the broker personally. If the broker has informed the seller of the obligations, the broker will not be held responsible for the seller's withholding of information from the broker. The requirements of the regulation do not apply to a purchaser's broker who receives all compensation from the purchaser.

Disclosure must be made before the seller accepts the purchaser's offer to purchase. The failure to fully disclose will not affect the validity of the contract, but rather gives the purchaser the ability to seek civil remedies for non-disclosure. In the event of a knowing violation of Section 1018 and the regulations, the violator is subject to liability for triple damages in a civil suit, civil monetary penalties imposed by the U.S. Department of Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA), criminal fines and possible imprisonment for up to one (1) year.

## **EXHIBIT 23 - LEAD PAINT CONTRACT CLAUSE**

### **(Sample Contract Language)**

#### **SELLER'S LANGUAGE**

This Contract is contingent upon Buyer, at Buyer's sole expense, having a risk assessment or inspection of the Property by a qualified inspector for the purpose of determining the presence of lead-based paint and/or lead-based paint hazards. (Intact lead-based paint that is in good condition is not necessarily a hazard. See the EPA pamphlet "Protect Your Family From Lead in Your Home" for more information.) If Buyer chooses to have such inspections done, such inspections must be completed and written reports must be furnished to Seller within ten (10) days from the date of this Contract. If Buyer fails to furnish such written reports to Seller within the time period specified, this contingency clause shall be deemed waived by Buyer and the Property deemed acceptable by Buyer.

If the report reflects specific existing deficiencies and corrections needed, Seller shall have the option of correcting such defect. Seller shall notify Buyer of his decision within seven (7) days from the date of receipt of the report. If Seller corrects the defect, Seller shall furnish Buyer with a certification from the inspector evidencing that the condition has been remedied.

If Seller does not elect to correct the defects, within five (5) days after receipt of Seller's response, Buyer shall have the option of (i) accepting the Property "as is", (ii) correcting the defects at Buyer's expense, if necessary to close title, or (iii) declaring the contract null and void and have all deposit moneys returned.

#### **BUYER'S LANGUAGE**

This Contract is contingent upon Buyer, at Buyer's sole expense, having a risk assessment or inspection of the Property by a qualified inspector for the purpose of determining the presence of lead-based paint and/or lead-based paint hazards. (Intact lead-based paint that is in good condition is not necessarily a hazard. See the EPA pamphlet "Protect Your Family From Lead in Your Home" for more information.) If Buyer chooses to have such inspections done, such inspections must be completed and written reports must be furnished to Seller within ten (10) days from the date of this Contract. If Buyer fails to furnish such written reports to Seller within the time period specified, this contingency clause shall be deemed waived by Buyer and the Property deemed acceptable by Buyer. If the report reflects specific existing deficiencies and corrections needed, Seller shall correct such defect, at Seller's expense, prior to closing.

## EXHIBIT 24 - LEAD PAINT WARNING STATEMENT

### ADDENDUM A DISCLOSURE OF INFORMATION AND ACKNOWLEDGMENT ABOUT LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS

#### I. LEAD PAINT WARNING

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

#### II. PROPERTY ADDRESS:

#### III. SELLER'S DISCLOSURE (initial) (To be completed and signed at time of listing)

- (a) Presence of lead-based paint and/or lead-based paint hazards (check one below):
- ☐ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain):
- \_\_\_\_\_
- ☐ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
- (b) Records and Reports available to the seller (check one below):
- ☐ Seller has no reports or records pertaining to lead-based paint and/or lead-based hazards in the housing.
- ☐ Seller has the following reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing, all of which seller has provided to its listing agent, and has directed its listing agent to provide purchaser or purchaser's agent with these records and reports prior to seller accepting any offer to purchase (list documents below):
- \_\_\_\_\_
- (c) If there is any change in the above information prior to seller accepting an offer from the purchaser to purchase, seller will disclose all changes to the purchaser prior to accepting the offer.

#### IV. SELLER'S CERTIFICATION OF ACCURACY

Seller(s) have reviewed the Seller's Disclosure in Section III and certify, to the best of his/her/their knowledge, that the information they have provided is true and accurate.

Seller \_\_\_\_\_ Date / / Seller \_\_\_\_\_ Date / /

#### V. LISTING AGENT'S CERTIFICATION OF ACCURACY

Listing Agent certifies that he/she has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Listing Agent \_\_\_\_\_ Date / /

#### VI. PURCHASER'S ACKNOWLEDGMENT (initial) (The Seller's Disclosure in Section III and Certification in Section IV, and the Listing Agent's Certification in Section V to be completed and signed prior to purchaser signing this Addendum A.)

- (a) Purchaser has received copies of all information listed in Section III above.
- (b) Purchaser has received the pamphlet Protect Your Family From Lead in Your Home.
- (c) Purchaser has (check one below):
- ☐ Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or
- ☐ Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

## EXHIBIT 24 - Lead Paint Warning Statement – Continued

### VII. PURCHASER'S CERTIFICATION OF ACCURACY

Purchaser(s) have reviewed the Purchaser's Acknowledgment in Section VI and certify, to the best of his/her/their knowledge, that the information they have provided is true and accurate.

Purchaser \_\_\_\_\_ Date / / Purchaser \_\_\_\_\_ Date / /

### VIII. SELLING/BUYER'S AGENT'S CERTIFICATION OF ACCURACY

Selling/Buyer's Agent certifies that the purchaser has received the information in section VI (a) and (b).

Selling/Buyer's Agent \_\_\_\_\_ Date / /

(j) **Other Hazardous Conditions.** In addition to radon and lead paint which may create conditions hazardous to the occupants of a home, a home may contain asbestos, which may require removal, encapsulation or perhaps no correction if the material is undamaged. A purchaser may also want to test the water supply to determine if there may be lead, nitrates, radon, or chloroform bacteria contamination. Carbon monoxide poisoning may also result if appliances which burn fuel such as gas, oil kerosene, wood or charcoal are not maintained and used properly.

(k) **Mortgage.** If the purchaser is seeking mortgage financing to pay a portion of the purchase price, the contract will include a mortgage contingency. The amount of the mortgage upon which the contract is contingent is reflected in the summary of the financial terms of the transaction as discussed in Section 3.3.5(c). In that way, it is clear that the purchase will only proceed if the purchaser is able to obtain a mortgage in the amount specified in the financial terms portion of the contract.

The mortgage contingency should state the type of mortgage being sought by the purchaser. Usually, the contract will specify that the purchaser is seeking a "conventional" loan, absent the desire of the purchaser to restrict the type of mortgage that the purchaser will be required to accept, such as a Federal Housing Administration (FHA), Veterans Administration (VA) or other type of loan. The mortgage contingency will also state the amount of the mortgage loan being sought and the term (length in years) of the mortgage. If, at the time the contract is being prepared, the purchaser has not made any decisions regarding the type of mortgage being sought, the contract should reflect a term of "30 years" and a "fixed" interest rate, since such a mortgage is more difficult to qualify for and lacks the uncertainty of an adjustable mortgage of a shorter term of years. Such a contingency would allow the purchaser to either terminate the agreement if such a commitment is not issued or give the purchaser the option to accept a commitment subject to other terms for which the purchaser might qualify and proceed with the transaction.

The mortgage contingency will also specify the maximum rate of interest that the purchaser is willing to pay. Often, the mortgage contingency clause will be completed with an interest rate of "prevailing rate" which means the rate in effect when the mortgage commitment is issued or the loan is closed; however, if the purchaser is unwilling or unable to proceed with the purchase of the property in the event the interest exceeds a certain amount, the contract should specify the maximum interest rate which the purchaser is willing to pay. If the interest rate then exceeds that rate, the purchaser will be able to terminate the contract for failure to obtain a satisfactory mortgage commitment. From the standpoint of the seller, the seller will want the mortgage contingency to reflect a reasonably high rate of interest in the event the purchaser wishes to specify a limit, or reference the "prevailing rate." The mortgage contingency should also reflect a date by which the purchaser is required to obtain a mortgage commitment, after which deadline and any agreed upon extensions, either party may cancel the contract.

In reviewing contracts, the attorney representing the purchaser should note that some contract forms state that the purchaser is permitted to obtain a mortgage commitment by a specified date. The provision further provides that in the event the purchaser does not give notice by that date of the purchaser's inability to obtain a mortgage commitment, the seller may assume that the purchaser has obtained a mortgage commitment and that the contract is binding. Such a provision should be modified

to require an express notice of cancellation by either party. Otherwise, if the purchaser's attorney inadvertently fails to give timely notice of the inability of the purchaser to obtain a mortgage commitment, the purchaser may become subject to the loss of the deposit monies and additional damages if the seller decides to enforce the contract due to the lack of timely notice of the purchaser's failure to obtain a mortgage commitment.

(l) **Home Sale (by Purchaser) or Home Purchase (by Seller) Contingency.** The contract may contain a contingency allowing the purchaser to sell the home currently owned by the purchaser or the seller to contract for or relocate to a home to be purchased by the seller. Where a home sale contingency applies to the purchaser, the sale of the home may determine the purchaser's ability to get a mortgage and appear as a condition in the mortgage commitment. Even when a purchaser may be able to qualify for a mortgage without the sale of the home currently owned by the purchaser, the purchaser may want a separate contingency (unrelated to the mortgage contingency) permitting the purchaser to cancel the contract notwithstanding the issuance of a mortgage commitment not conditioned upon the sale of the purchaser's current home. Such a separate contingency would ensure that the purchaser would not be required to simultaneously bear the costs associated with two properties even though the purchaser has the financial wherewithal to do so.

The contract should specify the timeframe in which either party has to satisfy this contingency under the contract. Also, the party who is not the beneficiary of the contingency, i.e. the purchaser where the seller has a home purchase contingency or the seller where the purchaser has a home sale contingency, should be fully aware of the significance of the other party's failure or inability to satisfy the contingency. The terms of the contract should be structured so that the cost and expense incurred by the non-benefitting party under the contract is limited to the extent possible. By way of example, the contract should be drafted so that until the home sale/home purchase contingency has been satisfied, the other party will not be required to satisfy any other contingencies under the contract. This is most important in this instance since the satisfaction of the contingency is largely out of the control of the party that the contingency benefits.

(m) **Smoke Detector, Carbon Monoxide, and Fire Extinguisher Compliance Certificate (Seller's Contingency).** The contract is usually contingent upon the seller obtaining evidence that the property complies with the smoke detector and carbon monoxide certification requirements imposed by the State and the municipality. A discussion of the law underlying the smoke detector certification and the satisfaction of the contingency by the seller appears in Section 5.2. Discussions of the carbon monoxide alarm certification appears in Section 5.2.1 and of the fire extinguisher certification in Section 5.2.2. A sample form of application for a smoke detector and carbon monoxide certificate, together with an explanation of the fire extinguisher requirements, appears as Exhibit 25. A form of smoke detector, carbon monoxide alarm, and fire extinguisher compliance certificate appears as Exhibit 26.

**EXHIBIT 25 - SMOKE DETECTOR AND CARBON MONOXIDE  
CERTIFICATE APPLICATION**

**APPLICATION FOR SMOKE DETECTOR AND  
CARBON MONOXIDE CERTIFICATION  
FIRE EXTINGUISHER REQUIREMENTS – as of March 5, 2007  
Fire Prevention Phone #: (908) 204-2511 Ext: 2511**

**Check section of town located in:**

SH/SR/Cedars \_\_\_\_\_  
Finley/Maple \_\_\_\_\_

Lyons/Stonehouse \_\_\_\_\_

King George/Valley \_\_\_\_\_  
Somerville Rd \_\_\_\_\_

The Hills \_\_\_\_\_ Liberty Corner \_\_\_\_\_  
Mountain Rd \_\_\_\_\_

Mt. Airy/W. Oak \_\_\_\_\_

Rt. 202/Childs \_\_\_\_\_

**NO NEED TO COMPLETE IF REINSPECTION - CURRENT APPLICATION ON FILE**

PROPERTY OWNER: \_\_\_\_\_

PROPERTY ADDRESS: \_\_\_\_\_

BLOCK: \_\_\_\_\_ LOT: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_ TELEPHONE NO.: \_\_\_\_\_

REALTOR: \_\_\_\_\_ AGENCY: \_\_\_\_\_

REALTOR'S TELEPHONE NO.: \_\_\_\_\_

CLOSING DATE: \_\_\_\_\_ DATE OF NEW RENTER: \_\_\_\_\_

Appointments are scheduled on Tuesday, Wednesday & Thursday from 8:00am to 11:30am.  
Please do not schedule your appointment the same day as your moving day or your closing.  
Payment is accepted in the form of cash or check made payable to Bernard's Township.  
No appointment will be made without completed application and payment.

**The fee schedule is as follows:**

\$35.00 more than 10 calendar days from change of occupancy/closing.  
\$70.00 within 10 calendar days of change of occupancy/closing.  
\$140.00 within 4 calendar days of change of occupancy/closing.

**PLEASE NOTE: WE DO CHARGE FOR A RE-INSPECTION. PLEASE READ THE FOLLOWING  
REQUIREMENTS TO BE SURE YOU ARE READY FOR YOUR INSPECTION.**

**ALL FIRE ALARM & SECURITY SYSTEM CODES WILL BE REQUIRED FOR PERSON MEETING  
INSPECTOR**

## **Exhibit 25 - Smoke Detector and Carbon Monoxide Certificate Application - Continued**

### **When and What is Required**

#### **Built Prior to 1977**

There were no smoke detector requirements. If no smoke detector upgrades have been done, then one battery-operated smoke detector is required on each level including the basement.

#### **Built from January 1, 1977 – February 21, 1983**

These dwellings were built with an electric smoke detector on the sleeping level and in the basement. They were not interconnected. The original smoke detector system must be working and a battery-operated detector must be installed on any level not currently equipped with a detector.

#### **Built from February 22, 1983 – April 30, 1993**

These dwellings were built with an electric smoke detector on every level including the basement. They were interconnected. The original smoke detector system must be working.

#### **Built from May 1, 1993 – Present**

These dwellings were built with interconnected electric smoke detectors with battery backup. This system will be tested from the electrical system and the battery system. Please be prepared to turn off the electrical breaker for the battery test. Detectors are located on every level including the basement, in the vicinity of sleeping areas, and in every bedroom. The original smoke detector system must be working.

### **Additional Information**

- When a dwelling has undergone a modification or increase in size that would have required an upgrade in the smoke detector system, the new system must be in working order.
- Ceiling mounting of smoke detectors is best. 6 inches of clearance are required around smoke detectors for better air current and detection of smoke.
- The rules regarding a split-level dwelling allow you to eliminate a smoke detector on one level when there is a smoke detector on the level above and no intervening door between the levels.
- Do not locate battery operated smoke detectors within five (5) feet of the kitchen or bathroom.

## **Exhibit 25 - Smoke Detector and Carbon Monoxide Certificate Application - Continued**

- Smoke Detectors in the basement must be located at the bottom of the basement stairs.

### **As of March 5, 2007 Requirements for Portable Fire Extinguisher Compliance (N.J.A.C. 5:70-2.3, 2.9 and 4.19)**

At least one portable fire extinguisher shall be installed in all residential dwelling upon change of occupancy.

The extinguisher must meet the following criteria:

1. The extinguisher must be rated for residential use consisting of an **ABC type**.
2. **No larger than 10 pound** rated extinguisher.
3. **Mounted with the manufacturers mount within 10 feet** of the kitchen area.
4. The extinguisher can be mounted within a cabinet.
5. Must be at least 4 ½ inches off the ground and no higher than 5 feet.

### **When mounting your fire extinguisher:**

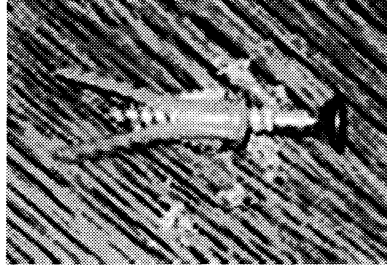
If you want to hang something heavy – like a bookshelf or a mirror – onto drywall, by far the best way is to fasten it directly into the underlying wall studs. Use a stud finder or just tap the wall to find out where the studs are and screw directly into them. Unfortunately in a lot of cases that isn't possible – those studs never seem to be where you want to hang something – so luckily, you have some other options.

Fasteners for hanging things on a wall are broadly grouped into light duty and heavy duty. Here's an overview of some of the more common fasteners used.

### **Light Duty Fasteners**

**Conical Plastic Anchors** – Also known as plastic wall plugs, these range in size from about ¾" all the way up to 2". The best of them have ribbed or ridged sides that will stop the anchor from pulling out of a wall once it is installed. To use one of these, drill a pilot hole in the drywall large enough for the anchor to be inserted and tapped flush with the wall surface. Manufacturers packaging outlines the size of the pilot and the size of the screw each fastener is designed to work with. When the proper sized screw is installed, the arms that form the cone shape are forced out wider than the hole, helping to hold the screw in the drywall. For the most part, these are designed for light duty holding and shouldn't be considered for anything that weighs more than 10 to 15 pounds.

**Exhibit 25 - Smoke Detector and Carbon Monoxide Certificate Application - Continued**



**An expanded plastic wall plug. When placed into a wall, the screw forced in causes the arms to spread.**

**Requirements for  
Carbon Monoxide (CO) Detectors**

NJ State law now requires that any dwelling that contains a fuel burning appliance, fireplace, woodstove, or an attached garage upon sale, lease, rental (change of occupancy), be equipped with a Carbon Monoxide (CO) detector. No construction permit is required for their installation, unless they are permanently connected to the homes electrical wiring. These detectors are available from most hardware stores, home centers, department stores, and discount stores. Detectors may be battery operated, plug-in, or hard wired with battery backup. Detectors must be installed (if not already) before making an appointment with our office.

CO detectors shall be centrally located in the hallway ***within 10 feet of the bedroom doors*** or one in each bedroom. The detector may be ceiling or wall mounted and installed in a competent manner and in accordance with the manufacturer's installation instructions. All detectors shall be located and mounted so that jarring or vibration will not cause accidental operation. All detectors shall be supported independently of their attachment wires.

\*\*\*PLEASE NOTE: DETECTORS DO EXPIRE. To test your detector, press the test button. The detector should emit a series of beeps, followed by a brief pause, then another series of beeps. One beep is not sufficient, it must be a series of beeps. \*\*\*

Exhibit 25 - Smoke Detector and Carbon Monoxide Certificate Application - Continued

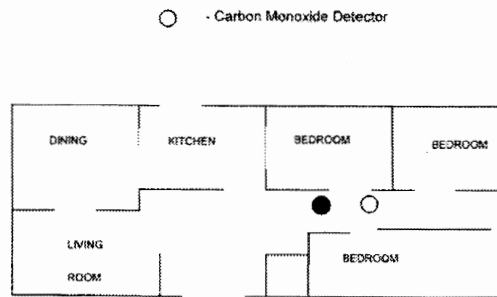


Figure 1

In homes with only one sleeping area on one floor, the smoke

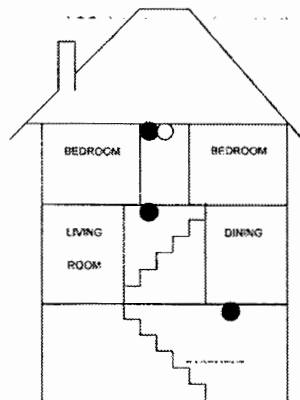


Figure 3

In multi-level homes, smoke detectors shall be located outside sleeping areas and at every finished level of the home. CO detectors are required for every sleeping area.

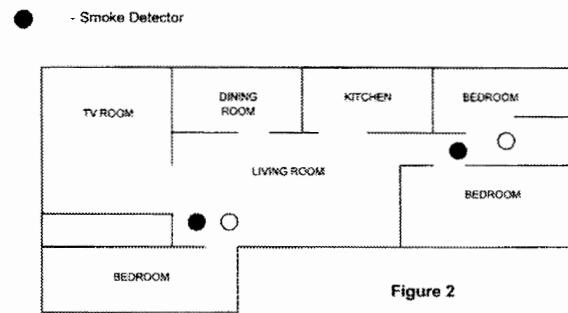


Figure 2

In a single floor home with two separate sleeping areas, two smoke and CO detectors are required, one of each outside each sleeping area.

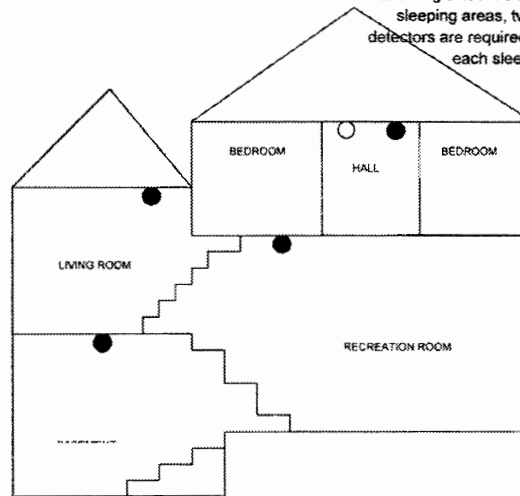


Figure 4

Basement level smoke detectors shall be located at the bottom of basement stairwell, ceiling mounted. CO detectors are required for every sleeping level.

## **Exhibit 25 - Smoke Detector and Carbon Monoxide Certificate Application - Continued**

### **WHAT TO EXPECT AT YOUR SMOKE/CARBON MONOXIDE DETECTOR/FIRE EXTINGUISHER INSPECTION**

When the Fire inspector arrives at your house they will be checking the smoke detectors, the carbon monoxide detectors and the fire extinguisher.

**\*\*IMPORTANT: Please see “Smoke Detector Requirements” attached to your application form for what type of smoke detector is required for your dwelling.**

The fire inspector will spray one of the smoke detectors with a can of smoke to make sure it works. If the smoke detectors are interconnected every smoke detector in the house must go off when one is tested. The inspector will continue to check each smoke detector individually until all have been checked.

He/she will then test the battery backup of each smoke detector. The electric circuit breaker for the smoke detectors will be turned off and the inspector will again spray smoke on each smoke detector to check that the battery backup is working. This only applies to dwellings with interconnected electric smoke detectors with battery backup.

**\*\* IMPORTANT: Please see “Carbon Monoxide Requirements” attached to your application form for more information on carbon monoxide detectors.**

The fire inspector will test the carbon monoxide detectors by pressing the test button. It should emit a series of beeps, then a pause, then another series of beeps. The carbon monoxide detectors must be located within 10 feet of the bedroom doors or one in each bedroom.

**\*\* IMPORTANT: Please see “Fire Extinguisher Requirements” attached to your application form for more information on fire extinguishers.**

The fire inspector will check that the fire extinguisher is **mounted with the manufacturers mount** in the kitchen or within 10 feet of the kitchen. The fire extinguisher cannot be sitting in a cabinet, on the floor, on a table or on the counter. **IT MUST BE MOUNTED.** It can be mounted in a cabinet in the kitchen or within 10 feet of the kitchen. It must be mounted no higher than 5 feet and be at least 4 ½” off the ground. The fire extinguisher must be **ABC** type and no larger than 10 pounds.

If your dwelling does not pass you must come into the office to make another appointment for a re-inspection. You will be required to pay the same fee you paid for the first inspection.

Please call the office at 908-204-2511 ext. 2511 with any questions prior to your appointment so we may assist you.

If you need to reschedule your appointment kindly give us at least 24 hours notice.

**EXHIBIT 26 - SMOKE DETECTOR, CARBON MONOXIDE, AND  
FIRE EXTINGUISHER CERTIFICATE**

*The Borough Of Sayreville*

**BUREAU OF FIRE PREVENTION**  
167 MAIN STREET, SAYREVILLE, NEW JERSEY 08872  
TEL: 732-390-7009 • FAX: 732-390-7458

**CERTIFICATE OF SMOKE DETECTOR, CARBON  
MONOXIDE ALARM, AND FIRE EXTINGUISHER  
COMPLIANCE**

OWNERS NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ Ave

CERTIFICATION #: 2009.315

**HAS BEEN INSPECTED BY THE SAYREVILLE BUREAU OF FIRE  
PREVENTION AND HAS MET COMPLIANCE WITH N.J.A.C. 5:70-4.19 AND  
N.J.A.C. 5:70-2.3**

INSPECTOR: *[Signature]*

LICENSE # 1-24672

DATE: 10-29-09

The application fee for a certificate of smoke detector, carbon monoxide alarm, and fire extinguisher compliance (CSDCMAFEC), as required by N.J.A.C. 5:70-2.3, shall be based upon the amount of time remaining before the change of occupancy is expected, as follows.

1. Requests for a CSDCMAFEC received more than 10 business days prior to the change of occupancy: \$ 35.00
2. Requests for a CSDCMAFEC received four to 10 business days prior to the change of occupancy: \$ 70.00
3. Requests for a CSDCMAFEC received fewer than four business days prior to the change of occupancy: \$ 125.00

**\*\*THIS CERTIFICATE EXPIRES SIX (6) MONTHS FROM DATE OF ISSUE\*\***

*Succeed in Sayreville*

Sayreville is an Equal Opportunity Employer

[www.sayreville.com](http://www.sayreville.com)

(n) **Certificate of Occupancy (Seller's Contingency).** Many municipalities conduct an inspection of the property to ensure that the property complies with the municipal codes and issue a certificate of occupancy. Some municipalities issue certificates referred to as certificates of continued occupancy or certificates of compliance when the transaction involves the resale of existing structure. If the municipality in which the property is located has such a requirement, the contract will be contingent upon the seller complying with the municipality's requirements and obtaining a certificate with any associated costs to be borne by the seller. Exhibit 27 is a sample form of application for a certificate of occupancy for the resale of an existing home and Exhibit 28 is a form of certificate of continued occupancy. A discussion of certificates of occupancy appears in Section 5.1.

**EXHIBIT 27 - CERTIFICATE OF OCCUPANCY APPLICATION (RESALE)**



**BOROUGH OF EATONTOWN**  
**Building-Housing Department**  
47 Broad Street  
Eatontown NJ 07724

**APPLICATION FOR CERTIFICATE OF OCCUPANCY**  
**SINGLE FAMILY DWELLING RESALE**

Certificate of Occupancy # \_\_\_\_\_ Date \_\_\_\_\_

*Please Print*

Property Address \_\_\_\_\_ Block \_\_\_\_\_ Lot \_\_\_\_\_

Owner's Name \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_

Proposed Owner \_\_\_\_\_ Phone \_\_\_\_\_

Current Address \_\_\_\_\_

Proposed Use \_\_\_\_\_ Size of Dwelling \_\_\_\_\_ sq/ft

Total # of Rooms \_\_\_\_\_ # of Bedrooms \_\_\_\_\_ # of Baths \_\_\_\_\_

Type of Heat \_\_\_\_\_ Type of A/C \_\_\_\_\_ Is There A Garage \_\_\_\_\_

If Yes, # of Cars \_\_\_\_\_ Is There a Basement \_\_\_\_\_ Finished \_\_\_\_\_

Style of House (Ranch, Cape, Bi-level, Etc.) \_\_\_\_\_

Sale price\$ \_\_\_\_\_ Date of sale \_\_\_\_\_ Realtor \_\_\_\_\_

Name of Attorney \_\_\_\_\_ Rental agency \_\_\_\_\_

I HEREBY REQUEST THE BOROUGH TO INSPECT AND ISSUE, WHEN ALL APPLICABLE CODES ARE COMPLETED WITH, A CERTIFICATE OF OCCUPANCY FOR THESE PREMISES.

Date \_\_\_\_\_ Applicant's Signature \_\_\_\_\_

*\$100.00 CERTIFICATE OF OCCUPANCY FEE MUST BE PAID AT THE TIME OF APPLICATION FILING. CHECKS SHOULD BE MADE PAYABLE TO THE "BOROUGH OF EATONTOWN".*

**EXHIBIT 28 - CERTIFICATE OF CONTINUED OCCUPANCY (RESALE)**

**BOROUGH OF SAYREVILLE**  
**Office of Code Enforcement**

**CERTIFICATE OF RESALE COMPLIANCE**

Address: [REDACTED]

New Owner's Name: [REDACTED]

The Borough of Sayreville Code Enforcement requires that all residences must be inspected prior to a change in occupancy as per borough ordinance # 64-08.

This residence was inspected on 11/05/11 and was found to be in compliance with all applicable property maintenance codes.

Refer all questions to the Sayreville Code Enforcement at 732-390-7028

11/5/11  
Date

[Signature]  
Code Enforcement Officer

***\*\*This certificate expires 60 days from the date of issue\*\****

### Section 3.3.9 Type of Deed

The contract should specify the type of deed which the seller is required to deliver to the purchaser at closing. In most real estate transactions, a seller and purchaser will agree that title is to be transferred by a bargain and sale deed with covenant against grantor's acts. A form of such deed is included as Exhibit 29.

The three general categories of deed types are the Bargain and Sale, Warranty, and Quitclaim deeds. There is also a "Short form deed" which may be found in *N.J.S.A.* 46:4-1.

(a) **Bargain and Sale Deed.** In accordance with *N.J.S.A.* 46:3-11, every deed conveys the entire estate of the grantor "unless an exception be made therein." Thus, the rules of construction mandate that "[i]n the absence of special equities or agreement to the contrary, the grantor must convey good title in fee-simple, by deed of bargain and sale, without covenants. This deed is deemed to the type of deed which the seller is to deliver if the contract does not specify otherwise. *Moran v. Fifteenth Ward B. & L. Assn*, 131 N.J. Eq. 361, 365 (Ch. 1942).

**Without Covenants** - "A Bargain and Sale Deed without covenants conveys no greater estate than the grantor may lawfully convey. The grantor conveys whatever he owns and gives no covenants of any kind." *Somerset Cty. v. Darling*, 174 N.J. Super. 52, 55 (Ch. Div. 1980).

**With Covenants** - A bargain and sale deed typically contains one covenant entitled the covenant as to the grantor's acts. As provided in *N.J.S.A.* 46:4-6, this covenant guarantees that the grantor "has done no act to encumber the lands." See e.g. *Matyne v. Nemecz*, 131 N.J.L. 73, (Sup. Ct. 1944). A form of bargain and sale deed with covenant against grantor's acts appears as Exhibit 29.

**EXHIBIT 29 - DEED (BARGAIN AND SALE WITH COVENANT  
AGAINST GRANTOR'S ACTS)**

**Deed**

This Deed is made on **July 15, 2010**

**BETWEEN**

**Mark Green and Dana Green, Husband and Wife**

whose post office address is **Unit 72, Edison Court Square  
Condominium, Edison, New Jersey 08817**

referred to as the Grantor,

**AND**

**Peter Jones and Patricia Jones, Husband and Wife**

whose post office address is **54 Jackson Place, North Brunswick,  
New Jersey 08902**

referred to as the Grantee.

1. **Transfer of Ownership.** The Grantor grants and conveys (transfers ownership of) the property (called the "Property") described below to the Grantee. This transfer is made for the sum of **\$450,000.00**

**Four Hundred Fifty Thousand Dollars and No Cents**

The Grantor acknowledges receipt of this money.

2. **Tax Map Reference.** (N.J.S.A. 46:15-1.1) Municipality of **North Brunswick**

Block No. **214** Lot No. **2** Qualifier No. \_\_\_\_\_ Account No. \_\_\_\_\_

☐ No lot and block or account number is available on the date of this Deed. (Check box if applicable.)

3. **Property.** The Property consists of the land and all the buildings and structures on the land in the **Township**  
of **North Brunswick** County of **Middlesex** and State of New Jersey.

The legal description is:

☐ Please see attached Legal Description annexed hereto and made a part hereof. (Check Box if Applicable.)

**Beginning at a point in the Southeasterly line of Jackson Place Sixty Feet Wide (60.00') said point being located in a Northeasterly direction a distance of Ninety and Zero one Hundredths Feet (90.00') from its intersection of the Southeasterly line of Jackson Place with the Northeasterly line of Poplar Place if both streets were extended to intersect, and from said Beginning point, thence;**

**1. Along the Southeasterly line of Jackson Place, North Fifty Degrees Twenty Five Minutes Ten Seconds East (N 50° 25' 10"E), a distance of Seventy Five and Zero One Hundredths Feet (75.00') to a point, thence;**

**2. South Thirty Nine Degrees Thirty Four Minutes Fifty Seconds East (S 39° 34' 50"E), a distance of One Hundred Twenty and Zero One Hundredths Feet (120.00') to a point, thence;**

**3. South Fifty Degrees Twenty Five Minutes Ten Seconds West (S 50° 25' 10" W), a distance of Seventy Five and Zero One Hundredths Feet (75.00') to a point, thence;**

**4. North Thirty Nine Degrees Thirty Four Minutes Fifty Seconds West (N 39° 34' 50" W), a distance of One Hundred Twenty and Zero One Hundredths Feet (120.00') to a point in the Southeasterly line of Jackson Place**

Prepared by: (print signer's name below signature)

(For Recorder's Use Only)

**Adam Attorney, Esq.**

## Exhibit 29 - Deed (Bargain and Sale with Covenant Against Grantor's Acts) - Continued

and the point and place of Beginning.

BEING known and designated as Lot Number 9, Block Number 543, as shown on a certain map entitled "Map of North Brunswick Village, Section 2, situated in Township of North Brunswick, Middlesex County, New Jersey prepared by H. Thomas Carr," Civil Engineer and Surveyor, dated October 13, 1963 and duly filed in the Middlesex County Clerk's Office on March 3, 1964 as Map No. 2746, File No. 951.

BEING more commonly known as 54 Jackson Place, North Brunswick, New Jersey.

BEING the same premises conveyed to the Grantor herein by Deed from Thomas Peterson and Susan Peterson, his wife, dated October 8, 1976 and recorded October 10, 1976 in Deed Book 1086 at Page 960 in the office of the Clerk of Middlesex County.

The street address of the Property is:

960 Jackson Place, North Brunswick, New Jersey 08902.

4. **Promises by Grantor.** The Grantor promises that the Grantor has done no act to encumber the Property. This promise is called a "covenant as to grantor's acts" (N.J.S.A. 46:4-6). This promise means that the Grantor has not allowed anyone else to obtain any legal rights which affect the Property (such as by making a mortgage or allowing a judgment to be entered against the Grantor).

5. **Signatures.** The Grantor signs this Deed as of the date at the top of the first page. (Print name below each signature.)

Witness by:

Adam Attorney, Esq.

Mark Green

(Seal)

Dana Green

(Seal)

STATE OF NEW JERSEY, COUNTY OF MIDDLESEX SS:

I CERTIFY that on July 15, 2010

Mark Green and Dana Green

personally came before me and stated to my satisfaction that this person (or if more than one, each person):

(a) was the maker of this Deed;

(b) executed this Deed as his or her own act; and

(c) made this Deed for \$ 450,000.00 as the full and actual consideration paid or to be paid for the transfer of title. (Such consideration is defined in N.J.S.A. 46:15-5.)

RECORD AND RETURN TO:  
Christine F. Li, Esq.  
Greenbaum, Rowe, Smith & Davis LLP  
Metro Corporate Campus One  
P.O. Box 5600  
Woodbridge, New Jersey 07095

Adam Attorney  
An Attorney-At-Law of the State of New Jersey  
Print name and title below signature

(b) **Warranty Deed.** A warranty deed contains from one ("plain warranty" deed) to six ("full warranty" deed) covenants to protect the grantee in case there are discrepancies between the actual title and the grantor's representations of it. The different types of covenants as described in *Spiegle v. Seaman*, 160 N.J. Super. 471 (App. Div. 1978), are:

1. Covenant of seizing - In this covenant "the representation is that the grantor, at the time of delivery of the deed, 'was seized in his own right of an absolute and indefeasible estate of inheritance in fee simple'" in the property being conveyed. 160 N.J. Super. at 483 (quoting *N.J.S.A.* 46:4-3).
2. Covenant of the right to convey - This covenant signifies the "commitment...that the grantor has the authority to convey the premises." *See also N.J.S.A.* 46:4-4.
3. Covenant against encumbrances - This covenant is pursuant to *N.J.S.A.* 46:4-5. 160 N.J. Super. at 483.
4. Covenant of further assurances - This is the grantor's promise "to execute such instruments or to perform such acts as may be required in the future to make good title." *Id.* (citation omitted). *See also N.J.S.A.* 46:4-10.
5. Covenant of quiet enjoyment - This is "a representation by the grantor that the grantee and his assigns 'will quietly enjoy the possession of the premises free from any claim or actions by other persons.'" 160 N.J. Super. at 483. (citation omitted). *See also N.J.S.A.* 46:4-5.
6. Covenant of warranty - "[T]he covenantor agrees 'to compensate his grantee for any loss which he may sustain by virtue of a failure of the title which the deed purports to convey.'" *Spiegle*, 160 N.J. at 482 (citation omitted). Moreover, pursuant to *N.J.S.A.* 46:4-7, under a covenant of general warranty, the grantor has promised that the grantor "will forever warrant and defend the said property unto the grantee, his heirs, personal representatives and assigns, against the claims and demands of all persons whomsoever." Thus, this covenant is particularly burdensome on the seller and is best avoided.

(c) **Special Warranty Deed.** This deed contains a covenant of special warranty that must be distinguished from a general warranty and a covenant against encumbrances. "A special warranty deed has the same effect as if the grantor had covenanted against the claims and demands of said grantor and all persons claiming or to claim by through or under him." *Campbell v. Heller*, 35 N.J. Super. 361, 366 (Ch. Div. 1955) (citing to *N.J.S.A.* 46:4-8). Moreover, "[s]uch a deed makes no warranty or covenants as to the status of the title prior to the vesting in the grantor." *Id.* at 368.

(d) **Quitclaim Deed.** A quitclaim deed contains no covenants, but merely transfers the grantor's rights to the property to the grantee. This type of deed is recognizable by such words as "the grantor releases to the said grantee" or "the grantor does remise, release and forever quitclaim unto the said grantee." [*N.J.S.A.* 46:5-1] However, despite the presence of such words, pursuant to *N.J.S.A.* 46:5-3, if the grantor does not indicate in any instrument an intent to reserve an interest in the property,

then the quitclaim deed will be deemed to transfer the equivalent of a deed of bargain and sale. *See also, Palmarg Realty Co. v. Rehac*, 80 N.J. 446 (1979). Even when such a reservation exists, the purchaser is entitled to the rights of a bargain and sale deed as to the interest not so reserved. [*N.J.S.A.* 46:5-4].

#### **Section 3.3.10 Affidavit of Title**

The contract drafted on behalf of a purchaser should specify that the seller deliver at closing an affidavit of title along with the deed. A form of the seller's affidavit of title, together with a supplemental affidavit of title, appears as Exhibit 30. The supplemental affidavit of title sets forth the Seller's representations based upon its review of the title commitment and potential changes which may have occurred since the title commitment issued.

There are two forms of affidavit of title utilized in connection with a real estate transaction. One form of affidavit is made by the seller and discussed in this Section. The second form of affidavit is given by the purchaser, as mortgagor, and discussed in Section 4.5.3(c).

The delivery by the seller of an affidavit of title is important since the affidavit provides certain information generally not available from any other source. From the standpoint of the seller, a contract provision which merely specifies that the seller is to deliver a "customary" or "typical" affidavit of title should raise some concerns as to the representations which the purchaser will be seeking from the seller by way of sworn affidavit at closing. A detailed discussion of the significance of the seller's affidavit of title and the preparation of the affidavit appears in Section 5.5.3.

#### **Section 3.3.11 Quality of Title**

The contract must specify the quality of title which the seller is required to deliver and the purchaser is required to accept. Such status of title is frequently defined as "good and marketable" title, title "insurable at regular rates by any title insurance company authorized to do business in New Jersey," "free of all claims and rights of others," except for certain specified exceptions which pertain to rights of utility companies, recorded agreements which do not adversely affect the use of the property, and any other specified exceptions. The contract should also provide that all improvements are located within the boundaries of the property and that no improvements of adjoining properties extend over the boundaries of the property which is the subject of the contract. To avoid ambiguity, the contract should include as exhibits a copy of the title insurance policy which insures the seller at the time the contract is being signed and of the existing survey to evidence the status of title which the seller will be able to deliver or that the title insurance company insuring the seller's interest will defend.

## EXHIBIT 30 - AFFIDAVIT OF TITLE (SELLER)

### Affidavit of Title

STATE OF NEW JERSEY COUNTY OF MIDDLESEX

SS:

Scott Seller and Susan Seller

say(s) under oath:

1. **Representations** If only one person signs this Affidavit, the words "we," "us" and "our" shall mean "I," "me" and "my." The statements in this Affidavit are true to the best of our knowledge, information and belief.

2. **Name, Age and Residence** We have never changed our names or used any other names. We are citizens of the United States and at least 18 years old. After today, we will live at

3. **Ownership and Possession** We are the only owners of Property located at 40 West Dudley Avenue, Westfield, New Jersey 07090 called "this Property."

We now sell this Property to Patrick O'Brien and Lauren O'Brien called the "Buyers." We are in sole possession of this Property. There are no tenants or other occupants of this Property. We have owned this Property since . Since then no one has questioned our ownership or right to possession. We have never owned any Property which is next to this Property. Except for our agreement with the Buyers, we have not signed any contracts to sell this Property. We have not given anyone else any rights concerning the purchase or lease of this Property.

4. **Improvements** No additions, alterations or improvements are now being made or have been made to this Property since four months last past. We have always obtained all necessary permits and Certificates of Occupancy. All charges for municipal improvements such as sewers, sidewalks, curbs or similar improvements benefiting this Property have been paid in full. No building, addition, extension or alteration on this Property has been made or worked on within the past 90 days. We are not aware that anyone has filed or intends to file a mechanic's lien, Notice of Unpaid Balance and Right to File Lien Claim, construction lien or building contract relating to this Property. No one has notified us that money is due and owing for construction, alteration or repair work on this Property.

5. **Liens or Encumbrances** We have not allowed any interests (legal rights) to be created which affect our ownership or use of this Property. No other persons have legal rights in this Property, except the rights of utility companies to use this Property along the road or for the purpose of serving this Property. There are no pending lawsuits or judgments against us or other legal obligations which may be enforced against this Property. No bankruptcy or insolvency proceedings have been started by or against us. We have never been declared bankrupt. No one has any security interest in any personal Property or fixtures included in this sale. All liens (legal claims, such as judgments) listed on the attached judgment or lien search are not against us, but against others with similar names.

6. **Marital/Civil Union/Registered Domestic Partnership History** (Check where appropriate)

☐ We are not married, civil union or registered domestic partners.

☒ We are married to each other, civil union or registered domestic partners. We were married, became civil union or registered domestic partners on 11/10/95. The maiden/previous name of Susan Seller was Susan Singer.

☐ This Property has never been occupied as the principal matrimonial/civil union/registered domestic residence of any of us. (If it has, or if it was acquired before May 28, 1980, each spouse/partner must sign the Mortgage and Affidavit N.J.S.A. 3B:28-2.3.)

☒ Our complete marital, civil union or registered domestic partnership history is listed above except as listed below under paragraph 7. This includes all marriages, civil union or registered domestic partnerships not listed above, and any pending matrimonial, civil union or registered domestic partnerships actions. We include how each marriage, civil union or registered domestic partnership ended. We have attached copies of any death certificates, judgments for divorce or annulment or dissolution of a civil union or registered domestic partnership including any provisions in these judgments which relate to this Property.

7. **Exceptions and Additions** The following is a complete list of exceptions and additions to the above statements. This includes all liens or mortgages which are not being paid off as a result of this sale, as well as marital, civil union or registered domestic partner information not particularly set forth in paragraph 6 above.

**Subject to such state of facts in the title commitment #12345 issued by Trident Abstract Title Agency, LLC, as agent for Transnation Title Insurance Company, dated June 14, 2010 and continued through the date hereof.**

We have been advised that recognition and/or abstracts or recognition of bail are not being indexed among the records of the Middlesex County Clerk/Register's office and that the Title Company, Buyer(s) and/or Mortgagee will rely on the truthfulness of this statement. The undersigned hereby certify that there are no recognitions filed against the undersigned as either principal or surety on the property which is the subject of this transaction. There are no unpaid fines or surcharges levied against us by the New Jersey Motor Vehicle Commission.

8. **Child Support**

☒ There are no outstanding child support orders or judgments against this deponent.

☐ There is a child support order outstanding, Docket No. \_\_\_\_\_ against this deponent. All payments, however, are current as of this date.

9. **Reliance** We make this Affidavit in order to induce the Buyer(s) to accept our Deed. We are aware that the Buyer(s) and their Mortgage lender rely on our truthfulness and the statements made in this Affidavit.

Signed and sworn to before me on (date)

July 15, 2010

Scott Seller

Susan Seller

Alice Attorney, An Attorney at Law

1630 - Affidavit of Title - For Sale of Property by Individual - Plain Language  
Rev. 2/07 1/2/10

Powered by  
HotDocs®

©2007 by ALL-STATE LEGAL®  
A Division of ALL-STATE International, Inc.  
www.ashlegal.com 800.222.0510

Exhibit 30 - Affidavit of Title (Seller) - Continued

## Supplemental Affidavit of Title

STATE OF NEW JERSEY  
COUNTY OF \_\_\_\_\_

SS: \_\_\_\_\_

say(s) under oath:

1. **Representations.** If only one person signs this Affidavit, the words "we," "us" and "our" shall mean "I," "me" and "my." The statements in this Affidavit are true to the best of our knowledge, information and belief.

2. **Ownership and Possession.** We are the only owners of Property located at \_\_\_\_\_  
called "this Property."

3. **Title Commitment.** We have reviewed Title Commitment \_\_\_\_\_  
called the "Commitment," issued by \_\_\_\_\_

4. **Review.** We have reviewed the mortgages and other exceptions to title shown on the commitment.

5. **Delay.** We have been advised that there is a delay in \_\_\_\_\_ in the County of \_\_\_\_\_  
and that \_\_\_\_\_ has been unable to search title to the property  
to the date of closing.

6. **We Represent, Warrant and Covenant that:**

- a) We have not executed any deed, mortgage, bridge loan, contract of sale, lease, easement, license agreement, security agreement or other instrument affecting title to the property other than those instruments set forth in the commitment.
- b) No judgment or other lien, including a Notice of Unpaid Balance or Lien Claim under the Construction Lien Law, has been filed against us.
- c) There is no pending lawsuit in which we are parties which affects the property.

7. **Reliance.** We make this Affidavit in order to induce the Buyer(s) to accept our Deed or the Lender to accept our Mortgage and to induce \_\_\_\_\_ to insure title to the property. We are aware that the Buyer(s) or the Lender and \_\_\_\_\_ will rely on our truthfulness and the statements made in this Affidavit.

Signed and sworn to before me on (date) \_\_\_\_\_

### **Section 3.3.12 Risk of Loss**

The contract should specify the party responsible for physical damage to the property during the period between contract and closing. The responsibility usually is that of the seller who continues to maintain casualty insurance on the property, as part of the homeowners insurance policy, until the closing of title. The contract should also include a provision obligating the seller to either repair any damage which may occur or allowing the purchaser to deduct the cost of such repairs from the purchase price. In protecting the interests of a purchaser, the contract should allow the purchaser to have the option to either require the seller to perform the work or provide the purchaser with a credit at closing. Also, the purchaser should be allowed to cancel the contract in the event that the damage exceeds a certain amount specified in the contract. Customarily, that amount is ten percent (10%) of the purchase price; however, the exact amount is negotiated between the seller and the purchaser.

### **Section 3.3.13 Personalty and Fixtures**

The contract should expressly provide that fixtures (items of property attached to the structures) are included in the sale. Additionally, any personal property expressly included in or excluded from the transaction should be specified in the contract. There are certain items which are usually included in the sale such as wall-to-wall carpeting and other flooring affixed to the floor of the property. However, items which should be discussed with the client include lighting fixtures, ceiling fans, built-in wall units, and window treatments. In representing either party in a transaction, it is best to determine at the contract stage, rather than when preparing for closing, what personalty the parties intended to be included in or excluded from the transaction.

### **Section 3.3.14 Physical Condition and Preclosing Inspection**

In the instance of the resale of an existing home, the contract might provide that the property is being sold in "as is" condition with the seller being required to maintain and deliver the property subject to reasonable and ordinary wear and tear. Where a home inspection has been performed and a written report issued, consideration should be given to specifying in the contract that the seller is obligated to deliver the property in the same condition as reflected in the home inspection report. The reference to a written report provides a more objective standard for comparison than merely providing that the condition will be in the same condition as of the purchaser's inspection of the property or as of the date of the contract if a material change in the condition is alleged at closing.

### **Section 3.3.15 Adjustments**

Items of income and expense related to the property are allocated between the seller and the purchaser based upon the respective periods of ownership. While preprinted contracts typically provide that the adjustments will be made "as of" the date of closing, there is little support for the position that the date of closing itself should be the responsibility of either the seller or the purchaser and arguments may be made by either the seller or the purchaser that the other party should be responsible for costs associated with the date of closing. In practice, the responsibility for the day of closing is customarily made that of the purchaser since that is the day on which the purchaser becomes

obligated for certain other costs, such as mortgage payments, associated with ownership of the property. To avoid ambiguity, the contract should expressly identify the party responsible for the costs for the property on the date of closing.

The date upon which the adjustments are made may be a date other than the date of closing under certain circumstances. The contract might allow the purchaser to use and occupy the property prior to closing and provide that adjustments are to be made as of the date of the permitted use and occupancy. Another contract provision might be that in the event that the purchaser postpones closing beyond a certain closing date specified in the contract, the purchaser will, nonetheless, be responsible for the adjustments as of the closing date specified in the contract even though the purchaser did not close and have access to the property until a later closing date. A discussion regarding adjustments appears in Section 4.6.

#### **Section 3.3.16 Assessments for Municipal Improvements**

The municipality in which property is located may impose an assessment upon properties benefitting from an improvement. Examples of such improvements are the construction of sidewalks or curbs, and the construction or repair of sewerage systems. The determination of the party responsible for the payment of the assessment depends upon whether the cost of the improvement has been taken into account in establishing the sales price reflected in the contract. In allocating the responsibility for the cost, the contract provision focuses upon the date the work is completed. An equitable clause would provide that any unpaid assessments imposed against the property for work completed before the closing is the responsibility of the seller. If the improvement has not been completed before the closing, then the purchaser will be responsible. By basing the responsibility for the added assessment upon the empirical evidence of the completion of the improvement, the seller will be able to take into consideration the responsibility for the assessment in establishing and agreeing to the purchase price for the property. The contract should also include a mechanism by which the seller will be held accountable for the payment of the assessment if the amount of the assessment has not yet been determined by the municipality by the date of closing. Specifically, the contract may require the seller to place a portion of the closing proceeds in escrow to cover the assessment and further obligate the seller to pay any additional amounts due.

#### **Section 3.3.17 Possession and Tenancies**

The contract will usually contain a provision that the purchaser is to be given possession of the property at closing. However, there may be circumstances which require the purchaser to gain access to the property prior to closing. By way of example, the property which is the subject of the contract may be vacant and the purchaser may be simultaneously selling a property and using the proceeds from that sale to purchase the subject property. In that case, the purchaser may wish to negotiate the right to use and occupy the property prior to closing. A more detailed discussion regarding use and occupancy arrangements appears in Section 3.4.1.

The contract should also specify that the property will not be subject to any tenancies unless the purchaser has agreed to take title to the property subject to such tenancies. In the event that the property is subject to tenancies, the attorney for the purchaser should ascertain the intentions of the purchaser regarding the tenancy. The purchaser may intend to vacate the premises for personal use upon the closing of title or may require as part of the contract the seller to vacate the premises prior to the closing of title. *N.J.S.A. 2A:18-61.1 et seq.* sets forth the rights of tenants in the State of New Jersey and there may be restrictions or prohibitions upon the vacation of tenants from residential dwellings. The notice requirements which are to be complied with relative to any tenancy which is proposed to be terminated appear at *N.J.S.A. 2A:18-61.2 et seq.*

If the purchaser intends to assume the obligations of the owner, as landlord, in connection with the tenancy, there are certain matters which should be discussed with the purchaser at the time of contract and addressed at the time of closing. The contract should provide for the pro-rata adjustment of rent between seller and purchaser at closing. The contract should also specify that the security deposit placed by the tenant be transferred at closing either as a credit on the closing statement or by a payment in accordance with *N.J.S.A. 46:8-19*. The purchaser should also be aware that if the tenant-occupied property consists of three or more units occupied by three or more persons living independently, the property is subject to the requirements of the Hotel and Multiple Dwelling Law, *N.J.S.A. 55:13A-1 et seq.* and the regulations at *N.J.A.C. 5:10-1.1 et seq.* and evidence of compliance with the Act in the form of a Certificate of Inspection should be obtained. The contract should also provide that the seller will deliver a notice to attorn as discussed in Section 5.5.10. A discussion of laws governing tenancies appears in Section 7.4

### **Section 3.3.18 Exculpatory Clause**

The contract should contain a provision specifying the damages recoverable by a purchaser due to the failure of the seller to complete a contract because a defect in title. *N.J.S.A. 2A:29-1* provides, in pertinent part, that:

When any person shall contract to sell real estate, the person with whom such contract was made...may, in a civil action, recover...not only the deposit money, with interest and costs, but also the reasonable expenses of examining the title and making a survey of the property, unless the contract shall provide otherwise...

The contract provision might specify that if the seller is unable to perform due to defective title, the seller will reimburse the purchaser for the costs of the title commitment and survey. The purchaser may also attempt to negotiate a provision for reimbursement for attorney's fees, mortgage application fees and other expenses. Such a provision would protect a seller acting in good faith from substantial damages and not subject the seller to unreasonable expense in removing the defect. The purchaser should also have the option of accepting title with the defect.

### **Section 3.3.19 Notices**

The contract should specify the manner in which notices may be given by one party to the contract to the other. It is important that the clause expressly provide that any notice given to either party should be given to the attorney for that party as well. In addition to the customary forms of notice by personal delivery and by certified mail, return receipt requested, consideration should be given to including notice by (a) a recognized and reputable overnight delivery service, or (b) telecopy/facsimile (fax) accompanied by telephone confirmation of receipt and followed by first class (regular) mail. While drafters of contracts frequently wish to include e-mail as a means of given notice, such a vehicle is generally not recommended due to delivery failures and the inability to provide that the party identified in the contract to receive notice was the actual recipient of the notice.

### **Section 3.4 Supportive Contract Documents**

There may be times in preparing or reviewing a contract for the sale and purchase of real estate that the special needs of the parties to the contract require additional terms to be incorporated into the contract which may be expanded into separate agreements. The incorporation and development of such terms affect the coordination and timing of the transaction and often take into consideration the respective financial situations of the parties to the contract as well. Sometimes the need for a special arrangement may not develop until shortly before the closing date. The attorneys representing the seller and purchaser, respectively, should be aware of and advise their respective clients of the advantages and disadvantages of the following arrangements.

#### **Section 3.4.1 Use and Occupancy Agreement**

Where simultaneous transactions are involved (the seller is selling a home and using the proceeds to immediately purchase a home to which the seller will be relocating or the purchaser is purchasing and relocating to a home using the proceeds from the sale of the home immediately preceding the purchase), there should be a discussion with the client regarding the logistics of packing and removing the possessions from one home and relocating to the other where such efforts hinge on the successful conduct of simultaneous closings. If no accommodations were sought from the other party in the transaction and no interim housing and storage arrangements available, the process would involve (a) the packing of the moving van, (b) the vacation of the home on the morning of the closing, (c) the attendance of the closing for the sale of the home being sold by the seller, (d) the attendance of the closing for the purchase of the home being bought by the seller, (e) the unpacking of the moving van and occupancy of the new home by the end of the day. These efforts are often difficult to accomplish and the purchaser may wish to negotiate the right to occupy the property prior to the closing of title or, in the case of representing the seller, the right to continue to occupy the property after the closing of title. The period of time for which the request may be made may range from a few hours to several days depending upon the needs of your clients.

A use and occupancy arrangement would accommodate the practical needs of the parties; however, there are many legal issues to which such an arrangement gives rise and the attorney representing the party permitting the other party to use and occupy the property before or after closing should be certain that the client is fully aware of the problems which may arise from such an arrangement. Unless there are extraordinary circumstances requiring the arrangement, the exertion of every effort to protect the interests of the party permitting the arrangement, and a full awareness by that party of the disadvantages of permitting such an arrangement, the client should be counseled against permitting a use and occupancy of the property.

Some of terms in the agreement which must be negotiated are as follows:

- (i) the fee, if any, to be charged and the obligation to pay utility costs.
- (ii) the responsibility for homeowners insurance (liability and casualty) for the property and for the personalty placed in the property.
- (iii) the length of the permitted occupancy.
- (iv) the security to ensure performance under the agreement, e.g. placement of an additional deposit and the right to use the deposit monies placed under the contract for default under the use and occupancy agreement where the purchaser is being permitted to use and occupy the property or the withholding of a portion of the closing proceeds where a seller is being permitted to continue to occupy the property after closing.

Where a purchaser is requesting the right to use and occupy the property prior to closing, that need may be contemplated at the time of contracting to purchase the property (in which case a provision should be incorporated into the contract), or it may arise as late as the day of closing itself if the purchaser wishes to start unpacking possessions from the moving van but the closing is not anticipated to occur until several hours later. The concerns of the seller in permitting the use and occupancy by the purchaser before closing include the discovery of "defects" by the purchaser as a result of the early access to the property, damage to the property by the purchaser who subsequently does not close, adequate security to ensure the performance by the purchaser, the unwillingness of the purchaser to close title, the unwillingness of the purchaser to vacate the property upon a default under the contract or the use and occupancy agreement, and the assertion by the purchaser that a landlord-tenant relationship was created and the concomitant assertion of rights under *N.J.S.A. 2A:18-61.1 et seq.* by the purchaser. A use and occupancy agreement for the occupancy of a purchaser prior to closing appears as Exhibit 31.

A seller may be unable to or desire not to vacate the property prior to closing and may request a permitted use and occupancy of the property where the purchaser has no immediate need to occupy the property upon closing. Once again, the seller may be seeking the right to use and occupy the property for anywhere from several hours after closing in order to facilitate the packing and relocation of personalty to a new home or may wish to continue to occupy the property for several days, weeks or months after closing. If the permitted occupancy is by the seller, the purchaser has the advantage of securing the performance of the seller by holding in escrow a substantial portion of the proceeds from closing until the seller has vacated the property. Such protection, however, would be available only if there is a substantial amount to be received by the seller at closing as the net proceeds from the sale of the property upon the payment of any other parties who have an interest in the closing proceeds.

**EXHIBIT 31 - USE AND OCCUPANCY AGREEMENT (PURCHASER)**

**USE AND OCCUPANCY AGREEMENT**  
**(BUYER TAKES POSSESSION PRIOR TO CLOSING OF TITLE)**

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_, "Seller," and \_\_\_\_\_, "Buyer."

WHEREAS, Seller and Buyer entered into a Contract for Sale of Real Estate dated \_\_\_\_\_ ("Contract"), regarding property located at \_\_\_\_\_, New Jersey ("Property"); and

WHEREAS, the Buyer desires to use and occupy the Property prior to the date of closing of title and Seller is willing to allow Buyer to use and occupy the Property from the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, until the closing of title or termination of occupancy pursuant to the terms of this Use and Occupancy Agreement; and

WHEREAS, the parties intend by this Agreement to set forth the terms under which Buyer may occupy the Property prior to the closing of title to the Property.

NOW, THEREFORE, in consideration of the terms and conditions of the Contract and the mutual covenants and agreements contained herein, the parties agree:

1. **Buyer's Occupancy.** Seller agrees that Buyer shall be permitted to reside in the Property and to use the Property as a single-family residence for Buyer's immediate family subject to the terms and conditions hereinafter set forth. No other persons shall be permitted use or occupy the Property.

2. **Nature of Occupancy.** No legal title or leasehold interest in the Property shall be deemed or construed to be created or vested in Buyer by anything contained herein. Buyer shall occupy the Property merely as a licensee. It is expressly understood and agreed that Buyer is not a tenant or lessee, Seller is not a landlord, and Buyer does not have such rights as exist at law regarding landlord/tenant rights, including without limitation, *N.J.S.A. 2A:18-61.1 et seq.*

3. **Occupancy Charge; Escrow.** For each day that Buyer is in occupancy of the Property pursuant to the terms hereof, Buyer shall pay to Seller the sum of \$ \_\_\_\_\_ per day. This amount shall be paid on the first day of each month for the occupancy of the preceding month, and shall be adjusted or paid at closing or termination of occupancy, as applicable, for unpaid use and occupancy charges to such date. Buyer has this date paid to \_\_\_\_\_ ("Escrow Agent") the sum of \$ \_\_\_\_\_ to secure Buyer's obligation for the payments due pursuant hereto and for performance of Buyer's obligations hereunder.

**Exhibit 31 - Use and Occupancy Agreement (Purchaser) - Continued**

4. **Pre-Occupancy Inspection.** Prior to occupancy, Buyer is to conduct an inspection of the Property as though the closing pursuant to the Contract ("closing") were about to occur. Buyer and Seller shall prepare, and initial or sign, an inspection report of all items agreed or alleged to require repair at the expense of Seller prior to closing. Any items shown on the inspection report, which is to be signed by the Buyer and Seller, will be adjusted or negotiated in the normal course, as applicable, at closing. In all other respects, the Buyer will take title at closing in an "as is" condition as of the date of occupancy.

5. **Duration of Occupancy.** The right to use and occupy the Property pursuant to this Agreement shall terminate upon the earlier of \_\_\_\_\_, or the conveyance by Seller to Buyer of title to the Property.

6. **Utilities, Taxes.** At the commencement of occupancy, all utilities will be transferred to the name of the Buyer. Buyer shall be responsible for and shall pay all water and utility bills and real estate taxes applicable to the Property from the date hereof to the date of closing or termination of occupancy.

7. **Indemnification; Insurance.** Buyer agrees that the use and occupancy of the Property shall be at Buyer's own risk and the Buyer hereby holds Seller harmless and does hereby release Seller from any and all liability for any personal injury or property damage relating in any way to the use and occupancy of the Property. Buyer further agrees to hold Seller harmless and indemnify Seller against any and all claims for personal injury or property damage to any third party to the extent such claim, injury or damage arises out of Buyer's use of the Property. The Seller shall be responsible for maintaining fire and liability insurance on the Property. Buyer will obtain insurance on Buyer's personal property and such liability insurance for Buyer's own purposes as Buyer deems necessary.

8. **Damage or Destruction.** Buyer agrees not to cause the Property to suffer any damage during Buyer's use hereunder and further agrees that in the event the Property shall suffer damage, Buyer shall be liable for the cost of correcting same. Buyer shall assume all risk of wear and tear to the Property and shall be responsible for making all repairs to the Property, whether ordinary or extraordinary.

9. **Default.** Prior to the closing of title, in the event of default in the use and occupancy payments or in the payments of any utility charges, or tax costs with regard to the Property, for a period of ten (10) days after Buyer's receipt of written notice of the amount and due date thereof, Escrow Agent is hereby authorized to expend so much of the monies held in escrow, as necessary, to satisfy any use and occupancy charges, utility charges and/or tax costs that may be delinquent. Escrow Agent shall disburse such funds upon receipt of an affidavit of Seller stating (i) the nature and amount of the payments in default and (ii) that a copy of the affidavit has been mailed to Buyer.

**Exhibit 31 - Use and Occupancy Agreement (Purchaser) - Continued**

10. **Contract Termination.** If the Contract is terminated pursuant to its terms, buyer may terminate occupancy at any time by delivering possession of the Property to Seller in the same condition as of the date of occupancy, reasonable wear and tear excepted. The deposit monies paid under the Contract as well as the sum paid under this Agreement are to be retained by the Escrow Agent until such time as the Escrow Agent is furnished with proof of payment of final utility bills and all other use and occupancy charges set forth herein through the termination of occupancy, as well as satisfactory evidence of Buyer's compliance with all other terms and conditions hereof. Upon satisfaction of this requirement, all monies will be returned to the Buyer. If the above requirement is not completed within fifteen (15) days from the date of termination of occupancy, so much of the aforesaid monies as may be necessary shall be utilized by the Escrow Agent to pay first, use and occupancy charges including the cost of taxes due to Seller, and second, unpaid utility bills. Any balance remaining will be delivered by the Escrow Agent to the Buyer. In the event such monies are insufficient to meet such expenses, Buyer shall remain personally, jointly and severally liable for payment of same.

Buyer acknowledges that in the event the Contract is terminated pursuant to its terms, the Property will again be placed on the market. In such event, Buyer agrees that Seller or its authorized real estate broker may have access to the Property at any time between the hours of 9 a.m. and 9 p.m., seven (7) days per week, in order to show the Property to prospective purchasers and agrees to maintain the Property in a neat and orderly condition. If the real estate broker reports in writing that the Property is not in a neat and orderly condition, Buyer may be required to vacate the Property, and Buyer agrees to so vacate, on ten (10) days' notice from Seller. The Buyer further acknowledges that in the event of such a sale, Buyer will be required and agrees to vacate the Property in order to make it available to the new purchaser on not less than fifteen (15) days' notice from Seller.

In the event Buyer fails to vacate the Property in a timely manner as provided herein, the Escrow Agent is hereby authorized to deliver to the Seller, from the said, escrow, for each and every full or partial day during which the Buyer shall remain in possession of the Property after the date specified for termination of occupancy in the notice provided in the paragraph above (i) two times the daily use and occupancy charges provided herein plus (ii) a sum equal to all monies or liability incurred by the Seller for legal fees and for costs for legal proceedings in order to obtain Buyer's eviction. The balance of the escrow, if any, shall be returned to the Buyer on vacation of the Property and delivery of physical possession of the Property in the same condition as at the date of occupancy and upon compliance of the provision set forth in this section and payment of all other sums by Escrow Agent pursuant to Section 9 above.

In no event shall the amount of the escrow established hereunder or the amount of the deposit monies paid under the Contract limit the Buyer's liability to Seller as provided herein. The parties acknowledge that the Escrow Agent has served as attorney for Seller and agree that in the event of a dispute between the parties arising hereunder or relating to the Contract of Sale, Escrow Agent may continue to serve as attorney for Seller.

**Exhibit 31 - Use and Occupancy Agreement (Purchaser) - Continued**

Buyer and Seller agree to indemnify and hold Escrow Agent harmless from and against any cost, expense, claim or liability, including reasonable attorney's fees and disbursements, arising by virtue of Escrow Agent's agreement to serve hereunder, except for such cost, expense, claim or liability as may be determined to have been caused by Escrow Agent's gross negligence or willful misconduct. By Escrow Agent's acceptance of the escrowed funds, Escrow Agent shall be deemed to have agreed to all of the terms and conditions applicable to Escrow Agent pursuant to this Agreement.

11. **Contract of Sale.** The Contract entered into between Seller and Buyer is incorporated by reference herein and subject to such modification as appear in this Agreement. Neither this Agreement, nor Buyer's possession of the Property before closing of title, shall be deemed a waiver of the Contract, but shall be considered as being conditional upon, and without prejudice to, the due performance of the Contract in all respects.

12. **Notices.** All notices hereunder shall be sent by certified mail, return receipt requests, to all parties, and shall be deemed received upon the second day after mailing. Notices shall be sent to the Buyer at the Property and to Seller as set forth in the Contract.

13. **Binding on Successors.** This Agreement shall be binding on the parties, their respective successors, assigns, heirs, administrators and executors.

14. **Modifications.** This Agreement contains the entire agreement of the parties and shall not be modified, altered or changed unless in writing signed by the parties.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement the date and year first above appearing.

WITNESS:

\_\_\_\_\_  
(as to Sellers)

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Seller

WITNESS:

\_\_\_\_\_  
(as to Buyers)

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Buyer

WITNESS:

\_\_\_\_\_  
Escrow Agent

The concerns of the purchaser are similar to those of a seller who permits the purchaser to use and occupy the property prior to closing. These concerns include damage to the property, the timely vacation of the property by the seller, and the assertion of rights by the seller based upon the creation of a landlord-tenant relationship. The purchaser should be aware that the permitted continued occupancy by the seller, depending upon the circumstances and the terms of that permitted occupancy, may be construed to be a default under a mortgage that requires the property be owner-occupied. A use and occupancy agreement for the continued occupancy by a seller after the closing appears as Exhibit 32.

#### **Section 3.4.2 Property Storage Agreement**

A permitted property storage arrangement might be a solution if a party is concerned about the disadvantages of a use and occupancy arrangement but nonetheless wishes to accommodate the other party to some extent. Essentially, the party requesting the accommodation would be permitted to store possessions either in a portion of the home, e.g. such as a garage, or throughout the home where the home is vacant, but would not be permitted to otherwise use and occupy the property.

Many of the concerns which exist with a use and occupancy arrangement also exist with a property storage arrangement and the terms have to be negotiated. However, the disadvantages to the seller are limited somewhat since the main concern will be the legal disposition of possessions rather than the removal of occupants. Nonetheless, the seller will be compelled to incur costs in causing the removal of such possessions. One of the benefits of a property storage arrangement is that the limited storage of property in the home may be permitted by the municipality prior to the issuance of the certificate of occupancy for a newly constructed home where the issuance of the certificate of occupancy may be the cause of a postponement of the closing. In any event, the seller should be certain to discuss the arrangement with the appropriate municipal official since the storage of the property in the home may cause the municipality to be unwilling to inspect and issue a certificate of occupancy. A form of property storage agreement is included as Exhibit 33.

#### **Section 3.4.3 Lease With An Option to Buy**

While this topic is somewhat outside of the usual issues encountered during the course of a residential real estate closing, a familiarity with the structure of this arrangement may assist in documenting this arrangement if requested by a client. The arrangement would accommodate a purchaser leasing the property from the seller by giving the purchaser an exclusive right to contract to purchase the property at a later point in time. The components of such an arrangement are a (a) lease; (b) option agreement, and (c) proposed contract of sale, which may be reflected in separate agreements or in a single document.

The lease agreement memorializes the terms of the rental of the property as would be the case in a typical rental of a residential home. The standard lease form of the New Jersey Association of REALTORS® , which includes an Addendum disclosing the presence and/or hazards of lead based paint appears as Exhibit 34. A lease agreement for the rental of a single-family home appears as Exhibit 35. The option agreement expresses the rights being granted to the purchaser to execute a contract for the purchase of the home. Specifically, the option agreement sets forth the period of time in which the purchaser has to exercise the option, the manner in which the option is to be exercised and the requirement of any consideration to be paid to the seller for the option. An option agreement appears as Exhibit 36.

**EXHIBIT 32 - USE AND OCCUPANCY AGREEMENT (SELLER)**

**USE AND OCCUPANCY AGREEMENT**  
**(SELLER REMAINING IN POSSESSION AFTER CLOSING OF TITLE)**

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_, "Seller," and \_\_\_\_\_, "Buyer."

WHEREAS, Seller and Buyer entered into a Contract for Sale of Real Estate dated \_\_\_\_\_ ("Contract"), regarding property located at \_\_\_\_\_, New Jersey ("Property"); and

WHEREAS, the Contract provides that possession of the Property is to be delivered free of tenancies at time of closing of title; and

WHEREAS, Seller wishes to remain in possession of the Property after closing of title of the Property, and Buyer is willing to allow Seller to so reside in the Property pursuant to the terms of this Use and Occupancy Agreement; and

WHEREAS, title has closed on this date and the parties wish and intend by this Agreement to set forth the terms under which Seller may occupy the property subsequent to closing of title of the Property.

NOW, THEREFORE, in consideration of the terms and conditions of the Contract and the mutual covenants and agreements contained herein, the parties agree:

1. **Seller's Occupancy.** Buyer agrees that Seller shall be permitted to reside in the Property and to use the Property as a single family residence, for Seller's immediate family subject to the terms and conditions hereinafter set forth. No other person shall be permitted to use or occupy the Property.

2. **Nature of Occupancy.** No legal title or leasehold interest in the Property shall be deemed or construed to be created or vested in Seller by anything contained herein. Seller shall occupy the Property as licensee. It is expressly understood and agreed that Seller does not have such rights as exist at law regarding landlord/tenant rights, including without limitation *N.J.S.A. 2A:18-61.1 et seq.*

3. **Occupancy Charge.** Subject to Paragraphs 4 and 5 below, for each day that Seller is in occupancy of the Property pursuant to the terms hereof, Seller shall pay to Buyer the sum of \$\_\_\_\_\_ per day.

4. **Duration of Occupancy.** Seller's right to occupy the Property in accordance with the terms hereof shall terminate on \_\_\_\_\_.

**Exhibit 32 - Use and Occupancy Agreement (Seller) - Continued**

5. **Failure to Vacate.** Anything in Paragraph 3 to the contrary, Seller agrees to pay Buyer the sum of \$\_\_\_\_\_ per day for each day after the Seller fails to vacate the premises when required in Paragraph 4. This charge shall not limit Buyer's right to specifically enforce the terms of this Agreement in order to obtain possession of the Property.

6. **Damage or Destruction.** In case of the destruction of damage of any kind whatsoever to the property or any portion thereof, other than due to Buyer's sole negligence, Buyer shall obtain an estimate for the repair of such damage and the cost of same, less the net proceeds of any applicable insurance, shall be paid by Seller.

7. **Insurance.** Seller, at Seller's own cost and expense, shall obtain or provide and keep in full force during Seller's occupancy of the Property, insurance covering loss or damage to Seller's personal property and hereby releases Buyer from any and all responsibility or liability for any loss or damage to such personal property. Seller shall also maintain liability insurance in an amount not less than \$300,000 Combined Single Limit. Seller hereby agrees to hold Buyer harmless and indemnify Buyer from and against any loss, claims, expense or liability, including attorney's fees, arising out of loss or damage to the Property or any personal property or injuries to persons arising from any cause whatsoever.

8. **Utilities.** Seller shall be liable for the cost of all utilities during Seller's occupancy of the Property.

9. **Inspection.** Buyer shall be entitled to inspect the Property upon reasonable notice to Seller and upon termination of Seller's occupancy.

10. **Escrow of Closing Proceeds.** Seller agrees that from the proceeds of closing of title which would otherwise be paid to Seller, an escrow in the amount of \$\_\_\_\_\_ shall be created which shall be held by the attorney for Buyer ("Escrow Agent") in a non-interest bearing trust account. The Escrow Agent shall utilize the escrowed funds to pay any charges which may be due to Buyer pursuant to this Agreement. The balance of the escrow, if any, shall be paid to Seller after Seller's vacation of the property free from damage of destruction. In no event shall the amount of the escrow established hereunder limit the Seller's liability to Buyer as provided herein. The parties acknowledged that the Escrow Agent has served as attorney for Buyer and agree that in the event of a dispute between the parties arising hereunder or relating to the Contract of Sale, Escrow Agent may continue to serve as attorney for Buyer.

Buyer and Seller agree to indemnify and hold Escrow Agent harmless from and against any cost, expense, claim or liability, including reasonable attorneys fees, arising by virtue of Escrow Agent's agreement to serve hereunder, except for such cost, expense, claim or liability as may be determined to have been caused by Escrow Agent's gross negligence or willful misconduct. By Escrow Agent's acceptance of the escrowed funds, Escrow Agent shall be deemed to have agreed to all of the terms and conditions applicable to Escrow Agent pursuant to this Agreement.

**Exhibit 32 - Use and Occupancy Agreement (Seller) - Continued**

11. **Contract of Sale.** The Contract of Sale entered into between Seller and Buyer is incorporated by reference herein subject to such modifications as appear in this Agreement. Neither this Agreement, no Seller's possession of the Property after closing of title, shall be deemed a waiver of the Contract, but shall be considered as being conditional upon, and without prejudice to, the due performance of the Contract in all respects.

12. **Notices.** All notices hereunder shall be sent by certified mail, return receipt requested, to all parties, and shall be deemed received when sent. Notices shall be sent to the addresses of Buyer and Seller as set forth in the Contract.

13. **Binding on Successors.** This Agreement shall be binding on the parties, their successors, assigns, heirs, administrators or executors.

14. **Modification.** This Agreement contains the entire agreement of the parties and shall not be modified, altered or changed unless in writing signed by the parties.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement the date and year first above appearing.

WITNESS:

\_\_\_\_\_  
(as to Sellers)

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Seller

WITNESS:

\_\_\_\_\_  
(as to Buyers)

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Buyer

WITNESS:

\_\_\_\_\_  
Escrow Agent

**EXHIBIT 33 - PROPERTY STORAGE AGREEMENT**

**PROPERTY STORAGE AGREEMENT**

**THIS AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_, \_\_, by and between:

\_\_\_\_\_,  
residing at \_\_\_\_\_  
(hereinafter referred to as "Seller")

**AND**

\_\_\_\_\_,  
residing at \_\_\_\_\_  
(hereinafter referred to as "Buyer")

**W I T N E S S E T H :**

**WHEREAS**, the Seller and Buyer have entered into a Contract of Sale dated \_\_\_\_\_ (hereinafter referred to as the "Contract"), whereby the Seller has agreed to sell and the Buyer has agreed to purchase premises known as \_\_\_\_\_  
\_\_\_\_\_  
(hereinafter referred to as the "Premises"); and

**WHEREAS**, the Buyer desires and has requested the permission of the Seller to store furniture, household and personal property in the Premises prior to the date of closing of title; and

**WHEREAS**, the Seller agrees, as an accommodation to the Buyer, to permit the Buyer to store furniture and personal property in the Premises from the \_\_\_\_\_ day of \_\_\_\_\_ until the closing of title, termination in accordance with this Agreement, or any date which may subsequently be agreed upon in writing by the Seller and Buyer.

**FOR AND IN CONSIDERATION** of the sum of ONE (\$1.00) DOLLAR and other good and valuable consideration to each and the other well in hand paid, receipt whereof is hereby acknowledged, and in consideration of the covenants and agreements hereinafter mentioned, mad and entered into by the parties:

1. Buyer may only store furniture, household and personal property in the Premises.
2. The consent of Seller to permit Buyer to store the permitted items in the Unit is based upon Buyer's agreement to purchase the Premises and to acquire title to the Premises. In the event the Contract is terminated for any reason, the consent of Seller under this Agreement will likewise be deemed to have simultaneously terminated and Buyer will be obligated to immediately move any and all items stored in the Premises.

**Exhibit 33 - Property Storage Agreement - Continued**

3. Buyer may store items in the Premises until title to the Premises is acquired by Buyer or until \_\_\_\_\_, whichever first occurs, unless an extension in time is granted by Seller in writing. Seller agrees to extend the date until which the Buyer is permitted to store items in the Premises if the closing of title is delayed due to no fault of the Buyer. Upon acquisition of title to the Premises, Buyer will be entitled to possession of same and may proceed as desired, and this Agreement shall have no further force or effect.

4. Buyer may store only normal household furniture and items in the Premises and may not store hazardous items.

5. Buyer will be responsible for securing, at his own cost and expense, any insurance coverage desired for the stored property. The Seller will not be responsible for any insurance coverage for the stored property.

6. Buyer agrees to hold Seller harmless in connection with any damage, destruction, or loss of stored property. Further, Buyer agrees to indemnify and hold harmless Seller from any and all claims of others that might arise in connection with the storage of items in the Premises.

7. Buyer agrees that all items stored in the Premises are stored at Buyer's risk and Seller assumes no responsibility or liability whatsoever with regard to security for same.

8. Arrangements for access to the Unit for the placement of items in storage within same must be made through \_\_\_\_\_. Buyer will not receive a key to the Premises before closing of title nor will the Buyer be allowed access to the stored property once it has been placed in the Premises.

9. By signing this Agreement, Buyer represents that Buyer has performed the preclosing inspection provided under Paragraph \_\_\_\_ of the Contract and has obtained the agreement of Seller's to perform any remaining items of work. Except for any items agreed to by the Seller or its agent in writing, Buyer accepts the condition of the Premise as of the date of the preclosing inspection and the Seller will not be responsible for any other work to the Premises.

10. Buyer will be responsible for any repair or replacement and the cost of same that might be necessitated by damage to the Premises resulting from the storage of property in the Premises.

11. Under no circumstances shall this arrangement for storage between Buyer and Seller be deemed to create a relationship of landlord/tenant between the Buyer and Seller as to the Premises. Also, it is understood that this arrangement is not intended to give the Buyer any right of occupancy or possession with regard to the Premises prior to the Buyer's acquisition of title to same.

**Exhibit 33 - Property Storage Agreement - Continued**

12. Upon termination of this Agreement through termination of the Contract or expiration on \_\_\_\_\_, unless such date is extended in writing by Seller, the failure to remove all stored items within 48 hours of such termination or expiration shall entitle Seller to have same removed from the Premise and stored away from the Premises at the Buyer's sole cost and expense and shall give rise to a legal cause of action which Seller shall be entitled to pursue in court by the institution of appropriate legal action. Buyer will be responsible for all legal fees and court costs incurred by Seller as the result of any such legal action.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals the day and year first above written.

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Seller

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Buyer

# **EXHIBIT 34 - NEW JERSEY ASSOCIATION OF REALTORS RESIDENTIAL LEASES AND LEAD BASED PAINT DISCLOSURE**



## NEW JERSEY ASSOCIATION OF REALTORS® STANDARD FORM OF RESIDENTIAL LEASE

©2001 NEW JERSEY ASSOCIATION OF REALTORS®, INC.



**THIS IS A LEGALLY BINDING LEASE THAT WILL BECOME FINAL WITHIN THREE BUSINESS DAYS.  
DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL  
THE LEASE. SEE SECTION ON ATTORNEY REVIEW FOR DETAILS.**

### **TABLE OF CONTENTS**

1. CONDOMINIUM/CO-OPERATIVE RIGHT OF TERMINATION  
2. PROPERTY  
3. TERM  
4. RENT  
5. INITIAL DEPOSIT  
6. SECURITY DEPOSIT  
7. LATE PAYMENT PENALTY  
8. ADDITIONAL RENT  
9. POSSESSION AND USE  
10. UTILITIES  
11. NO ASSIGNMENT OR SUBLETING  
12. VIOLATION, EJECTION & RE-ENTRY  
13. DAMAGES  
14. QUIET ENJOYMENT  
15. TENANT'S REPAIRS AND MAINTENANCE  
16. LANDLORD REPAIRS

17. ACCESS TO THE PROPERTY  
18. NO ALTERATIONS OR INSTALLATION OF EQUIPMENT  
19. INSPECTION  
20. INSURANCE  
21. FIRE AND OTHER CASUALTY  
22. LIABILITY OF LANDLORD & TENANT  
23. PETS  
24. NOTICES  
25. NO WAIVER  
26. SEVERABILITY  
27. RENEWAL OF LEASE  
28. FURNITURE  
29. END OF TERM  
30. ASSOCIATION BYLAWS, RULES & REGULATIONS  
31. BINDING  
32. ENTIRE AGREEMENT

33. ATTORNEY REVIEW CLAUSE  
34. BROKER'S COMMISSION  
35. LEAD-BASED PAINT DOCUMENT ACKNOWLEDGMENT  
36. WINDOW GUARD NOTIFICATION  
37. NERGA'S LAW STATEMENT  
38. CONSUMER INFORMATION STATEMENT  
39. DECLARATION OF LICENSEE BUSINESS RELATIONSHIP  
40. ACKNOWLEDGMENT OF TRUTH IN RENTING  
41. SMOKE DETECTORS, CARBON MONOXIDE ALARM AND  
PORTABLE FIRE EXTINGUISHER COMPLIANCE  
42. PRIVATE WELL TESTING  
43. NERGA'S LAW REGISTRY  
44. OTHER LEASE PROVISIONS

### **RESIDENTIAL LEASE AGREEMENT**

**BETWEEN LANDLORD:** \_\_\_\_\_

**whose address is** \_\_\_\_\_

**AND TENANT:** \_\_\_\_\_

**whose address is** \_\_\_\_\_

The word "Landlord" as used in this Lease means all of the landlords above listed. In all instances in which the Landlord may exercise rights or perform obligations under this Lease, it may do so through its authorized agents or representatives.

The word "Tenant" as used in this Lease means all of the tenants above listed.

**1. CONDOMINIUM/CO-OPERATIVE RIGHT OF TERMINATION:** (The following statement generally, as required by law, must be included in a lease for a condominium or cooperative unit.) THIS BUILDING IS BEING CONVERTED TO OR IS A CONDOMINIUM OR COOPERATIVE. YOUR TENANCY CAN BE TERMINATED UPON 60 DAYS NOTICE IF YOUR APARTMENT IS SOLD TO A BUYER WHO SEEKS TO PERSONALLY OCCUPY IT. IF YOU MOVE OUT AS A RESULT OF RECEIVING SUCH A NOTICE AND THE LANDLORD ARBITRARILY FAILS TO COMPLETE THE SALE, THE LANDLORD SHALL BE LIABLE FOR TREBLE DAMAGES AND COURT COSTS.

**2. PROPERTY:** The Tenant agrees to lease from the Landlord and the Landlord agrees to lease to the Tenant (the single family home) (apartment # \_\_\_\_\_) (condominium unit # \_\_\_\_\_) (townhouse unit # \_\_\_\_\_) having a street address of \_\_\_\_\_ located in \_\_\_\_\_, New Jersey (referred to as the "Property").

**3. TERM:** The Term of this Lease is for \_\_\_\_\_ (months) (years) starting on \_\_\_\_\_ and ending on \_\_\_\_\_. This is referred to as the "Term". If the Landlord is unable to give possession of the Property to the Tenant on the first day of the Term, the Landlord shall not have any liability to the Tenant. However, the Tenant shall not be liable for the payment of rent until the Landlord gives possession of the

### Exhibit 34 - New Jersey Association of REALTORS® Residential Leases and Lead Based Paint Disclosure - Continued

Property to the Tenant. If the Landlord fails to give possession of the Property within 30 days of the start date set forth above, then the Tenant may terminate this Lease by giving notice to Landlord. If the first day of the Term is delayed, then the last day of the Term shall be adjusted accordingly, so that the Term remains for the number of months or years above stated.

**4. RENT:** The rent for the Term of this Lease is \$ \_\_\_\_\_, to be paid as follows: \$ \_\_\_\_\_ per month, which is due on the \_\_\_\_\_ day of each month. Rent shall be payable to: \_\_\_\_\_.

**5. INITIAL DEPOSIT:** Tenant has paid an initial deposit of \$ \_\_\_\_\_ (ACCOUNT AND ADDRESS) received on \_\_\_\_\_ that will be credited towards \_\_\_\_\_ the first month's rent or \_\_\_\_\_ the Security Deposit. The balance shall be paid as follows: First month's rent \$ \_\_\_\_\_ Due on \_\_\_\_\_, Security Deposit \$ \_\_\_\_\_ Due on \_\_\_\_\_.

**6. SECURITY DEPOSIT:** Tenant shall pay to the Landlord the sum of \$ \_\_\_\_\_ (the "Security Deposit" which cannot exceed one and one-half months rent) to assure that Tenant performs all of Tenant's obligations under this Lease. Landlord shall comply with the Rent Security Deposit Act (N.J.S.A. 46:8-19 et seq; the "Act"). This includes depositing the Security Deposit into a banking institution or investment company in New Jersey and notifying the Tenant in writing within 30 days of Landlord's receipt of the Security Deposit of (i) the name and address of the banking institution or investment company; (ii) the type of account in which the Security Deposit is deposited or invested (for example, interest bearing or money market); (iii) the amount of the Security Deposit and (iv) the current rate of interest for the account. The Act also requires payment in cash to Tenant of all interest earned on the Security Deposit upon the anniversary date of this Lease or the renewal of the term of this Lease. At such time, or at the time of a change in the type of account or a change in the banking institution or investment company, Landlord shall again notify Tenant of (i) the name and address of the banking institution or investment company; (ii) the type of account in which the Security Deposit is deposited or invested; (iii) the amount of Security Deposit and (iv) the current rate of interest for the account. Such a notice shall also be given to Tenant within 30 days after conveyance of the Property.

The Landlord may deduct from the Security Deposit any costs resulting from the Tenant's failure to comply with any of the terms of this Lease. If the Landlord makes any such deductions, then upon demand, the Tenant shall promptly restore the Security Deposit to its original amount. The Security Deposit may not be used by the Tenant for the payment of rent without the written consent of the Landlord.

The Landlord shall inspect the Property after the Tenant vacates at the end of the Term. Within 30 days of the termination of this Lease, the Landlord shall return the Security Deposit plus the undistributed interest to the Tenant, less any charges expended by the Landlord for damages to the Property resulting from the Tenant's occupancy. The interest and deductions shall be itemized in a statement by the Landlord, and shall be forwarded to the Tenant with the balance of the Security Deposit by personal delivery, registered or certified mail.

If the Landlord sells or transfers the Property during the Term of this Lease, the Landlord will transfer the Security Deposit plus the undistributed interest to the new owner. Landlord shall notify the Tenant of the sale and transfer, as well as the name and address of the new owner. The notice shall be given by registered or certified mail within five days after conveyance of title. After acquisition of the Property, the new owner shall have all responsibility regarding the Security Deposit, and the Landlord shall have no further responsibility.

**7. LATE PAYMENT PENALTY:** If the Tenant does not pay the rent by the \_\_\_\_\_ day of the month, the Tenant shall pay a late charge of \_\_\_\_\_ until the rent is received by Landlord. The late charge shall be added to the rent, and shall be considered as additional rent, which is defined in Section 8. In the event any rent check is returned unpaid due to insufficient funds, the Tenant agrees to pay the Landlord a \$ \_\_\_\_\_ processing charge. In such event, the Landlord reserves the right to demand that future rent payments be made in cash, bank or certified check.

**8. ADDITIONAL RENT:** Landlord may perform any obligations under this Lease which are Tenant's responsibility and which Tenant fails to perform. The cost to Landlord for such performance may be charged to TENANT as "additional rent" which shall be due and payable with the next installment of monthly rent. The additional rent may include reasonable attorney's fees incurred by Landlord because of Tenant's failure to perform under this Lease. Landlord has the same rights against Tenant for failure to pay additional rent as Landlord has for Tenant's failure to pay monthly rent. This means that the Landlord may evict Tenant for failure to pay additional rent.

**9. POSSESSION AND USE:** The Landlord shall give possession of the Property to the Tenant for the Term of this Lease except as otherwise provided in this Lease. The Tenant shall occupy the Property only as a private residence, and will not use the Property for any business, trade or profession. The Tenant shall not store any flammable, dangerous or hazardous materials at the Property, other than ordinary household cleaning materials. The Property shall not be allowed to be vacant for any extended period of time.

**10. UTILITIES:** The Tenant shall arrange to have the utilities transferred into Tenant's name prior to occupancy, and shall be responsible for paying the following utility services: ☐ Gas ☐ Electric ☐ Water ☐ Heat ☐ Sewer ☐ General Trash Disposal ☐ (Other) \_\_\_\_\_

The Landlord shall provide and pay for the following utility services: ☐ Gas ☐ Electric ☐ Water ☐ Heat ☐ Sewer

# **Exhibit 34 - New Jersey Association of REALTORS® Residential Leases and Lead Based Paint Disclosure - Continued**

93     ☐ General Trash Disposal ☐ (Other) \_\_\_\_\_. The Tenant agrees  
 94     not to waste or unreasonably use any utility or appliance that is provided by the Landlord. Landlord shall not be responsible for any damage  
 95     or loss caused to Tenant or Tenant's property because of an interruption in utility services over which Landlord has no reasonable  
 96     means of control. Any such interruption shall not be grounds for Tenant to reduce or stop paying rent.  
 97  
 98     **11. NO ASSIGNMENT OR SUBLETTING:** The Tenant may not assign this Lease, sublet all or any part of the Property, or permit  
 99     any other person to use the Property without the prior written permission of the Landlord. The Landlord may withhold such permission  
 100     in Landlord's sole and absolute discretion.  
 101  
 102     **12. VIOLATION, EVICTION AND RE-ENTRY:** The Landlord reserves the right of re-entry. This means that if the Tenant violates  
 103     the terms of this Lease, the Landlord may terminate this Lease and regain possession of the Property. This is done by a court proceeding  
 104     known as an eviction. A complaint is served upon the Tenant and the Tenant must appear in court. The Landlord may also evict the  
 105     Tenant for any other cause which is permitted by applicable law. When the eviction proceeding is concluded, the Landlord may regain  
 106     possession of the Property.  
 107  
 108     **13. DAMAGES:** The Tenant is liable for all Landlord's damages caused by Tenant's breach of this Lease. Such damages may include  
 109     loss of rent, the cost of preparing the Property for re-renting, brokerage commission in finding a new tenant as a result of Tenant's eviction  
 110     or Tenant moves out prior to the end of the Term as well as reasonable attorney's fees and court costs.  
 111  
 112     **14. QUIET ENJOYMENT:** The Tenant may occupy the Property without interference, subject to Tenant's compliance with the  
 113     Terms of this Lease.  
 114  
 115     **15. TENANT'S REPAIRS AND MAINTENANCE:** The Tenant shall:  
 116     (a) Pay for all repairs, replacements and damages caused by the act or neglect of the Tenant, the Tenant's family, domestic employees,  
 117     guests or visitors, which includes but is not limited to sewer and plumbing drainage problems caused by the Tenant.  
 118     (b) Keep and maintain the Property in a neat, clean, safe and sanitary condition.  
 119     (c) Cut the grass and maintain the shrubbery.  
 120     (d) Drive and park vehicles only in designated areas, if any.  
 121     (e) Take good care of the Property and all equipment, fixtures, carpeting and appliances located in it.  
 122     (f) Keep the furnace clean, and regularly change the furnace filters, if applicable.  
 123     (g) Keep nothing in the Property which is flammable, dangerous or which might increase the danger of fire or other casualty.  
 124     (h) Promptly notify the Landlord of any condition which requires repairs to be done.  
 125     (i) Use the electric, plumbing and other systems and facilities in a safe manner.  
 126     (j) Promptly remove all garbage and recyclables from the Property and place it at the curb (or other designated area) in the proper  
 127     containers in accordance with the prescribed pick-up schedule.  
 128     (k) Not engage in any activity which may cause a cancellation or an increase in the cost of the Landlord's insurance coverages.  
 129     (l) Use no more electricity than the receptacles, wiring or feeders to the Property can safely carry.  
 130     (m) Obey all instructions, written or otherwise, of the Landlord for the care and use of appliances, equipment and other personal prop-  
 131     erty.  
 132     (n) Do nothing to destroy, deface or damage any part of the Property.  
 133     (o) Promptly comply with all orders and rules of the Board of Health or any other governmental authority which are directed to the  
 134     Tenant.  
 135     (p) Do nothing which interferes with the use and enjoyment of neighboring properties.  
 136     (q) Do nothing to cause any damage to any trees or landscaping on the Property.  
 137     (r) Keep the walks and driveway free from dirt, debris, snow, ice and any hazardous objects.  
 138     (s) Comply with such rules and regulations that may be published from time to time by the Landlord.  
 139  
 140     **16. LANDLORD REPAIRS:** The Landlord shall make any necessary repairs and replacements to the vital facilities serving the  
 141     Property, such as the heating, plumbing and electrical systems, within a reasonable time after notice by the Tenant. The Tenant may be  
 142     liable for the cost of such repairs and replacements pursuant to Section 15. The Landlord shall not be liable for interruption of services  
 143     or inconvenience resulting from delays in making repairs or replacements if due to circumstances beyond Landlord's reasonable control.  
 144  
 145     **17. ACCESS TO THE PROPERTY:** The Landlord shall have access to the Property on reasonable notice to the Tenant in order to  
 146     (a) inspect the interior and exterior of the Property, (b) make necessary repairs, alterations, or improvements, (c) supply services, and (d)  
 147     show it to prospective buyers, appraisers, contractors or insurers. The Landlord may enter the Property without prior notice in the event  
 148     of an emergency or if the Tenant is not home for more than seven consecutive days. If this Lease is not renewed as per Section 27 of this  
 149     Lease Agreement, Landlord shall then be allowed access to the Property at any time prior to the end of the Term for showing of Property  
 150     to prospective tenants.

## Exhibit 34 - New Jersey Association of REALTORS® Residential Leases and Lead Based Paint Disclosure - Continued

151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206

**18. NO ALTERATIONS OR INSTALLATION OF EQUIPMENT:** The Tenant may not alter or change the Property without first obtaining Landlord's written consent. By way of example, the Tenant may not:

- (a) Install any improvement such as carpeting, paneling, floor tiles, or any other improvement which is nailed or tacked down, cemented or glued in;
- (b) Install any locks or chain guards;
- (c) Wallpaper, affix wall coverings or other permanent type decorations;
- (d) Install or change the electrical, plumbing, heating or air cooling system.

When painting (whether interior or exterior), the Tenant must have the Landlord's permission regarding paint colors. All painting must be done in a professional and workmanlike manner. The Tenant shall repair all walls and ceilings which had pictures or fixtures attached, prior to vacating. Any and all changes, additions or improvements made without the Landlord's written consent shall be removed by the Tenant on demand by the Landlord. The Property shall be in substantially the same condition at the end of the Term as it was at the beginning of the Term, reasonable wear and tear excepted.

All permitted changes, additions and improvements shall become the property of the Landlord when completed, shall be fully paid for by the Tenant, and shall remain as part of the Property at the end of the Term of this Lease, unless the Landlord demands that the Tenant remove them. The Tenant shall not allow any construction lien or other claim to be filed against the Property. If any such lien or claim is filed against the Property, the Tenant shall have it promptly removed.

**19. INSPECTION:** If the municipality requires a continued use inspection or certificate of occupancy prior to occupancy, the Landlord shall be responsible for obtaining such inspections and certificates as well as making the necessary repairs.

**20. INSURANCE:** The Tenant shall be responsible for obtaining, at Tenant's own cost and expense, a tenant's insurance policy for the Tenant's furniture, furnishings, clothing and other personal property. The Tenant's personal property shall not be the responsibility of the Landlord, and will not be insured by the Landlord. The Tenant's insurance policy must also include liability coverage. Upon request, the Tenant shall periodically furnish Landlord with evidence of Tenant's insurance policy.

**21. FIRE AND OTHER CASUALTY:** Immediate notice shall be given by the Tenant to Landlord of any fire or other casualty which occurs at the Property. If the Property is uninhabitable, Tenant's obligation to pay rent shall cease until the time that the Property is restored by the Landlord. If only a part of the Property is uninhabitable, then the rent shall be adjusted proportionately.

If only part of the Property is damaged, the Landlord shall repair the Property within a reasonable period of time. Landlord shall not be obligated to repair or restore any improvements that Tenant has made to the Property.

Either party may cancel this Lease if the Property is so damaged by fire or other casualty that the property cannot be repaired within 90 days. The Landlord's determination in such regard shall be final, conclusive and binding on both parties.

The Lease shall end if the Property is totally destroyed. The Tenant shall pay rent to the date of destruction.

If the fire or other casualty is caused by the act or neglect of the Tenant, the Tenant's family, domestic employees, guests or visitors, the Tenant shall pay for all repairs and other damages.

**22. LIABILITY OF LANDLORD AND TENANT:** The Landlord is not legally responsible for any loss, injury or damage to any person or property unless such loss, injury or damage is directly caused by the Landlord's negligence. The Tenant is legally responsible for loss, injury or damage to any person or property caused by the negligence of the Tenant, the Tenant's family members, domestic employees, guests or visitors.

**23. PETS:** No dogs, cats or other pets shall be permitted on the Property without the prior written consent of the Landlord, which the Landlord may withhold in the Landlord's sole and absolute discretion.

**24. NOTICES:** All notices given under this Lease must be in writing in order to be effective. Delivery of notices may not be refused. If any notice is refused, it shall be considered to have been effectively given. Notices shall be given by (a) personal delivery, or (b) certified mail, return receipt requested, unless applicable law requires a different means of notice. Notices to the Landlord shall be at the address on the first page of this Lease, and to the Tenant at the Property.

**25. NO WAIVER:** The Landlord's failure to enforce any obligation of the Tenant contained in this Lease in any one instance shall not prevent the Landlord from enforcing the obligation at a later time.

**26. SEVERABILITY:** If any term or condition of this Lease is contrary to law, the remainder of the Lease shall be unaffected and shall continue to be binding upon the parties.

**Exhibit 34 - New Jersey Association of REALTORS® Residential Leases  
and Lead Based Paint Disclosure - Continued**

207 **27. RENEWAL OF LEASE:** The Tenant must be offered a renewal of this Lease by the Landlord, unless the Landlord has good  
208 cause not to do so under applicable law. Reasonable changes may be included in the renewal Lease. Not less than \_\_\_\_\_ days  
209 before the expiration of the Term of this Lease, the Landlord shall notify the Tenant of the proposed terms for the renewal Lease. Within  
210 \_\_\_\_\_ days after the Tenant receives the Landlord's renewal notice, Tenant shall notify Landlord whether Tenant accepts or rejects  
211 the proposed renewal Lease. If the Tenant does not notify the Landlord of Tenant's acceptance, then the Landlord's proposal shall be con-  
212 sidered to have been rejected. If the Tenant does not accept the renewal Lease, the Tenant must vacate the Property at the end of the Term.  
213

214 **28. FURNITURE:** If the Property is leased in furnished condition, or if the Landlord leaves personal property to be used by the Ten-  
215 ant, the Tenant shall maintain the furniture and furnishings in good condition and repair. A list of such items shall be attached to this Lease  
216 and signed by the Landlord and the Tenant.  
217

218 **29. END OF TERM:** At the end of the Term, the Tenant shall (a) leave the Property clean, (b) remove all of the Tenant's property,  
219 (c) repair any damage including that caused by moving, (d) make arrangements for final utility readings and pay all final utility bills and  
220 (e) vacate the Property and return it with all keys to the Landlord in the same condition as it was at the beginning of the Term, except for  
221 normal wear and tear.  
222

223 **30. ASSOCIATION BYLAWS, RULES AND REGULATIONS:** If Property is subject to any Association Bylaws  
224 and Rules and Regulations, Tenant agrees to comply with such Association Bylaws and Rules and Regulations including  
225 any amendments.  
226

227 **31. BINDING:** This Lease is binding on the Landlord and the Tenant and all parties who lawfully succeed to their rights and respon-  
228 sibilities.  
229

230 **32. ENTIRE AGREEMENT:** This Lease contains the entire agreement of the Landlord and Tenant. No representations have been  
231 made by the Landlord or its real estate broker or agents except as set forth in this Lease. This Lease can only be changed in writing by an  
232 agreement signed by both the Landlord and the Tenant.  
233

234 **33. ATTORNEY REVIEW CLAUSE:**  
235 **(1) Study by Attorney.**  
236 The Tenant or the Landlord may choose to have an attorney study this Lease. If an attorney is consulted, the attorney must complete  
237 his or her review of the Lease within a three-day period. This Lease will be legally binding at the end of this three-day period unless an  
238 attorney for the Tenant or the Landlord reviews or disapproves of the Lease.  
239 **(2) Counting the Time.**  
240 You count the three days from the date of delivery of the signed Lease to the Tenant and the Landlord. You do not count Saturdays,  
241 Sundays or legal holidays. The Tenant and the Landlord may agree in writing to extend the three-day period for attorney review.  
242 **(3) Notice of Disapproval.**  
243 If an attorney for the Tenant or the Landlord reviews and disapproves of this Lease, the attorney must notify the Broker(s) and the other  
244 party named in this Lease within the three-day period. Otherwise this Lease will be legally binding as written. The attorney must send the  
245 notice of disapproval to the Broker(s) by certified mail, by telegram, or by delivering it personally. The telegram or certified letter will be  
246 effective upon sending. The personal delivery will be effective upon delivery to the Broker's office. The attorney may also, but need not,  
247 inform the Broker(s) of any suggested revision(s) in the Lease that would make it satisfactory.  
248

249 **34. BROKER'S COMMISSION:** The Broker's Commission is earned, due and payable upon signing of a fully executed Lease  
250 Agreement and satisfaction of the Attorney Review Period set forth in Section 33 of this Lease. The Commission shall be paid by the  
251 ☐ Landlord in accord with previously executed Listing Agreement.  
252 ☐ Tenant and shall be payable as follows: \_\_\_\_\_  
253 \_\_\_\_\_  
254 \_\_\_\_\_  
255 \_\_\_\_\_  
256 \_\_\_\_\_  
257 \_\_\_\_\_  
258 Listing Broker  
259 \_\_\_\_\_  
260 \_\_\_\_\_  
261 Address Telephone #  
262 \_\_\_\_\_

### Exhibit 34 - New Jersey Association of REALTORS® Residential Leases and Lead Based Paint Disclosure - Continued

Participating Broker	Commission
Address	Telephone #

**35. LEAD-BASED PAINT DOCUMENT ACKNOWLEDGMENT: (Applies to dwellings built before 1978)**  
 The Tenant acknowledges receipt of the EPA pamphlet, "Protect Your Family From Lead In Your Home". Moreover, a copy of the document entitled, "Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards" has been fully completed, signed by Tenant, Landlord and Broker(s) and is appended to and made a part of this Agreement.

**36. WINDOW GUARD NOTIFICATION:**  
**THE OWNER (LANDLORD) IS REQUIRED BY LAW TO PROVIDE, INSTALL AND MAINTAIN WINDOW GUARDS IN THE APARTMENT OR IS, OR WILL BE, REGULARLY PRESENT THERE FOR A SUBSTANTIAL PERIOD OF TIME IF THE TENANT GIVES THE OWNER (LANDLORD) A WRITTEN REQUEST THAT THE WINDOW GUARDS BE INSTALLED. THE OWNER (LANDLORD) IS ALSO REQUIRED, UPON THE WRITTEN REQUEST OF THE TENANT, TO PROVIDE, INSTALL AND MAINTAIN WINDOW GUARDS IN THE HALLWAYS TO WHICH PERSONS IN THE TENANT'S UNIT HAVE ACCESS WITHOUT HAVING TO GO OUT OF THE BUILDING. IF THE BUILDING IS A CONDOMINIUM, COOPERATIVE OR MUTUAL HOUSING BUILDING, THE OWNER (LANDLORD) OF THE APARTMENT IS RESPONSIBLE FOR INSTALLING AND MAINTAINING WINDOW GUARDS IN THE APARTMENT AND THE ASSOCIATION IS RESPONSIBLE FOR INSTALLING AND MAINTAINING WINDOW GUARDS IN HALLWAY WINDOWS. WINDOW GUARDS ARE ONLY REQUIRED TO BE PROVIDED IN FIRST FLOOR WINDOWS WHERE THE WINDOW SILL IS MORE THAN SIX FEET ABOVE GRADE OR THERE ARE OTHER HAZARDOUS CONDITIONS THAT MAKE INSTALLATION OF WINDOW GUARDS NECESSARY TO PROTECT THE SAFETY OF CHILDREN.**

**37. MEGAN'S LAW STATEMENT:**  
 UNDER NEW JERSEY LAW, THE COUNTY PROSECUTOR DETERMINES WHETHER AND HOW TO PROVIDE NOTICE OF THE PRESENCE OF CONVICTED SEX OFFENDERS IN AN AREA. IN THEIR PROFESSIONAL CAPACITY, REAL ESTATE LICENSEES ARE NOT ENTITLED TO NOTIFICATION BY THE COUNTY PROSECUTOR UNDER MEGAN'S LAW AND ARE UNABLE TO OBTAIN SUCH INFORMATION FOR YOU. UPON CLOSING, THE COUNTY PROSECUTOR MAY BE CONTACTED FOR SUCH FURTHER INFORMATION AS MAY BE DISCLOSABLE TO YOU.

**38. CONSUMER INFORMATION STATEMENT ACKNOWLEDGMENT:** By signing below, the Landlord and Tenant acknowledge they received the Consumer Information Statement on New Jersey Real Estate Relationships from the brokerage firms involved in this transaction prior to the first showing of the Property.

**39. DECLARATION OF LICENSEE BUSINESS RELATIONSHIP(S):**  
 A. \_\_\_\_\_, (name of firm)  
 AND \_\_\_\_\_ (name(s) of licensee(s))  
 AS ITS AUTHORIZED REPRESENTATIVE(S) ARE WORKING IN THIS TRANSACTION AS (choose one)  
☐ LANDLORD'S AGENTS ☐ TENANT'S AGENTS ☐ DISCLOSED DUAL AGENTS ☐ TRANSACTION BROKERS.  
 B. INFORMATION SUPPLIED BY \_\_\_\_\_ (name of other firm)  
 HAS INDICATED THAT IT IS OPERATING IN THIS TRANSACTION AS A (choose one)  
☐ LANDLORD'S AGENT ONLY ☐ TENANT'S AGENT ONLY ☐ DISCLOSED DUAL AGENT ☐ TRANSACTION BROKER.

**40. ACKNOWLEDGMENT OF TRUTH IN RENTING STATEMENT: (Applies to all Tenants with a rental term of at least one month living in residences with more than two dwelling units or more than three if the Landlord occupies one.)** By signing below, Tenant acknowledges receipt of the booklet, "Truth In Renting - A guide to the rights and responsibilities of residential tenants and landlords in New Jersey".

**41. SMOKE DETECTORS, CARBON MONOXIDE ALARM AND PORTABLE FIRE EXTINGUISHER COMPLIANCE:**  
 The Certificate of smoke detectors, carbon monoxide alarm and portable fire extinguisher compliance (CSDCMAFFEC), as required by law, shall be the responsibility of the Landlord. If such alarms are battery operated, the Tenant shall be responsible for their maintenance.

**42. PRIVATE WELL TESTING: (This section is applicable if the Property's potable water supply is provided by a private well for which testing of the water is not required by any State law other than the Private Well Testing Act (the "Act" - N.J.S.A. 58:12A-26 to 37). By March 14, 2004, and at least once every five years thereafter, the Landlord is required to test the potable water**

**Exhibit 34 - New Jersey Association of REALTORS® Residential Leases  
and Lead Based Paint Disclosure - Continued**

321 supply for the Property in accordance with the Act. Within thirty (30) days after receiving the test results, the Landlord shall provide a  
322 written copy thereof to the Tenant. Also, the Landlord is required to provide a written copy of the most recent test results to any new  
323 tenant at the Property. If the Property is for "seasonal use or rental," the Landlord shall either post the tests results in a readily visible  
324 location inside of the Property or provide a written copy thereof to the tenant. A "seasonal use or rental" means use or rental for a term  
325 of not more than 125 consecutive days for residential purposes by a person having a permanent place of residence elsewhere. By signing  
326 below, Tenant acknowledges receipt of a written copy of the test results, or in the case of a seasonal rental, if it has not received the test  
327 results, acknowledges the posting thereof inside of the Property in accordance with the Act.

328  
329 **43. MEGAN'S LAW REGISTRY:** Buyer is notified that New Jersey law establishes an Internet Registry of Sex Offenders that may  
330 be accessed at [www.njsp.org](http://www.njsp.org).

331  
332 **44. OTHER LEASE PROVISIONS, IF ANY:**  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377

**Exhibit 34 - New Jersey Association of REALTORS® Residential Leases  
and Lead Based Paint Disclosure - Continued**

378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398

WITNESS:

\_\_\_\_\_  
Landlord

\_\_\_\_\_  
Date

\_\_\_\_\_  
Landlord

\_\_\_\_\_  
Date

\_\_\_\_\_  
Tenant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Tenant

\_\_\_\_\_  
Date

**Exhibit 34 - New Jersey Association of REALTORS® Residential Leases  
and Lead Based Paint Disclosure - Continued**

**THIS PAGE SHOULD BE KEPT SEPARATE FROM THE LEASE**

**VERIFICATION OF VERBAL WINDOW GUARD NOTIFICATION**

This will verify that the below window guard notification was provided verbally at the time of lease signing to the undersigned tenant by the owner, lessor, agent, or other person who manages or controls the unit ("owner/representative") and that the tenant was made aware of his/her right to request installation of window guards and understands this notification.

**WINDOW GUARD NOTIFICATION:**

THE OWNER (LANDLORD) IS REQUIRED BY LAW TO PROVIDE, INSTALL AND MAINTAIN WINDOW GUARDS IN THE APARTMENT IF A CHILD OR CHILDREN 10 YEARS OF AGE OR YOUNGER IS, OR WILL BE, LIVING IN THE APARTMENT OR IS, OR WILL BE, REGULARLY PRESENT THERE FOR A SUBSTANTIAL PERIOD OF TIME IF THE TENANT GIVES THE OWNER (LANDLORD) A WRITTEN REQUEST THAT THE WINDOW GUARDS BE INSTALLED. THE OWNER (LANDLORD) IS ALSO REQUIRED, UPON THE WRITTEN REQUEST OF THE TENANT, TO PROVIDE, INSTALL AND MAINTAIN WINDOW GUARDS IN THE HALLWAYS TO WHICH PERSONS IN THE TENANT'S UNIT HAVE ACCESS WITHOUT HAVING TO GO OUT OF THE BUILDING. IF THE BUILDING IS A CONDOMINIUM, COOPERATIVE OR MUTUAL HOUSING BUILDING, THE OWNER (LANDLORD) OF THE APARTMENT IS RESPONSIBLE FOR INSTALLING AND MAINTAINING WINDOW GUARDS IN THE APARTMENT AND THE ASSOCIATION IS RESPONSIBLE FOR INSTALLING AND MAINTAINING WINDOW GUARDS IN HALLWAY WINDOWS. WINDOW GUARDS ARE ONLY REQUIRED TO BE PROVIDED IN FIRST FLOOR WINDOWS WHERE THE WINDOW SILL IS MORE THAN SIX FEET ABOVE GRADE OR THERE ARE OTHER HAZARDOUS CONDITIONS THAT MAKE INSTALLATION OF WINDOW GUARDS NECESSARY TO PROTECT THE SAFETY OF CHILDREN.

DATED: \_\_\_\_\_

\_\_\_\_\_  
TENANT (SIGNATURE)

\_\_\_\_\_  
TENANT (PRINT NAME)

DATED: \_\_\_\_\_

\_\_\_\_\_  
TENANT (SIGNATURE)

\_\_\_\_\_  
TENANT (PRINT NAME)

DATED: \_\_\_\_\_

\_\_\_\_\_  
OWNER/REPRESENTATIVE (SIGNATURE)

\_\_\_\_\_  
OWNER/REPRESENTATIVE (PRINT NAME)

## Exhibit 34 - New Jersey Association of REALTORS® Residential Leases and Lead Based Paint Disclosure - Continued

### ADDENDUM DISCLOSURE OF INFORMATION AND ACKNOWLEDGMENT ABOUT LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS LEASES

#### I. LEAD PAINT WARNING

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

#### II. PROPERTY ADDRESS:

#### III. LESSOR'S DISCLOSURE (initial) (To be completed and signed at time of listing)

(a) Presence of lead-based paint and/or lead-based paint hazards (check one below):

☐ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain):

☐ Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and Reports available to the lessor (check one below):

☐ Lessor has no reports or records pertaining to lead-based paint and/or lead-based hazards in the housing.

☐ Lessor has the following reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing, all of which lessor has provided to its listing agent, and has directed its listing agent to provide lessee or lessee's agent with these records and reports prior to lessor accepting any offer to lease (list documents below):

(c) **If there is any change in the above information prior to lessor accepting an agreement from the lessee to lease, lessor will disclose all changes to the lessee prior to accepting the lease.**

#### IV. LESSOR'S CERTIFICATION OF ACCURACY

Lessor(s) have reviewed the Lessor's Disclosure in Section III and certify, to the best of his/her/their knowledge, that the information they have provided is true and accurate.

Lessor \_\_\_\_\_ Date / / Lessor \_\_\_\_\_ Date / /

#### V. LISTING AGENT'S CERTIFICATION OF ACCURACY

Listing Agent certifies that he/she has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Listing Agent \_\_\_\_\_ Date / /

#### VI. LESSEE'S ACKNOWLEDGMENT (initial) (The Lessor's Disclosure in Section III and Certification in Section IV and the Listing Agent's Certification in Section V to be completed and signed prior to lessee signing this Addendum.)

(a) Lessee has received copies of all information listed in Section III above.

(b) Lessee has received the pamphlet Protect Your Family From Lead in Your Home.

#### VII. LESSEE'S CERTIFICATION OF ACCURACY

Lessee(s) have reviewed the Lessee's Acknowledgment in Section VI and certify, to the best of his/her/their knowledge, that the information they have provided is true and accurate.

Lessee \_\_\_\_\_ Date / / Lessee \_\_\_\_\_ Date / /

#### VIII. LEASING/LESSEE'S AGENT'S CERTIFICATION OF ACCURACY

Leasing/Lessee's Agent certifies that the lessee has received the information in section VI (a) and (b).

Leasing/Lessee's Agent \_\_\_\_\_ Date / /

NJAR® Addendum-Lessee- 7/12 copyright ©2012 New Jersey Association of REALTORS®, INC.

EXHIBIT 35 - LEASE FORM

**Lease**

This Lease is made on \_\_\_\_\_

**BETWEEN** the Tenant(s)

whose address is \_\_\_\_\_

referred to as the "Tenant,"

**AND** the Landlord

whose address is \_\_\_\_\_

referred to as the "Landlord."

The word "Tenant" means each Tenant named above.

1. **Property.** The Tenant agrees to rent from the Landlord and the Landlord agrees to lease to the Tenant, the House located at \_\_\_\_\_ referred to as the "House."

2. **Term.** The term of this Lease is for \_\_\_\_\_ starting on \_\_\_\_\_ and ending on \_\_\_\_\_. The Landlord is not responsible if the Landlord cannot give the Tenant possession of the House at the start of this Lease. However, rent will only be charged from the date on which possession is made available and if the Landlord cannot give possession within 30 days, the Tenant may cancel this Lease.

3. **Rent.** The Tenant agrees to pay \$ \_\_\_\_\_ as rent, to be paid as follows: \$ \_\_\_\_\_ per month, due on the \_\_\_\_\_ day of each month. The first payment of rent and any security deposit is due upon the signing of this Lease by the Tenant. The Tenant must pay a late charge of \$ \_\_\_\_\_ as additional rent for each payment that is more than 10 days late. This late charge is due with the monthly rent payment. The Tenant must also pay a fee of \$25.00 as additional rent for any dishonored check.

4. **Security Deposit.** The Tenant has deposited \$ \_\_\_\_\_ with the Landlord as security that the Tenant will comply with all the terms of this Lease. If the Tenant complies with the terms of this Lease, the Landlord will return this deposit within 30 days after the end of the Lease, including any extension. The Landlord may use as much of the deposit as necessary to pay for damages resulting from the Tenant's occupancy, and demand that the Tenant replace the amount of the security deposit used by the Landlord. If the Landlord sells the property, the Landlord shall transfer the deposit to the new owners for the Tenant's benefit and notify the Tenant. The Landlord will then be released of all liability to return the security deposit. The Landlord will fully comply with the Rent Security Law (N.J.S.A. 46:8-19 *et seq.*). This includes depositing the security deposit in an interest-bearing account, and notifying the Tenant, in writing, of the name and address of the banking institution and the amount of the security deposit being held. Interest due the Tenant will be credited as rent on each renewal date of this Lease.

5. **Landlord's Agent.** The Landlord authorizes the following person(s) to manage the property on behalf of the Landlord (name(s) and address(es)):

### Exhibit 35 - Lease Form - Continued

**6. Use of Property.** The Tenant may use the House only as a private residence for the following persons:

referred to as "household members." The Tenant will not keep anything in the House that is dangerous, flammable, explosive or might increase the danger of fire or any other hazard. No dogs, cats, or other animals are allowed in this House without the Landlord's prior written consent.

**7. Utilities.** The Landlord will pay for the following utilities:

☐ cold water    ☐ hot water    ☐ electricity    ☐ heat    ☐ air conditioning    ☐ gas

The Tenant will pay for the following utilities as additional rent:

☐ cold water    ☐ hot water    ☐ electricity    ☐ heat    ☐ air conditioning    ☐ gas

**8. Eviction.** The Tenant may be evicted if the Tenant does not pay the rent when it is due, or does not comply with all the terms of this Lease and for all other causes allowed by law. If evicted, the Tenant must continue to pay the rent for the rest of the term. The Tenant must also pay all costs, including reasonable attorney fees, related to any eviction and the collection of any moneys owed the Landlord, along with the cost of re-entering, re-renting, cleaning and repairing the House. Rent received from any new tenant will reduce the amount owed the Landlord.

**9. Payments by Landlord.** If the Tenant fails to comply with the terms of this Lease, the Landlord may take any required action and charge the cost, including reasonable attorney fees, to the Tenant as additional rent. Failure to pay such additional rent upon demand is a violation of this Lease.

**10. Lead Paint Lease Disclosure.** The Landlord, Tenant and Agent (if any), have signed the "Disclosure to Tenants" form for lease of residential property (if the housing was built before 1978). For all such above leases the tenant has also been provided with a copy of the EPA pamphlet, "Protect Your Family from Lead in Your Home," 42 U.S.C. 4852d; 24 C.F.R. 35.88; 40 C.F.R. 745.107.

**11. Private Well Testing Act (N.J.S.A. 58:12A-26 et seq.)** In accordance with the Private Well Testing Act (the "Act"), if potable water for the [Demised Premises] is supplied by a private well, and testing of the water supply is not required pursuant to any other State law, Landlord is required to test the water (i) by March 14, 2004, and (ii) every five years thereafter, in the manner established under the Act and to provide a copy of the results thereof to each tenant. If such testing has been done prior to the date hereof, upon signing this Lease, Landlord shall provide Tenant with a written copy of the most recent test results.

**12. Care of the House.** The Tenant has examined the House, including the living quarters, all facilities, furniture and appliances, and the grounds upon which the House is located, and is satisfied with its present physical condition. The Tenant agrees to maintain the House and property in as good condition as it is at the start of this Lease except for ordinary wear and tear. The Tenant must pay for all repairs, replacements and damages caused by the act or neglect of the Tenant, the Tenant's household members or their visitors. The Tenant will remove all of the Tenant's property at the end of this Lease. Any property that is left becomes the property of the Landlord and may be thrown out. The Tenant must get the Landlord's prior written consent to alter, improve, paint or wallpaper the House. Alterations, additions and improvements become the Landlord's property.

**13. Repairs by Landlord.** If the House is damaged or needs repair, the Tenant must promptly notify the Landlord. The Landlord will have a reasonable amount of time to make repairs. If the Tenant must leave the House because of damage not resulting from the Tenant's act or neglect, the Tenant will not have to pay rent until the House is repaired. If the House is destroyed, this Lease will end and the Tenant will pay rent up to the date of destruction. The Landlord is not responsible for any inconvenience or interruption of services due to repairs, improvements or for any reason beyond the Landlord's control. The Tenant may not put any sign or projection (such as a TV or radio antenna) in or out of the windows or exteriors of the House without the Landlord's prior written consent.

### Exhibit 35 - Lease Form - Continued

**14. Compliance with Laws.** The Tenant must comply with laws, orders, rules and requirements of governmental authorities and insurance companies that have issued or are about to issue policies covering this House.

**15. No Waiver Assignment or Sublease.** The Landlord does not give up any rights by accepting rent or by failing to enforce any terms of this Lease. The Tenant may not sublease the House or assign this Lease without the Landlord's prior written consent.

**16. Entry by Landlord.** Upon reasonable notice, the Landlord may enter the House to provide services, inspect, repair, improve or show it. Tenant must notify Landlord if Tenant will be away for 10 days or more. In case of emergency or Tenant's absence, the Landlord may enter the House without Tenant's consent.

**17. Quiet Enjoyment.** The Tenant may live in and use the House without interference subject to this Lease.

**18. Subordination.** This Lease and the Tenant's rights are subject and subordinate to present and future mortgages on the premises that include the House. The Landlord may execute any papers on the Tenant's behalf as the Tenant's attorney in fact to accomplish this.

**19. Injury or Damage.** The Tenant will be responsible for any injury or damage caused by the act or neglect of the Tenant, the Tenant's household members or their visitors. The Landlord is not responsible for any injury or damage unless due to the negligence or improper conduct of the Landlord.

**20. Renewals and Changes in Lease.** The Landlord may offer the Tenant a new Lease to take effect at the end of this Lease. The new Lease may include reasonable changes. The Tenant will be notified of any proposed new Lease at least sixty (60) days before the end of the present Lease. If no changes are made, the Tenant may continue to rent the House on a month-to-month basis (with the rest of the Lease remaining the same). In either case the Tenant must notify the Landlord of the Tenant's decision to stay or to leave at least thirty (30) days before the end of the term. Otherwise, the Tenant will be responsible under the terms of the new Lease.

**21. Notices.** All notices provided by this Lease must be written and delivered personally or by certified mail, return receipt requested. Notices to the Landlord may be sent to the Landlord's Agent.

**22. Rules.** The Tenant will not interfere with the quiet enjoyment of any other Tenant. The Tenant will comply with all rules attached to this Lease and upon reasonable notice accept reasonable changes in such rules made by the Landlord. The Tenant will likewise be responsible for the acts of the Tenant's household members and visitors.

**23. Validity of Lease.** If a clause or provision of the Lease is legally invalid, the rest of this Lease remains in effect.

**24. Entire Lease.** All promises the Landlord has made are contained in this written Lease. This Lease can only be changed by an agreement in writing by both Tenant and Landlord. The Landlord, each Tenant and all who lawfully succeed to their rights and responsibilities are bound by this Lease.

**25. Signatures.** The Landlord and the Tenant agree to the terms of this Lease. If this Lease is made by a corporation, its proper corporate officer's sign and its corporate seal is affixed.

Witnessed or Attested by:

\_\_\_\_\_  
Landlord (Seal)

\_\_\_\_\_  
Tenant (Seal)

\_\_\_\_\_  
Tenant (Seal)

**EXHIBIT 36 - OPTION AGREEMENT**

OPTION AGREEMENT

THIS AGREEMENT, effective as of the \_\_\_\_ day of \_\_\_\_\_, \_\_,

BY AND BETWEEN:

\_\_\_\_\_,  
having an office located at \_\_\_\_\_

(hereinafter referred to as "Optionor");

AND:

\_\_\_\_\_,  
residing at \_\_\_\_\_

(hereinafter referred to as "Optionee");

W I T N E S S E T H:

WHEREAS, Optionor is the owner of Premises known as \_\_\_\_\_ (the "Premises"), and more particularly described on Exhibit "A" attached hereto and made a part hereof;

WHEREAS, simultaneously with the execution of this Option Agreement, Optionor and Optionee are entering into an Apartment Lease (the "Lease") permitting Optionee to occupy the Premises;

WHEREAS, Optionee is desirous of obtaining an option for the exclusive right and privilege to purchase the Premises; and

WHEREAS, Optionor desires to grant such option on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the sum of ONE DOLLAR, the mutual covenants and conditions herein contained, and other good and valuable consideration, it is hereby agreed as follows:

**Exhibit 36 - Option Agreement - Continued**

1. Optionor does hereby give and grant to Optionee or its permitted assignee, the sole exclusive option, right and privilege (the "Option") upon the timely exercise of the Option in the manner hereinafter set forth, to purchase the Premises for such sum and in the manner and on the conditions set forth in the form of Contract of Sale set forth in Exhibit "B" attached hereto and made a part hereof, subject to the exceptions, encumbrances and conditions of title permitted thereunder.

2. Optionee must exercise in writing the purchase option no later than ninety (90) days prior to the expiration of the Term under the Lease (the "Term"), provided that Optionee is not then in default under the Lease. Notice of the exercise of the Option shall be sent or delivered to Optionor in the manner set forth in Paragraph 9 of this Agreement. Upon receipt of notice of Optionee's exercise of the option to purchase, Optionor shall prepare and deliver to Optionee a formal Contract of Sale, in the form attached hereto as Exhibit "B". The Contract of Sale shall set a closing date which shall be the earlier of (a) a date sixty (60) days after the Optionor's delivery of the fully signed Contract of Sale to Optionee, or (b) the expiration date of the Term. The only contingency under the Contract of Sale shall be the right of the Optionee to obtain a mortgage commitment within thirty (30) days of the date of execution and delivery of the Contract of Sale. The sale of the Premises to Optionee shall be in "AS IS" condition, and without any representation by Optionor as to the condition of the Premises or its suitability.

3. Optionor and Optionee agree that time shall be of the essence for each and every performance by the parties under this Agreement and the Contract of Sale. In the event the Option granted by this Agreement shall not be exercised in accordance with the provisions hereof, then this Option shall be deemed terminated and cancelled, and neither Optionor nor Optionee shall have any right against or obligation to, or claim against the other in connection herewith. Time shall be deemed to be of the essence of the exercise of the Option granted hereby, and unless duly exercised in accordance with the terms and provisions hereof, the same shall be null and void, and of no further force or effect.

4. Optionee will pay the Optionor a total consideration of \$\_\_\_\_\_, payable in equal monthly installments of \$\_\_\_\_\_ for this option (the "Option Fee"). Each installment shall be paid on the first day of each month. If the Optionor does not receive the Option Fee on or before the seventh (7th) day of the month, the Optionee will pay a late charge of \$\_\_\_\_\_.

If any check is returned by the Optionee's bank as being drawn on insufficient funds or is otherwise returned unpaid, then the Optionor will be entitled to the sum of \$\_\_\_\_\_ for the cost of handling this check. Thereafter, the Optionor may demand replacement of this check by certified funds, or by a check which a New Jersey bank has drawn upon itself.

5. If the Optionee exercises the option during the first \_\_\_\_ months of the Term and closes in accordance with the terms of the Contract of Sale, the Optionee shall receive at closing a credit in the amount of \$\_\_\_\_\_.

**Exhibit 36 - Option Agreement - Continued**

The credit under this paragraph will be given to the Optionee at closing only if the Optionee is current in making all payments of the Option Fee due under this Agreement and of rent under the Lease. If the Optionee has not made some or all of the payments of the Option Fee or of rent under the Lease, Optionee will not be entitled to receive a credit for any payments at closing.

6. Any uncured breach of the Lease which has been executed simultaneously with this Option Agreement will constitute an event of default under this Option Agreement. Any event of default under this Option Agreement will constitute a breach of the Lease and any such breach arising by virtue of a default under this Option Agreement shall be immediate and there shall be no obligation to provide notice or permit cure of any such breach.

7. Any questions or matters arising under this Option Agreement as to validity, construction, performance or otherwise, shall be determined in accordance with the laws of the State of New Jersey applicable to agreements made and to be performed wholly within the State of New Jersey.

8. Any notice by the Optionor to the Optionee will be considered duly given if (a) delivered personally to the Optionee or such person in possession of the Premises; (b) leaving a copy of the notice at the Premises with some member of his family over the age of 14 years; or (c) mailed by certified mail, return receipt requested, with the necessary postage in an envelope addressed to the Optionee at the Premises. Any notice dispatched by the Optionor to the Optionee by certified mail, return receipt requested may also be simultaneously or subsequently served by regular mail. Notices sent by regular mail shall be deemed received on the third business day following the date of mailing. Any notice by the Optionee to the Optionor must be given in writing, signed by the Optionee and mailed by certified mail, return receipt requested, with postage paid, in an envelope addressed to the Optionor at the Optionor's address as set forth on page 1 of this Agreement. Such notice will be deemed duly given to the Optionor only if the Optionee obtains a return receipt signed by the Optionor or its agent. Optionor shall have the right from time to time of changing its mailing address by notifying the Optionee of such change in the manner set forth in this Paragraph.

9. This Option Agreement shall inure to the benefit of and be binding upon the several parties hereto. This Option may not be assigned by Optionee without the prior written consent of Optionor.

10. This Option Agreement constitutes the entire and complete agreement between the parties hereto and supersedes all prior correspondence, discussions, agreements and understandings between the parties hereto relating to the matters herein contained.

11. Nothing in this Option Agreement is intended or shall be construed to confer upon or give any person not a party to this Agreement any right or claim under or by reason of this Option Agreement. All terms and conditions of this Option Agreement shall be for the sole and exclusive benefit of the parties hereto.

**Exhibit 36 - Option Agreement - Continued**

12. (a) This Option Agreement may be executed in several counterparts, and as so executed shall constitute one Agreement.

(b) Neither this Option Agreement or any memorandum hereof may be recorded by either party.

13. This Option Agreement shall not be amended except by written instrument executed by the parties hereto.

14. Optionor and Optionee represent and warrant to each other that \_\_\_\_\_ is the only broker authorized to represent the Optionor. The Optionor will be responsible to pay the broker's commission pursuant to a separate agreement. Optionee represents that the Optionee has contacted no other real estate broker or salesperson in connection with this transaction. Optionor and Optionee agree to indemnify and hold harmless each other against any claim of any other broker with whom Optionor or Optionee has dealt as the case may be. The provisions of this Paragraph shall survive the closing of title.

IN WITNESS WHEREOF, the parties hereto have set hereunto set their hands and seals as of the day and year first above written.

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Optionor

\_\_\_\_\_  
Optionor

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Optionee

\_\_\_\_\_  
Optionee

The terms of the contract pursuant to which the purchaser will be able to purchase the property would best be reflected by attaching a form of the contract which the purchaser would be required to sign upon the exercise of the option. The attachment of a form of contract in substantially the form to be signed by the purchaser at the time of the exercise of the option will eliminate most of the disagreements which may arise if the preparation of the contract is postponed until the actual exercise of the option. If, at the time the lease is being made and the option is being granted, the terms of the contract of sale have not been fully developed, the parties may prefer to specify the salient provisions of the contract, such as the purchase price, contingencies and closing date, as part of the option agreement with the understanding that the purchaser will be required to sign a formal contract of sale at the time of the exercise of the option.

From the standpoint of the tenant (the party getting the option, i.e. the "optionee"), the lease permits the tenant to "test" the property prior to closing. If the financial condition of the tenant is a factor in restricting the prospective tenant to a lease of the property rather than purchase the property at the outset, the leasing arrangement allows the tenant to develop the financial wherewithal to purchase the property, e.g. accumulate savings for the deposit, develop credentials to qualify for a mortgage. Also, the arrangement between the seller and the tenant may include an agreement by the seller to apply certain amounts paid under the lease arrangement toward the deposit due to the seller at the time the purchaser exercises the option. The disadvantage to the tenant is that the terms of the contract are generally established at the time the prospective purchaser commences the lease of the property. Any modifications of the terms governing the sale and purchase of the property would have to be subsequently renegotiated by the tenant.

From the standpoint of the landlord (the party giving the option, i.e. the "optionor"), the arrangement provides interim income to the landlord which would otherwise not be available for so long as the property has not been sold. The disadvantages to the landlord include the exclusion of the sale of the property to another prospective purchaser who might be more financially qualified or willing to purchase the property subject to terms more favorable to the seller. The ability of the tenant to gain a familiarity with the property may also prevent the tenant from ultimately purchasing the property. The seller might also be subject to the assertion of rights by the tenant under *N.J.S.A. 2A:18-61.1, et seq.* if the tenant elects not to exercise the option and continue to occupy the property as a tenant. Lastly, the seller bears the obligations of landlord under the rental arrangement.

### **Section 3.5      Application of Deposit Toward Damages**

As discussed in Section 3.3.5, the contract provides for the placement of a deposit in escrow by the purchaser in order to secure the purchaser's performance under the contract. However, a default by the purchaser does not automatically entitle the seller to retain the deposit. In *Central Steel Drum Co. v. Gold Cooperage, Inc.*, 200 N.J. Super. 251, 262 (App.Div. 1985), New Jersey rejected its common law rule which stated that "a purchaser who alone repudiates the contract without justifiable cause...cannot recover under it." Thus, "the defaulting buyer may not recover his deposit, irrespective of the actual damages suffered by the seller and regardless of whether the contract contains a forfeiture provision or not." *Oliver v. Lawson*, 92 N.J. Super. 331, 333 (1966), *cert. denied*, 48 N.J. 574 (1967).

In *Kutzin v. Pirnie*, 124 N.J. 500 (1991), the Supreme Court recognized the injustice that results from such total forfeiture of deposit monies under the old rule and relied on the Restatement Second of Contracts, Section 374(1) reporter's note (1981) which states:

[I]f a party justifiably refuses to perform on the ground that his remaining duties of performance have been discharged by the other party's breach, the party in breach is entitled to restitution for any benefit that he has conferred by way of part performance or reliance in excess of the loss that he has caused by his own breach.

Thus, the Court flatly overruled all previous cases following the common law rule for damages, but stressed that "[o]ne who charges an unjust enrichment has the burden of proving it." *Id.* at 516 (quoting *Oliver v. Lawson*, 92 N.J. Super. 331, 336 (1966)). The Court then set forth the new rule that "[w]henver the breaching buyer proves that deposit exceeds the seller's actual damages suffered as a result of the breach, the buyer may recover the difference." *Kutzin*, 124 N.J., at 517.

The Court made clear the newly established rule was applicable only to contracts not containing a forfeiture or liquidated damages clause and proposed that contracts with such clauses be governed by section 374(2) of the Restatement (Second) of Contracts. This section states that:

To the extent that, under the manifested assent of the parties, a party's performance to be retained in the case of breach, that party is not entitled to restitution if the value of the performance as liquidated damages is reasonable in light of the anticipated loss caused by breach and the difficulties of proof of loss.

Liquidated damages are the sum a party agrees to pay upon that party's breach of the contract. "Generally, a liquidated damages clause is enforceable in New Jersey where actual damages which would be sustained upon a breach are difficult to project...The agreed-upon sum must not, however, be disproportionate to the presumable loss" or it will be deemed a penalty, and thus unenforceable. *Central Steel Drum Co.*, 200 N.J. Super. at 259-60 (citations omitted).

A liquidated damages clause should provide that the liquidated sum, i.e. the deposit, will be in full settlement of all damages for default of the contract and that neither party may thereafter maintain an action against the other for further damages. The amount that parties establish as liquidated damages is often the deposit, which is customarily ten percent (10%) of the purchase price. The contract should provide that the purchaser's deposit is to be placed in escrow so that it may be returned to the purchaser upon the default of the seller. However, the Court in *Kutzin* warned that "penalties and forfeitures are not favored; and calling an outrageous penalty by the more kindly name of liquidated damages does not absolve it from its sin." *Kutzin*, 124 N.J., at 518 (quoting Corbin, *The Right of a Defaulting Vendee to the Restitution of Installments Paid*, 40 Yale L.J. 1013, 1016 (1931)).

Pursuant to *N.J.S.A. 2A:29-1*, when the seller breaches the contract of sale, the purchaser is entitled to "recover not only the deposit money with interest and costs, but also the reasonable expenses of examining the title and making a survey of the property, unless the contract provides otherwise," such as when the contract includes a liquidated damages provision.

### **Section 3.6 Plain Language Law**

The New Jersey Plain Language Act, *N.J.S.A. 56:12-1 et seq.* was adopted to respond to the need for consumer protection and consumer rights. *N.J.S.A. 56:12-2* provides in pertinent part that all "consumer contract[s]...shall be written in a simple, clear, understandable and easily readable way." The Act offers guidelines discouraging the use of (a) double negatives, and exceptions to exceptions, (b) confusing cross-references, (c) unnecessarily long and confusing sentences, (d) words with obsolete meanings or words that differ in their legal meaning from their common, ordinary meaning, (e) sentences and sections that are in a confusing or illogical order and (f) Old English and Middle English words and Latin and French phrases. *N.J.S.A. 56:12-10(a)(1)-(6)*. The Act also sets forth guidelines that (a) the sections of the contract be captioned and divided in a logical order, (b) all contracts with more than 3,000 words contain a table of contents or alphabetical index, and (c) all conditions and exceptions to the contract be given prominence equal to its main promise and be in a font no smaller than 10 point type. *N.J.S.A. 56:12-10(b)(1)-(3)*. "Consumer contracts" include all "written agreement[s] in which an individual...[p]urchases real or personal property." *N.J.S.A. 56:12-1*. Moreover, pursuant to section 3, those who fail to comply with the Act are liable "for actual damages sustained, if the violation caused the consumer to be substantially confused about the rights, obligations or remedies of the contract, plus punitive damages in an amount up to \$50.00 ...[as well as] the consumer's reasonable attorney's fees and costs, not to exceed \$2,500.00." To avoid potential non-compliance, those preparing and selling consumer contracts may obtain an opinion from the Attorney General certifying that a contract meets the Act's standards. [*N.J.S.A. 56:12-8*].

In addition, section 5 of the Act provides in part that "[t]here shall be no liability...if...the creditor, seller, insurer, or lessor attempts in good faith to comply with the act in preparing the consumer contract...." In *Wheatly v. Myung Sook Suh*, 207 N.J. Super. 539 (Law Div. 1985), the Court stated that "'good faith' requires a showing that consideration was given to the provisions of the Act when that agreement was prepared. Ignorance of the law is not a substitute for good faith." *Id.* at 548. See generally, 207 N.J. Super. 539 for a discussion of the Plain Language Act.

The attorney should carefully review all documents to protect the client's interests. Additionally, not all parties to a contract may have legal representation. In either case, it is the individual who prepares a contract, rider or other applicable instrument who is ultimately responsible for its clarity. Thus, when drafting instruments, it is important to keep them simple and understandable to ensure their effectiveness.

### **Section 3.7 Time of the Essence**

Delays due to unforeseen problems are quite common when setting the actual date for closing. These delays often arise through no fault of either party. For example, the seller may be having difficulty finalizing new living accommodations, the work schedules of the parties may conflict, or there may be difficulty clearing title to the property. At times, delays encountered in closing may not be attributable to "problems" at all; rather, they may merely be due to all parties involved performing their responsibilities in due course. The rationale for making time of the essence is to effect performance by one party at the exact time specified in the contract or established by notice to enable

that party to require counter-performance from the other party. If the other party defaults, then the non-defaulting party can pursue applicable rights and remedies upon that default.

In the interest of justice, courts hold a strong presumption against time being of the essence in a contract of sale and will generally not find time to be of the essence unless the contract unequivocally provides that the closing is to be held on a definite day at a definite time and place and includes the words "time is of the essence". In the seminal case of *Orange Society v. Konski*, the Court of Equity stated what remains the law today:

The law is that a day fixed in a contract for closing title, without more, is merely formal; but if it is stipulated that time is of the essence, or the circumstances are persuasive that that is the case, prompt performance is essential...[W]here time fixed is regarded as a formality only, and the period has gone by, or where time is of the essence and there is a waiver, that time may nevertheless be made of the essence by a formal demand that the title be closed by a given day; but the time given must be reasonable. *Orange Society v. Konski*, 94 N.J. Eq. 632, 635 (1923).

The Supreme Court has expounded on the concept of reasonableness with respect to notifying a party who is either unreasonably delaying closing or exhibits an intention to default entirely. In *Pardiso v. Mazejy*, the Court held that the time given in such notice must bear a reasonable relation to the time elapsed after the date set in the contract. *Pardiso v. Mazejy*, 3 N.J. 110 (1949). Therefore, in order to ensure that the closing takes place as early as possible, it is important not to allow too much time to pass before serving such notice on the delaying party and to allow the party receiving the notice a reasonable time relative to the amount of time which has elapsed to prepare for the closing. Absent any extraordinary circumstances or passage of time, a minimum of fourteen (14) days' notice customarily has been upheld as a reasonable notice period.

Despite the fact that the time fixed for closing has been made of the essence, "the parties may nevertheless waive this provision by their conduct." *Salvator v. Trace*, 109 N.J. Super. 83, 91 (1969). "When a specific time is fixed for the performance of a contract and is of the essence...and [the contract] is not performed by that time, but the parties proceed with the performance of it after that time,...the time for performance will be deemed to have been extended for a reasonable time." 6 Williston, CONTRACTS (3 ed. 1962), §856.

Time may be made of the essence by contract provision, modification of the contract in accordance with the amendment requirements of the contract, or written notice after the closing date in the contract has passed. A letter making time of the essence appears as Exhibit 37.

**EXHIBIT 37 - TIME OF THE ESSENCE NOTICE**

**Time of the Essence Notification**

[Date]

[Name and Address]

Re: [Parties to Contract]  
Contract dated:  
Premises:

Dear

The undersigned represents \_\_\_\_\_, the Seller/Buyer under the Contract of Sale referenced above.

PLEASE TAKE NOTICE that the Seller/Buyer will be ready, willing and able to convey/accept title to the said premises in accordance with the aforementioned Contract of Sale on \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ a.m. / p.m. at the offices of \_\_\_\_\_, located at \_\_\_\_\_, which TIME IS HEREBY MADE OF THE ESSENCE of the Contract.

If you fail to appear to accept/tender Seller's Deed and pay/accept the balance of the purchase price fully in accord with the aforesaid Contract of Sale, you will be in default and the Contract of Sale will be deemed breached by reason of your default. if this occurs, you will lose your rights under the Contract of Sale and you will be held responsible for all losses and damages which the Seller/Buyer may sustain or incur as a result of your failure to close title and you will forfeit your rights to the deposit.

Very truly yours,

[Service in accordance with  
notice provision in Contract]

cc:

There is no definitive case law deciding whether one party to a contract in which the time set for closing is not of the essence can unilaterally make the date in the contract or earlier date time of the essence by service of a notice on the other party *prior* to the contract date. Some New Jersey cases have upheld such unilateral modifications of contracts. Such cases, however, have been fact specific and the decision of the court depended on countervailing equities. *Earlin v. Mors*, 1 N.J. 336 (1949) (Modification upheld due to notice of anticipatory breach by purchaser based on financial inability to perform); *Vautrinot v. Booth*, 105 N.J. Eq. 211 (E. & A. 1929) (Notice given by seller to purchaser effective against seller where seller was not able to convey good title at closing). It is suggested that notice not be served until the closing date specified in the contract has passed or the other party has clearly repudiated the contract.

The party making time of the essence and the party agreeing to a time of the essence provision should fully understand its significance. There should be a high degree of certainty by both parties of the timely ability to perform; otherwise, the non-performing party may be subject to default and an action for damages.



## **CHAPTER IV**

### **THE PURCHASER - BETWEEN CONTRACT AND CLOSING: PREPARING FOR CLOSING**

Once the terms of the contract have been finalized, the burden is on the purchaser and the purchaser's attorney to immediately act to satisfy the contingencies in the contract. The first step is likely to be procuring the services of experts such as the termite inspection company, the home inspection company, and radon inspection company to dispose of the contingencies discussed in Section 3.3.8. The performance of the inspections is frequently arranged for or coordinated by a real estate broker involved in the transaction. Once the inspections have been completed and the purchaser is satisfied with the condition of the property, the purchaser would submit an application for the mortgage loan financing. When the mortgage loan commitment has issued, a title search of the property would be ordered and arrangements made for clearing any exceptions appearing on the title work. The attorney would also comply with the closing instructions of the lender providing the mortgage loan financing. Upon the satisfaction of the lender's requirements, a closing date would be scheduled by the purchaser's attorney with the seller's attorney in consultation with the lender, closing figures prepared and reviewed by the seller's attorney, and then the mortgage and title closings would be held.

In order to prepare for closing in the manner described above, a period of sixty (60) to ninety (90) days would be required. By proceeding in such a manner, the purchaser's attorney would be confident that no additional expense on behalf of the purchaser would be incurred without knowing that certain less costly and time-consuming contingencies have been disposed to the satisfaction of the purchaser. However, the purchaser and the purchaser's attorney may not have the luxury to proceed at such a pace and in such a manner. There may be extenuating circumstances which require the purchaser to close within thirty (30) days of signing the contract. Should that be the case and the purchaser is seeking the attorney's assistance in expediting and closing within a relatively short timeframe, the purchaser should be aware of the costs which would be incurred in the event that all contingencies in the contract could not be addressed to the satisfaction of or waived by the purchaser. By way of example, if the purchaser insists that the property inspections be conducted, the mortgage application be submitted, and title work be ordered simultaneously, the purchaser would have incurred costs for the mortgage application and performance of title searches in the event the inspections were not satisfactory to the purchaser and the purchaser decided not to proceed with the purchase.

In disposing of the contingencies and preparing for closing, circumstances may arise that require the involvement of the attorney. While many of the efforts in preparing for closing may be accomplished by the purchaser in consultation with the real estate broker, the purchaser may look to the attorney for guidance relative to certain aspects of that preparation. This section will discuss not only the customary steps taken by the attorney's office in preparing for the closing but also some of the issues which may arise and require the intervention of legal counsel during this period of the transaction.

## **Section 4.1     Addressing Inspection Results**

In preparing or reviewing a contract which has clauses in it pertaining to termite, structural, radon, septic, well, home heating oil tank, and/or lead paint, the provisions may, on the one hand, appear straightforward as to the circumstances under which the purchaser may seek the repair of the property by the seller prior to closing, a credit against the purchase price at closing for the purchaser to address the problem post-closing or the termination of the contract. Inspection contingencies are discussed in Section 3.3.8. However, there is often room for interpretation as to whether a condition gives rise to a "defect" which would allow the purchaser to seek remedies under the contract from the seller. Beyond issues arising from the interpretation of the clause, a purchaser may be adamant in seeking some concession from the seller in connection with a discovered condition which does not, under the strict terms of the contract, allow the purchaser to any recourse. In such instances, even the most tightly drafted provision which establishes objective standards based upon the cost of the repair as a means of defining a "defect" as discussed in Section 3.3.8 may not satisfy a purchaser.

The purchaser should be fully aware of the significance of the inspection contingencies and warned against attempting to use them as means of negotiating a reduction in the purchase price in the contract. The failure of the purchaser to perform will give rise to a default and an action for damages by the seller. On the other hand, where a condition detected under the inspection clause is such that it allows the purchaser recourse under the contract or, in the alternative, the seller merely agrees to accommodate the purchaser by addressing the conditions raised in order to induce the purchaser to proceed with the transaction, the agreement of the parties should be memorialized as an amendment to the contract. Sample amendments appear as Exhibit 38.

## **Section 4.2     Mortgage Financing**

(a)     **Amount of Loan.** The amount of the loan being sought by the purchaser may affect the requirements of the lender and the mortgage costs incurred by the purchaser at closing and over the life of the loan. In 2010, a mortgage in excess of \$417,000 is commonly referred to as "jumbo" loan since, because of the size of the loan, the loan is subject to certain requirements imposed by secondary mortgage markets such as the Federal National Mortgage Association. Where the loan is a jumbo loan, a slightly higher interest rate is likely to be imposed by the lender for the loan.

Additionally, if the amount of the mortgage exceeds eighty percent (80%) of the lower of the purchase price or appraised value of the property, the lender is likely to require private mortgage insurance. Private mortgage insurance covers the lender's "risk" in light of the fact that the borrower's equity in the property is less than 20%. Where private mortgage insurance is required to be obtained in a transaction, the purchaser may be required to pay the first year's premium, as well as an amount to be placed in escrow with each monthly principal and interest payment, so that funds are accumulated to pay the premium imposed in subsequent years.

**EXHIBIT 38 - INSPECTION RESULTS AGREEMENT**

**SAMPLE AGREEMENTS REGARDING INSPECTION RESULTS**

[Reduction in purchase price as means to compensate purchaser for defects]

**Purchase Price**

Paragraphs 5 and 6 of the Contract are amended as follows:

5.	TOTAL PURCHASE PRICE	<u>\$250,000.00</u>
6.	MANNER OF PAYMENT	
A.	Initial Deposit	\$ 2,000.00
B.	Balance of Deposit	\$23,000.00
C.	Mortgage Loan Amount	\$200,00.00
D.	Balance of Purchase Price	<u>\$25,000.00</u>
	TOTAL PURCHASE PRICE	<u>\$250,000.00</u>

The reduction in the Purchase Price has been made in consideration of the conditions which were discovered as a result of the inspections performed at the property under Paragraph 9 of the Contract captioned "INSPECTION CLAUSE" and Paragraph 10 of the Contract captioned "TERMITE INSPECTION". Buyer and Seller agree that the reduction in the Purchase Price reflects the total consideration to be given by the Seller to the Buyer as a result of the home inspection, termite and radon contingencies under the Agreement. Buyer agrees that the contingencies set forth at Paragraph 9 and Paragraph 10 of the Contract shall be deemed to be satisfied upon the execution of this Rider by both parties.

**Exhibit 38 - Inspection Results Agreement - Continued**

[Purchaser's attorney's letter amendment to contract]

Dear \_\_\_\_\_:

This will respond to your letter dated \_\_\_\_\_ in which you set forth the items which your client wishes to be addressed as a result of the home inspection report. The position of our client as to each item as follows:

1. Our clients are not willing to perform any work to improve the attic ventilation.
2. Our clients will arrange for the boiler to be inspected by Public Service Electric & Gas (PSE&G). If the inspector from PSE&G requires any work to be performed to improve the venting of the boiler, our clients will arrange for same to be performed. Otherwise, our clients shall not be required to perform any work in this regard.
3. Our clients will arrange for the chimney and vent piping flashings to be resealed.
4. Our clients will arrange for the upper chimney cap to be recemented.
5. Our clients will refasten the leader pipe near the front porch.

I would appreciate it if you would review that which is set forth herein with your clients at your earliest convenience and arrange for them to countersign this letter to indicate their agreement to the manner in which our clients intend to address the inspection items.

Very truly yours,

(b) **Types of Loans.** There are many financing options available to a purchaser and the type of loan program should be selected which best suits the purchaser's needs. The purchaser should be aware of the requirements for and understand the specific loan program selected to avoid future complications. The following are examples of common loan programs:

(1) Conventional financing is provided by an institutional lender, whether a savings & loan, a bank or a mortgage company, which is not insured or guaranteed. Conventional financing can also be in the form of a "Fannie Mae" mortgage purchased by the Federal National Mortgage Association (FNMA), a federally chartered private mortgage company. FNMA sells commitments to purchase mortgages by guaranteeing that it will purchase a certain number of mortgages, of a certain type (conventional or government-backed), at a specified price within a particular period of time.

(2) A fixed rate mortgage is one in which the interest rate and the monthly payment for principal and interest remain constant for the entire term of the loan, fixed-rate mortgages are available for 10, 15, 20, 25 and 30 years. Monthly payments consist of principal, interest, taxes, and insurance and are designed to fully amortize the loan over the term.

(3) A graduated payment mortgage (GPM) is a flexible-payment mortgage where the payments start lower than they would with a conventional mortgage, then increase for a specified period of time before finally levelling off.

(4) An adjustable rate mortgage (ARM) is one in which the interest rate is adjusted periodically according to a preselected index. The terms, adjustment schedule, and index to be used can be negotiated by the borrower and lender. The mortgage agreement will specify a cap limiting the amount the interest rate may be adjusted at each period and over the life of the loan. Typically, the interest rate cannot increase more than two percent at each adjustment. However, which lender and program the borrower selects will determine the amount the interest rate can increase over the life of the loan.

The interest rate on these loans is fixed for a specified period of time and then adjusts periodically for the remainder of the loan. Due to the increased risk assumed by the borrower (the possible increase in the interest rate), the lender generally offers a lower interest rate for the initial period. In some cases this can help applicants to qualify for a larger loan amount or to save money during the initial period compared to a fixed rate loan. The adjustments are based on a pre-selected index. The most common indices are US Treasury securities, London Interbank Offered Rate Index (LIBOR) and Cost of Funds Index (COFI).

Types of ARM loans include:

- 1/1 ARM (30 years) The interest rate is subject to adjustment annually.
- 5/1 ARM (30 years) The interest rate is fixed for the first five years and is then subject to adjustment annually.

- 7/1 ARM (30 years) The interest rate is fixed for the first seven years and is then subject to adjustment annually.
- 10/1 ARM (30 years) The interest rate is fixed for the first ten years and is then subject to adjustment annually.

In all cases, the principal is amortized over a 30-year period.

(5) A renegotiable rate mortgage (RRM) or "rollover mortgage" is an adjustable rate mortgage in which changes are allowed every three to five years and are bound by an index of average mortgage rates at the time of renegotiation. A conversion option is also available by which a mortgage may be converted from an adjustable rate to a fixed rate during a designated period of time. The lender will specify the conversion and notice requirements as well as any applicable fee.

(6) A balloon mortgage is one with periodic installments of principal and interest that do not fully amortize the loan. Monthly principal payments during the term are calculated based on a 30-year term. The balance of the mortgage is due in a lump sum at a specified date in the future, usually at the end of the term. Although the loan has a short term, typically 5 or 7 years, some programs will offer a modification option by which the remaining term of the mortgage can be extended. The borrower may decide at the end of the term to refinance the remaining balance with a new mortgage. A 5/25 or a 7/23 convertible loan program provides the option to convert the balloon mortgage after the initial term to a fixed rate mortgage at the prevailing interest rate at the time of conversion. If the borrower does not have the ability to convert the loan, the amount due at the end of the term may be substantial and the borrower will have to have available the funds to satisfy the loan at the point in time.

(7) Special loan programs are available to eligible borrowers. These include state assisted programs and programs for first time or low/moderate income borrowers. Assistance is also available from the Federal Housing Administration (FHA) which insures first mortgages, enabling lenders to loan a very high percentage of the sale price. The regulations governing FHA loans are enumerated in 24 C.F.R. §203.1 *et seq.* Eligible veterans of the armed forces of the United States and their dependents may be eligible for Veterans Administration (VA) loans which are issued by banks, savings and loans, and other lenders who are insured by the Veterans Administration. Similar in purpose to FHA loans, these enable veterans to buy a residential property with little or no money down.

(c) **Information for Mortgage Application.** The attorney representing a purchaser seeking mortgage financing should be familiar with the mortgage loan application since a purchaser may require some assistance in either accumulating the information necessary to complete a mortgage application or completing the form itself. A residential mortgage loan application, together with the related disclosures and statements, appears as Exhibit 39.

In the event the purchaser seeks guidance as to the information required for submitting a complete application so that no delays are encountered, some of the information and records which a mortgage applicant may have to make available include:

(1) Personal Information:

- Borrower's name, co-borrower's name(s) and any name(s) under which borrower previously applied for or received credit
- Social security numbers of borrower, spouse or other co-borrowers
- Marital status
- Number and age of dependents
- Current address and telephone number and, if borrower lived at current address less than 2 years, former addresses for up to 2 years
- A detailed explanation of current housing expenses, including rent or mortgage payments, real estate taxes and insurance

(2) Employment History and Sources of Income:

- 2 years employment history with employer's name and address, borrower's job title or position, length of time on the job, salary, bonuses, commissions and overtime
- Recent paycheck stubs and Federal W-2 forms for 2 years (Note: a full Federal tax return may be required if borrower is self-employed or has other sources of income)
- Social security and disability payments, including a copy of the award letter, or a copy of the bank statement for proof of electronic deposit, or a recent check stub
- Rental property income, including a copy of lease agreement(s)
- Alimony and child support, including adequate proof of the source such as canceled checks, divorce decrees (Note: alimony and child support may not need to be disclosed unless used to repay the obligation)

(3) Personal Assets:

- Checking, savings, or money market accounts which will be used for the loan transaction, with the name and address of the institution, name(s) on the accounts, account numbers and current account balances
- Statements for the last two months on all listed accounts
- Current market value of stocks, bonds, CDs and other investments

- Vested interest in all retirement accounts
  - Address and market value of all real estate
- (4) Personal Indebtedness:
- If borrower has been through bankruptcy or foreclosure proceedings within the past seven years, full details and copies of applicable documents
  - Details of obligations to pay alimony, child support or separate maintenance
- (5) Details of Purchase Contract and the Property:
- A complete copy of the sales contract, including any addenda, signed by all parties, showing the full names of the sellers and buyers as they will appear on the new deed, the amount of earnest money deposit, and the party responsible for closing costs, origination fees, etc.
  - Name, address and telephone number of the real estate agent and/or the seller of the property who will assist the appraiser in obtaining access to the property
  - Name, address and telephone number of the borrower's attorney or settlement agent

## EXHIBIT 39A - UNIFORM RESIDENTIAL LOAN APPLICATION

Amber Sky Home Mortgage LLC, NMLS# 907795 | Originator: Joseph M. Berg, NMLS# 218266

## Uniform Residential Loan Application

This application is designed to be completed by the applicant(s) with the Lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower", as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when ☒ the income or assets of a person other than the "Borrower" (including the Borrower's spouse) will be used as a basis for loan qualification or ☐ the income or assets of the Borrower's spouse or other person who has community property rights pursuant to state law will not be used as a basis for loan qualification, but his or her liabilities must be considered because the spouse or other person has community property rights pursuant to applicable law and Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

If this is an application for joint credit, Borrower and Co-Borrower each agree that we intend to apply for joint credit (sign below):

Borrower		Co-Borrower	
<b>I. TYPE OF MORTGAGE AND TERMS OF LOAN</b>			
Mortgage Applied for: <input type="checkbox"/> VA <input checked="" type="checkbox"/> Conventional <input type="checkbox"/> Other (explain): <input type="checkbox"/> FHA <input type="checkbox"/> USDA/Rural Housing Service		Agency Case Number	Lender Case Number <b>2013092302</b>
Amount \$ <b>500,000</b>	Interest Rate <b>4.750 %</b>	No. of Months <b>360/360</b>	Amortization Type: <input checked="" type="checkbox"/> Fixed Rate <input type="checkbox"/> Other (explain): <input type="checkbox"/> GPM <input type="checkbox"/> ARM (type):
<b>II. PROPERTY INFORMATION AND PURPOSE OF LOAN</b>			
Subject Property Address (street, city, state, & ZIP) <b>123 Main Street, Westfield, NJ 07090 County: Union</b>			No. of Units <b>1</b>
Legal Description of Subject Property (attach description if necessary) <b>See Preliminary Report</b>			Year Built <b>2000</b>
Purpose of Loan <input checked="" type="checkbox"/> Purchase <input type="checkbox"/> Construction <input type="checkbox"/> Other (explain): <input type="checkbox"/> Refinance <input type="checkbox"/> Construction-Permanent		Property will be: <input checked="" type="checkbox"/> Primary Residence <input type="checkbox"/> Secondary Residence <input type="checkbox"/> Investment	
Complete this line if construction or construction-permanent loan. Year Lot Acquired: Original Cost: Amount Existing Liens: (a) Present Value of Lot: (b) Cost of Improvements: Total (a+b): \$ \$ \$ \$ \$			
Complete this line if this is a refinance loan. Year Acquired: Original Cost: Amount Existing Liens: Purpose of Refinance: Describe Improvements: <input type="checkbox"/> made <input type="checkbox"/> to be made \$ \$ Cost: \$			
Title will be held in what Name(s) <b>Joseph Borrower</b> <b>Jennifer Borrower</b>		Manner in which Title will be held <b>Husband &amp; Wife</b>	Estate will be held in: <input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold (show expiration date)
Source of Down Payment, Settlement Charges and/or Subordinate Financing (explain) <b>Checking/Savings</b>			
Borrower		Co-Borrower	
<b>III. BORROWER INFORMATION</b>		<b>Co-Borrower</b>	
Borrower's Name (include Jr. or Sr. if applicable) <b>Joseph Borrower</b>		Co-Borrower's Name (include Jr. or Sr. if applicable) <b>Jennifer Borrower</b>	
Social Security Number <b>111-11-1111</b>	Home Phone (incl. area code) <b>201-345-5533</b>	DOB (mm/dd/yyyy) <b>01/01/1970</b>	Yrs. School <b>16</b>
<input checked="" type="checkbox"/> Married (includes registered domestic partners) <input type="checkbox"/> Unmarried (includes single, divorced, widowed) <input type="checkbox"/> Separated		<input checked="" type="checkbox"/> Married (includes registered domestic partners) <input type="checkbox"/> Unmarried (includes single, divorced, widowed) <input type="checkbox"/> Separated	
Dependents (not listed by Co-Borrower) No. <b>2</b> Ages <b>5, 7</b>		Dependents (not listed by Borrower) No. _____ Ages _____	
Present Address (street, city, state, ZIP/ country) <input type="checkbox"/> Own <input checked="" type="checkbox"/> Rent <b>2</b> No. Yrs. <b>129 Washington Street, Suite 100LL</b> <b>Hoboken, NJ 07030 / United States</b>		Present Address (street, city, state, ZIP/ country) <input type="checkbox"/> Own <input checked="" type="checkbox"/> Rent <b>2</b> No. Yrs. <b>129 Washington Street, Suite 100LL</b> <b>Hoboken, NJ 07030 / United States</b>	
Mailing Address, if different from Present Address		Mailing Address, if different from Present Address	
If residing at present address for less than two years, complete the following:			
Former Address (street, city, state, ZIP) <input type="checkbox"/> Own <input type="checkbox"/> Rent ____ No. Yrs. _____		Former Address (street, city, state, ZIP) <input type="checkbox"/> Own <input type="checkbox"/> Rent ____ No. Yrs. _____	
Former Address (street, city, state, ZIP) <input type="checkbox"/> Own <input type="checkbox"/> Rent ____ No. Yrs. _____		Former Address (street, city, state, ZIP) <input type="checkbox"/> Own <input type="checkbox"/> Rent ____ No. Yrs. _____	

## Exhibit 39A - Uniform Residential Loan Application - Continued

Borrower		IV. EMPLOYMENT INFORMATION		Co-Borrower	
Name & Address of Employer <b>Employer</b> <b>123 Employer Lane</b> <b>Employer, NJ 12345</b>		Yrs. on this job <b>2 yr(s) 2 mth(s)</b> Yrs. employed in this line of work/profession <b>2</b>	Name & Address of Employer		Yrs. on this job
<input type="checkbox"/> Self Employed				<input type="checkbox"/> Self Employed	
Position/Title/Type of Business <b>Senior Employee</b>		Business Phone (incl. area code) <b>201-345-5533</b>	Position/Title/Type of Business		Business Phone (incl. area code)
<i>If employed in current position for less than two years or if currently employed in more than one position, complete the following:</i>					
Name & Address of Employer		<input type="checkbox"/> Self Employed	Dates (from-to)	Name & Address of Employer	
				<input type="checkbox"/> Self Employed	
		Monthly Income \$		Monthly Income \$	
Position/Title/Type of Business		Business Phone (incl. area code)	Position/Title/Type of Business		Business Phone (incl. area code)
Name & Address of Employer		<input type="checkbox"/> Self Employed	Dates (from-to)	Name & Address of Employer	
				<input type="checkbox"/> Self Employed	
		Monthly Income \$		Monthly Income \$	
Position/Title/Type of Business		Business Phone (incl. area code)	Position/Title/Type of Business		Business Phone (incl. area code)
Name & Address of Employer		<input type="checkbox"/> Self Employed	Dates (from-to)	Name & Address of Employer	
				<input type="checkbox"/> Self Employed	
		Monthly Income \$		Monthly Income \$	
Position/Title/Type of Business		Business Phone (incl. area code)	Position/Title/Type of Business		Business Phone (incl. area code)
Name & Address of Employer		<input type="checkbox"/> Self Employed	Dates (from-to)	Name & Address of Employer	
				<input type="checkbox"/> Self Employed	
		Monthly Income \$		Monthly Income \$	
Position/Title/Type of Business		Business Phone (incl. area code)	Position/Title/Type of Business		Business Phone (incl. area code)
Name & Address of Employer		<input type="checkbox"/> Self Employed	Dates (from-to)	Name & Address of Employer	
				<input type="checkbox"/> Self Employed	
		Monthly Income \$		Monthly Income \$	
Position/Title/Type of Business		Business Phone (incl. area code)	Position/Title/Type of Business		Business Phone (incl. area code)

V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION						
Gross Monthly Income	Borrower	Co-Borrower	Total	Combined Monthly Housing Expense	Present	Proposed
Base Empl. Income*	\$ 10,000.00		\$ 10,000.00	Rent	\$ 2,500.00	
Overtime				First Mortgage (P&I)		\$ 2,608.24
Bonuses				Other Financing (P&I)		
Commissions				Hazard Insurance		50.00
Dividends/Interest				Real Estate Taxes		500.00
Net Rental Income				Mortgage Insurance		
Other (before completing, see the notice in "describe other income," below)				Homeowner Assn. Dues		
				Other:		
<b>Total</b>	<b>\$ 10,000.00</b>		<b>\$ 10,000.00</b>	<b>Total</b>	<b>\$ 2,500.00</b>	<b>\$ 3,158.24</b>

\* Self Employed Borrower(s) may be required to provide additional documentation such as tax returns and financial statements.

Describe Other Income      *Notice: Alimony, child support, or separate maintenance income need not be revealed if the Borrower (B) or Co-Borrower (C) does not choose to have it considered for repaying this loan.*

B/C	Monthly Amount
	\$

## Exhibit 39A - Uniform Residential Loan Application - Continued

VI. ASSETS AND LIABILITIES							
This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise, separate Statements and Schedules are required. If the Co-Borrower section was completed about a non-applicant spouse or other person, this Statement and supporting schedules must be completed by that spouse or other person also.							
Completed <input checked="" type="checkbox"/> Jointly <input type="checkbox"/> Not Jointly							
<b>ASSETS</b>	<b>Cash or Market Value</b>	<b>Liabilities and Pledged Assets:</b> List the creditor's name, address and account number for all outstanding debts, including automobile loans, revolving charge accounts, real estate loans, alimony, child support, stock pledges, etc. Use continuation sheet, if necessary. Indicate by (*) those liabilities which will be satisfied upon sale of real estate owned or upon refinancing of the subject property.					
Cash deposit toward purchase held by: <b>Earnest Money Deposit</b>	\$ 5,000						
<b>List checking and savings accounts below</b>		<b>LIABILITIES</b>		<b>Monthly Payment &amp; Months Left to Pay</b>	<b>Unpaid Balance</b>		
Name and address of Bank, S&L, or Credit Union <b>Main Street Bank</b>		Name and address of Company <b>American Express</b>		\$ Payment/Months	\$		
Acct. no. 1234		Acct. no. 1234		120.00 / (R)	2,400		
Name and address of Bank, S&L, or Credit Union <b>Main Street Bank</b>		Name and address of Company <b>Capital One</b>		\$ Payment/Months	\$		
Acct. no. 1234		Acct. no. 1234		50.00 / (R)	1,000		
Name and address of Bank, S&L, or Credit Union <b>Main Street Bank</b>		Name and address of Company		\$ Payment/Months	\$		
Acct. no. 4567		Acct. no.		\$ Payment/Months	\$		
Name and address of Bank, S&L, or Credit Union		Name and address of Company		\$ Payment/Months	\$		
Acct. no.		Acct. no.		\$ Payment/Months	\$		
Stocks & Bonds (Company name/number description)		Name and address of Company		\$ Payment/Months	\$		
Life insurance net cash value		Acct. no.		\$ Payment/Months	\$		
Face amount: \$		Name and address of Company		\$ Payment/Months	\$		
<b>Subtotal Liquid Assets</b>		Acct. no.		\$ Payment/Months	\$		
Real estate owned (enter market value from schedule of real estate owned)		Name and address of Company		\$ Payment/Months	\$		
Vested interest in retirement fund		Alimony/Child Support/Separate Maintenance Payments Owed to:		\$			
Net worth of business(es) owned (attach financial statement)		Job-Related Expense (child care, union dues, etc.):		\$			
Automobiles owned (make and year)		<b>Total Monthly Payments</b>		\$ 170.00			
Other Assets (itemize)		Net Worth (a minus b) =>		\$ 301,600	<b>Total Liabilities b.</b>		\$ 3,400
<b>Total Assets a.</b>		\$ 305,000					
<b>Schedule of Real Estate Owned</b> (if additional properties are owned, use continuation sheet)							
Property Address (enter S if sold, PS if pending sale or R if rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Insurance, Maintenance, Taxes & Misc.	Net Rental Income
		\$	\$	\$	\$	\$	\$
	Totals	\$	\$	\$	\$	\$	\$
List any additional names under which credit has previously been received and indicate appropriate creditor name(s) and account number(s):							
Alternate Name		Creditor Name		Account Number			

## Exhibit 39A - Uniform Residential Loan Application - Continued

VII. DETAILS OF TRANSACTION		VIII. DECLARATIONS	
a. Purchase price	\$ 750,000.00	<p>If you answer "Yes" to any questions a through l, please use continuation sheet for explanation.</p> <p>a. Are there any outstanding judgments against you? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>b. Have you been declared bankrupt within the past 7 years? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>c. Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>d. Are you a party to a lawsuit? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>e. Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>(This would include such loans as home mortgage loans, SBA loans, home improvement loans, educational loans, manufactured (mobile) home loans, any mortgage, financial obligation, bond, or loan guarantee. If "Yes," provide details, including date, name, and address of Lender, FHA or VA case number, if any, and reasons for the action.)</p> <p>f. Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "Yes," give details as described in the preceding question.</p> <p>g. Are you obligated to pay alimony, child support, or separate maintenance? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>h. Is any part of the down payment borrowed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>i. Are you a co-maker or endorser on a note? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>j. Are you a U. S. citizen? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>k. Are you a permanent resident alien? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>l. Do you intend to occupy the property as your primary residence? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If "Yes," complete question m below.</p> <p>m. Have you had an ownership interest in a property in the last three years? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>(1) What type of property did you own-principal residence (PR), second home (SH), or investment property (IP)? _____</p> <p>(2) How did you hold title to the home-solely by yourself (S), jointly with your spouse (SP), or jointly with another person (O)? _____</p>	
b. Alterations, improvements, repairs			
c. Land (if acquired separately)			
d. Refinance (incl. debts to be paid off)			
e. Estimated prepaid items	3,689.58		
f. Estimated closing costs	6,611.90		
g. PMI, MIP, Funding Fee			
h. Discount (if Borrower will pay)			
i. Total costs (add items a through h)	760,301.48		
j. Subordinate financing			
k. Borrower's closing costs paid by Seller			
l. Other Credits (explain)			
Cash Deposit	5,000.00		
m. Loan amount (exclude PMI, MIP, Funding Fee financed)	500,000.00		
n. PMI, MIP, Funding Fee financed			
o. Loan amount (add m & n)	500,000.00		
p. Cash from/to Borrower (subtract j, k, l & o from i)	255,301.48		

IX. ACKNOWLEDGEMENT AND AGREEMENT	
<p>Each of the undersigned specifically represents to Lender and to Lender's actual or potential agents, brokers, processors, attorneys, insurers, servicers, successors and assigns and agrees and acknowledges that: (1) the information provided in this application is true and correct as of the date set forth opposite my signature and that any intentional or negligent misrepresentation of this information contained in this application may result in civil liability, including monetary damages, to any person who may suffer any loss due to reliance upon any misrepresentation that I have made on this application, and/or in criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Sec. 1001, et seq.; (2) the loan requested pursuant to this application (the "Loan") will be secured by a mortgage or deed of trust on the property described in this application; (3) the property will not be used for any illegal or prohibited purpose or use; (4) all statements made in this application are made for the purpose of obtaining a residential mortgage loan; (5) the property will be occupied as indicated in this application; (6) the Lender, its servicers, successors or assigns may retain the original and/or an electronic record of this application, whether or not the loan is approved; (7) the Lender and its agents, brokers, insurers, servicers, successors and assigns may continuously rely on the information contained in the application, and I am obligated to amend and/or supplement the information provided in this application if any of the material facts that I have represented herein should change prior to closing of the Loan; (8) in the event that my payments on the Loan become delinquent, the Lender, its servicers, successors, or assigns may, in addition to any other rights and remedies that it may have relating to such delinquency, report my name and account information to one or more consumer credit reporting agencies; (9) ownership of the Loan and/or administration of the Loan account may be transferred with such notice as may be required by law; (10) neither I nor my agent, brokers, insurers, servicers, successors or assigns has made any representation or warranty, express or implied, to me regarding the property or the condition or value of the property; and (11) my transmission of this application as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or my facsimile transmission of this application containing a facsimile of my signature, shall be as effective, enforceable and valid as if a paper version of this application were delivered containing my original written signature.</p> <p><b>Acknowledgement.</b> Each of the undersigned hereby acknowledges that any owner of the Loan, its servicers, successors and assigns, may verify or reverify any information contained in this application or obtain any information or data relating to the Loan, for any legitimate purpose through any source, including a source named in this application or a consumer reporting agency.</p> <p><b>Right to Receive Copy of Appraisal.</b> I/We have the right to a copy of the appraisal report used in connection with this application for credit. To obtain a copy, I/we must send Creditor a written request at the mailing address Creditor has provided. Creditor must hear from us no later than <u>30</u> days after Creditor notifies me/us about the action taken on this application, or I/we withdraw this application.</p> <p>If you would like a copy of the appraisal report, contact: <b>Amber Sky Home Mortgage LLC 1 Route 46 West, Suite 1 Elmwood Park, NJ 07407</b></p>	
Borrower's Signature	Date
<b>X</b>	
Co-Borrower's Signature	Date
<b>X</b>	

X. INFORMATION FOR GOVERNMENT MONITORING PURPOSES	
<p>The following information is requested by the Federal Government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a Lender may not discriminate either on the basis of this information, or on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, under Federal regulations, this lender is required to note the information on the basis of visual observation and surname if you have made this application in person. If you do not wish to furnish the information, please check the box below. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the lender is subject under applicable state law for the particular type of loan applied for.)</p>	
<p><b>BORROWER</b> <input type="checkbox"/> I do not wish to furnish this information</p> <p>Ethnicity: <input type="checkbox"/> Hispanic or Latino <input checked="" type="checkbox"/> Not Hispanic or Latino</p> <p>Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input checked="" type="checkbox"/> White</p> <p>Sex: <input type="checkbox"/> Female <input checked="" type="checkbox"/> Male</p>	<p><b>CO-BORROWER</b> <input type="checkbox"/> I do not wish to furnish this information</p> <p>Ethnicity: <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino</p> <p>Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White</p> <p>Sex: <input type="checkbox"/> Female <input type="checkbox"/> Male</p>
<p><b>To be Completed by Loan Originator:</b></p> <p>This information was provided: <input type="checkbox"/> in a face-to-face interview <input type="checkbox"/> By the applicant and submitted by fax or mail <input checked="" type="checkbox"/> in a telephone interview <input type="checkbox"/> By the applicant and submitted via e-mail or the Internet</p>	
Loan Originator's Signature	Date
<b>X</b>	<b>09/23/2013</b>
Loan Originator's Name (print or type)	Loan Originator Identifier
<b>Joseph M. Berg</b>	<b>218269</b>
Loan Origination Company's Name	Loan Origination Company Identifier
<b>Amber Sky Home Mortgage LLC</b>	<b>907795</b>
<b>(P) 866-955-5655 (F) 201-537-0731</b>	Loan Origination Company's Address
<b>Uniform Residential Loan Application</b>	<b>1 Route 46 West, Suite 1</b>
<b>Fannie Mae Form 65 7/08 (rev. 6/09)</b>	<b>Elmwood Park, NJ 07407</b>

## EXHIBIT 39B – CASH-TO-CLOSE STATEMENT

Amber Sky Home Mortgage LLC, NMLS# 907795 | Originator: Joseph M. Berg, NMLS# 218266

### Cash-To-Close

Cash-To-Close For: Joseph Borrower / Jennifer Borrower

Property Address: 123 Main Street Westfield, NJ 07090

Prepared For:

Provided By: Joseph M. Berg, Amber Sky Home Mortgage LLC  
1 Route 46 West, Suite 1 Elmwood Park, NJ 07407  
(P) 866-955-5655/ (F) 201-537-0731

### Loan Program: 30 Year Fixed Conventional

a. Purchase Price	750,000.00
b. Alterations, improvements, repairs	
c. Land (if acquired separately)	
d. Refinance (incl. debts to be paid off)	
e. Estimated prepaid items	3,689.58
f. Estimated closing costs	8,611.90
g. PMI, MIP, Funding fee	
h. Discount (if Borrower will pay)	
i. Total costs (add items a through h)	760,301.48
j. Subordinate financing	
k. Borrower's closing costs paid by Seller	
l. Other credits (explain)	
Cash Deposit	5,000.00
m. Loan amount (exclude n)	500,000.00
n. PMI, MIP, Funding Fee financed	
o. Loan amount (add m & n)	500,000.00
p. Cash from/to Borrower (subtract j, k, l, & o from i)	255,301.48

The Cash-To-Close statement above is presented as an estimate of the total funds the prospective borrower will pay (or receive) at the close of escrow. This is not a loan statement, nor is it a guarantee of any funds. This statement is based solely on estimated figures and information available at the time of preparation.

Calyx Form etc.frm (04/08)



**EXHIBIT 39C – FEES WORKSHEET – SUMMARY OF TRANSACTION DETAILS**

Amber Sky Home Mortgage LLC, NMLS# 907795 | Originator: Joseph M. Berg, NMLS# 218266

**FEES WORKSHEET**  
**Summary of Transaction Details**Applicants: Joseph Borrower / Jennifer Borrower  
Prepared By: Amber Sky Home Mortgage LLC Ph. 856-955-6655  
1 Route 46 West, Suite 1, Elmwood Park, NJ 07407Application No: 2013092300  
Date Prepared: 09/23/2013  
Loan Program: 30 Year Fixed Conventional

THIS IS NOT A GOOD FAITH ESTIMATE (GFE). This "Fees Worksheet" is provided for informational purposes ONLY, to assist you in determining an estimate of cash that may be required to close and an estimate of your proposed monthly mortgage payment. Actual charges may be more or less, and your transaction may not involve a fee for every item listed.

Total Loan Amount:	\$ 500,000.00	Interest Rate:	4.750 %	Term/Due In:	360 / 360
Purchase Price/Payoff				\$	750,000.00
Estimated Prepaid Items/Reserves	(+)	\$			3,689.58
Estimated Closing Costs	(+)	\$			6,611.90
Total Loan Amount	(-)	\$			500,000.00
Cash Deposit	(-)	\$			5,000.00

Your Down Payment Is:	\$	250,000.00
Total Cash From Borrower	(=)	\$ 255,301.48

<b>Total Estimated Monthly Payment</b>					
Principal & Interest		\$			2,808.24
Other Financing	(+)				
Hazard Insurance	(+)	\$			60.00
Real Estate Taxes	(+)	\$			500.00
Mortgage Insurance	(+)				
HOA Dues	(+)				
Other	(-/-)				
Total Monthly Payment	(=)	\$			3,158.24

**EXHIBIT 39D – FEES WORKSHEET – FEE DETAILS**

Amber Sky Home Mortgage LLC, NMLS# 907795 | Originator: Joseph M. Berg, NMLS# 218266

**FEES WORKSHEET**  
**Fee Details**Applicants: Joseph Borrower / Jennifer Borrower  
Prepared By: Amber Sky Home Mortgage LLC Ph. 886-955-5855  
1 Route 46 West, Suite 1, Elmwood Park, NJ 07407Application No: 2013092300  
Date Prepared: 09/23/2013  
Loan Program: 30 Year Fixed Conventional

THIS IS NOT A GOOD FAITH ESTIMATE (GFE). This "Fees Worksheet" is provided for informational purposes ONLY, to assist you in determining an estimate of cash that may be required to close and an estimate of your proposed monthly mortgage payment. Actual charges may be more or less, and your transaction may not involve a fee for every item listed.

Total Loan Amount: \$ 500,000		Interest Rate: 4.750 %	Term/Due In: 360 / 360 mths
<b>Estimated Settlement Charges</b>			
TOTAL ESTIMATED SETTLEMENT CHARGES			\$10,301.48
TOTAL ESTIMATED SETTLEMENT CHARGES NOT INCLUDED ON GFE			+ \$ 0.00
TOTAL ESTIMATED SETTLEMENT CHARGES PAID AT CLOSING			= \$10,301.48
Fees	Paid To	Paid By (Fee Split*)	Amount PFC / F / POC
<b>ORIGINATION CHARGES</b>			
Commitment Fee	Amber Sky Home Mortgage	Borrower	\$ 895.00 ✓
<b>OTHER CHARGES</b>			
Appraisal Fee	DART Appraisal	Borrower	\$ 395.00
Credit Report Fee	Amber Sky Home Mortgage	Borrower	\$ 9.90
Flood Certification Fee	Amber Sky Home Mortgage	Borrower	\$ 12.00
Attorney Fee	Attorney	Borrower	\$ 1,200.00 ✓
Lender's Title Insurance	Title Co.	Borrower	\$ 2,000.00
Owner's Title Insurance		Borrower	\$ 1,000.00
Survey		Borrower	\$ 650.00 ✓
Mortgage Recording Charge		Borrower	\$ 450.00
Hazard Insurance Reserves	Amber Sky Home Mortgage	Borrower	\$ 50.00 x 2 mth(s) \$ 100.00
County Property Tax Reserves	Amber Sky Home Mortgage	Borrower	\$ 500.00 x 4 mth(s) \$ 2,000.00
Daily Interest Charges	Amber Sky Home Mortgage	Borrower	\$ 65.9722 x 15 day(s) \$ 989.58 ✓
Hazard Insurance Premium	Home Insurance Co.	Borrower	\$ 50.00 x 12 mth(s) \$ 600.00

\* PFC = Prepaid Finance Charge    F = FHA Allowable Closing Cost    POC = Paid Outside of Closing  
 \*\* B = Borrower    S = Seller    Br = Broker    L = Lender    TP = Third Party    C = Correspondent

Calyx Form - feesw.fm (09/2010)

**EXHIBIT 39E – GOOD FAITH ESTIMATE (GFE)**

Amber Sky Home Mortgage LLC, NMLS# 907795 | Originator: Joseph M. Borg, NMLS# 216266

OMB Approval No. 2502-0265

**Good Faith Estimate (GFE)**

Name of Originator	<b>Amber Sky Home Mortgage LLC</b>	Borrower	<b>Joseph Borrower / Jennifer Borrower</b>
Originator Address	<b>1 Route 45 West, Suite 1 Elmwood Park, NJ 07407</b>	Property Address	<b>123 Main Street Westfield, NJ 07090 County: Union</b>
Originator Phone Number	<b>866-955-5655</b>	Date of GFE	<b>09/23/2013</b>
Originator Email	<b>joe@myambersky.com</b>		

**Purpose**

This GFE gives you an estimate of your settlement charges and loan terms if you are approved for this loan. For more information, see HUD's Special Information Booklet on settlement charges, your Truth-in-Lending Disclosures, and other consumer information at [www.hud.gov/raspa](http://www.hud.gov/raspa). If you decide you would like to proceed with this loan, contact us.

**Shopping for your loan**

Only you can shop for the best loan for you. Compare this GFE with other loan offers, so you can find the best loan. Use the shopping chart on page 3 to compare all the offers you receive.

**Important dates**

1. The interest rate for this GFE is available through **11/07/2013 05:00 PM**. After this time, the interest rate, some of your loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.
2. This estimate for all other settlement charges is available through **11/07/2013 05:00 PM**.
3. After you lock your interest rate, you must go to settlement within **45** days (your rate lock period) to receive the locked interest rate.
4. You must lock the interest rate at least **NA** days before settlement.

**Summary of your loan**

Your initial loan amount is	\$	<b>500,000.00</b>
Your loan term is		<b>30</b> years
Your initial interest rate is		<b>4.750</b> %
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$	<b>2,608.24</b> per month
Can your interest rate rise?	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes, it can rise to a maximum of _____ % The first change will be in _____
Even if you make payments on time, can your loan balance rise?	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes, it can rise to a maximum of \$ _____
Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes, the first increase can be in _____ and the monthly amount owed can rise to \$ _____. The maximum it can ever rise to is \$ _____
Does your loan have a prepayment penalty?	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes, your maximum prepayment penalty is \$ _____
Does your loan have a balloon payment?	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes, you have a balloon payment of \$ _____ due in _____ years.

**Escrow account information**

Some lenders require an escrow account to hold funds for paying property taxes or other property-related charges in addition to your monthly amount owed of \$ **2,608.24**. Do we require you to have an escrow account for your loan?

☐ No, you do not have an escrow account. You must pay these charges directly when due.

☒ Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.

**Summary of your settlement charges**

<b>A</b>	Your Adjusted Origination Charges (See page 2.)	\$	<b>895.00</b>
<b>B</b>	Your Charges for All Other Settlement Services (See page 2.)	\$	<b>9,406.48</b>
<b>A + B</b>	<b>Total Estimated Settlement Charges</b>	\$	<b>10,301.48</b>

## Exhibit 39E – Good Faith Estimate (GFE) - Continued

Amber Sky Home Mortgage LLC, NMLS# 897795 | Originator: Joseph M. Berg, NMLS# 218268

Understanding  
your estimated  
settlement charges

Some of these charges  
can change at settlement.  
See the top of page 3 for  
more information.

Your Adjusted Origination Charges																													
1. Our origination charge This charge is for getting this loan for you.	895.00																												
2. Your credit or charge (points) for the specific interest rate chosen <input checked="" type="checkbox"/> The credit or charge for the interest rate of <u>4.750</u> % is included in "Our origination charge." (See item 1 above.) <input type="checkbox"/> You receive a credit of \$ <u>          </u> for this interest rate of <u>          </u> %. This credit <b>reduces</b> your settlement charges. <input type="checkbox"/> You pay a charge of \$ <u>          </u> for this interest rate of <u>          </u> %. This charge (points) <b>increases</b> your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.	0.00																												
<b>A</b> Your Adjusted Origination Charges	\$ 895.00																												
Your Charges for All Other Settlement Services																													
3. Required services that we select These charges are for services we require to complete your settlement. We will choose the providers of these services. <table border="1"> <thead> <tr> <th>Service</th> <th>Charge</th> </tr> </thead> <tbody> <tr> <td>Appraisal</td> <td>395.00</td> </tr> <tr> <td>Credit Report</td> <td>9.90</td> </tr> <tr> <td>Flood Certification</td> <td>12.00</td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Service	Charge	Appraisal	395.00	Credit Report	9.90	Flood Certification	12.00													416.90								
Service	Charge																												
Appraisal	395.00																												
Credit Report	9.90																												
Flood Certification	12.00																												
4. Title services and lender's title insurance This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required.	3,200.00																												
5. Owner's title insurance You may purchase an owner's title insurance policy to protect your interest in the property.	1,000.00																												
6. Required services that you can shop for These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below. <table border="1"> <thead> <tr> <th>Service</th> <th>Charge</th> <th>Service</th> <th>Charge</th> </tr> </thead> <tbody> <tr> <td>Survey</td> <td>650.00</td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Service	Charge	Service	Charge	Survey	650.00																							650.00
Service	Charge	Service	Charge																										
Survey	650.00																												
7. Government recording charges These charges are for state and local fees to record your loan and title documents.	450.00																												
8. Transfer taxes These charges are for state and local fees on mortgages and home sales.																													
9. Initial deposit for your escrow account This charge is held in an escrow account to pay future recurring charges on your property and includes <input checked="" type="checkbox"/> all property taxes, <input checked="" type="checkbox"/> all insurance, and <input type="checkbox"/> other <u>          </u> .	2,100.00																												
10. Daily interest charges This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is \$ <u>65.9722</u> per day for <u>15</u> days (if your settlement is <u>10/15/2013</u> ).	989.58																												
11. Homeowner's insurance This charge is for the insurance you must buy for the property to protect from a loss, such as fire. <table border="1"> <thead> <tr> <th>Policy</th> <th>Charge</th> </tr> </thead> <tbody> <tr> <td>Hazard Insurance</td> <td>600.00</td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Policy	Charge	Hazard Insurance	600.00									600.00																
Policy	Charge																												
Hazard Insurance	600.00																												
<b>B</b> Your Charges for All Other Settlement Services	\$ 9,406.48																												
<b>A + B</b> Total Estimated Settlement Charges	\$ 10,301.48																												

## Exhibit 39E – Good Faith Estimate (GFE) - Continued

Amber Sky Home Mortgage LLC, NMLS# 907795 | Originator: Joseph M. Berg, NMLS# 218266

## Instructions

Understanding which charges can change at settlement

This GFE estimates your settlement charges. At your settlement, you will receive a HUD-1, a form that lists your actual costs. Compare the charges on the HUD-1 with the charges on this GFE. Charges can change if you select your own provider and do not use the companies we identify. (See below for details.)

These charges cannot increase at settlement:	The total of these charges can increase up to 10% at settlement:	These charges can change at settlement:
<ul style="list-style-type: none"> <li>• Our origination charge</li> <li>• Your credit or charge (points) for the specific interest rate chosen (after you lock in your interest rate)</li> <li>• Your adjusted origination charges (after you lock in your interest rate)</li> <li>• Transfer taxes</li> </ul>	<ul style="list-style-type: none"> <li>• Required services that we select</li> <li>• Title services and lender's title insurance (if we select them or you use companies we identify)</li> <li>• Owner's title insurance (if you use companies we identify)</li> <li>• Required services that you can shop for (if you use companies we identify)</li> <li>• Government recording charges</li> </ul>	<ul style="list-style-type: none"> <li>• Required services that you can shop for (if you do not use companies we identify)</li> <li>• Title services and lender's title insurance (if you do not use companies we identify)</li> <li>• Owner's title insurance (if you do not use companies we identify)</li> <li>• Initial deposit for your escrow account</li> <li>• Daily interest charges</li> <li>• Homeowner's insurance</li> </ul>

## Using the tradeoff table

In this GFE, we offered you this loan with a particular interest rate and estimated settlement charges. However:

- If you want to choose this same loan with **lower settlement charges**, then you will have a **higher interest rate**.
- If you want to choose this same loan with a **lower interest rate**, then you will have **higher settlement charges**.

If you would like to choose an available option, you must ask us for a new GFE.

Loan originators have the option to complete this table. Please ask for additional information if the table is not completed.

	The loan in this GFE	The same loan with lower settlement charges	The same loan with a lower interest rate
Your initial loan amount	\$ 500,000.00	\$	\$
Your initial interest rate <sup>1</sup>	4.750 %	%	%
Your initial monthly amount owed	\$ 2,608.24	\$	\$
Change in the monthly amount owed from this GFE	No change	You will pay \$ more every month	You will pay \$ less every month
Change in the amount you will pay at settlement with this interest rate	No change	Your settlement charges will be reduced by \$	Your settlement charges will increase by \$
How much your total estimated settlement charges will be	\$ 10,301.48	\$	\$

<sup>1</sup> For an adjustable rate loan, the comparisons above are for the initial interest rate before adjustments are made.

## Using the shopping chart

Use this chart to compare GFEs from different loan originators. Fill in the information by using a different column for each GFE you receive. By comparing loan offers, you can shop for the best loan.

	This loan	Loan 2	Loan 3	Loan 4
Loan originator name	Amber Sky Home Mortgage LLC			
Initial loan amount	\$ 500,000.00			
Loan term	30 years			
Initial interest rate	4.750 %			
Initial monthly amount owed	\$ 2,608.24			
Rate lock period	45 days			
Can interest rate rise?	NO			
Can loan balance rise?	NO			
Can monthly amount owed rise?	NO			
Prepayment penalty?	NO			
Balloon payment?	NO			
Total Estimated Settlement Charges	\$ 10,301.48			

If your loan is sold in the future

Some lenders may sell your loan after settlement. Any fees lenders receive in the future cannot change the loan you receive or the charges you paid at settlement.

**EXHIBIT 39F – INTENT TO PROCEED WITH APPLICATION**

Amber Sky Home Mortgage LLC, NMLS# 997799 | Originator: Joseph M. Berg, NMLS# 218286

Loan Number: **2013092300**

**INTENT TO PROCEED WITH APPLICATION**

Originator: **Amber Sky Home Mortgage LLC**  
**1 Route 46 West, Suite 1**  
**Elmwood Park, NJ 07407**  
**866-955-5655**

Applicant(s): **Joseph Borrower**  
**Jennifer Borrower**

Property Address: **123 Main Street**  
**Westfield, NJ 07090**

You have applied for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 et seq.). In accordance with RESPA, you were given a Good Faith Estimate. However, if you do not express intent to continue with your application on or before 11/07/2013 at 05:00 PM, the loan originator is no longer bound by the Good Faith Estimate.

By signing below, I/we express intent to continue with the application for which a Good Faith Estimate was issued on 08/23/2013.

Joseph Borrower Date

Jennifer Borrower Date

## EXHIBIT 39G – WRITTEN LIST OF SERVICE PROVIDERS

Amber Sky Home Mortgage LLC, NMLS# 907798 | Originator: Joseph M. Berg, NMLS# 218286

### Written List of Service Providers

Applicant(s): Joseph Borrower & Jennifer Borrower  
 Property Address: 123 Main Street  
 Westfield, NJ 07090 County: Union

Date: 09/23/2013  
 File No : 2013092300

The Good Faith Estimate you received from the Originator identifies specific settlement services that are required in order for you to close your loan. Below is a list compiled by the Originator that identifies providers who offer those required settlement service. You do not need to pick any of the providers on the list and may shop for any of these required services.

#### 4. Title Service and Lender's Title Insurance \$ 3,200.00

##### Lender's Title Insurance \$ 2,000.00

Elite Title Group LLC 22 Ridge Road Lyndhurst, NJ 07071	(P)201-672-6000	(F)201-672-9800
---	-----------------	-----------------

##### Attorney \$ 1,200.00

Greenbaum, Rowe, Smith & Davis LLP 99 Wood Ave S Iselin Iselin, NJ 08830	(P)(732) 549-5600 www.greenbaumlaw.com
--	---

#### 5. Owner's Title Insurance \$ 1,000.00

Elite Title Group LLC 22 Ridge Road Lyndhurst, NJ 07071	(P)201-672-6000	(F)201-672-9800
---	-----------------	-----------------

# EXHIBIT 39H – TRUTH-IN-LENDING DISCLOSURE STATEMENT

Amber Sky Home Mortgage, LLC, NMLS# 907796 | Originator: Joseph M. Berg, NMLS# 218266

TRUTH-IN-LENDING DISCLOSURE STATEMENT (THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND)			
Applicant: <b>Joseph Borrower</b>		Prepared By: <b>Amber Sky Home Mortgage LLC</b>	
Property Address: <b>123 Main Street</b>		1 Route 46 West, Suite 1	
Westfield, NJ 07090		Elmwood Park, NJ 07407	
Application No: <b>2013092300</b>		Date Prepared: <b>09/23/2013</b>	Ph: <b>866-955-5655</b>
<b>ANNUAL PERCENTAGE RATE</b> The cost of your credit as a yearly rate	<b>FINANCE CHARGE</b> The dollar amount the credit will cost you	<b>AMOUNT FINANCED</b> The amount of credit provided to you or on your behalf	<b>TOTAL OF PAYMENTS</b> The amount you will have paid after making all payments as scheduled
* <b>4.798</b> %	\$ * <b>442,698.52</b>	\$ * <b>496,265.42</b>	\$ * <b>938,963.94</b>
<input type="checkbox"/> <b>REQUIRED DEPOSIT:</b> The annual percentage rate does not take into account your required deposit. <b>There is no guarantee that you will be able to refinance to lower your rate and payments</b>			
<b>INTEREST RATE AND PAYMENT SUMMARY</b>			
<b>Rate &amp; Monthly Payment</b>			
Interest Rate		4.750 %	
Principal + Interest Payment		\$ 2,608.24	
Est. Taxes + Insurance (Escrow)		\$ 550.00	
<b>Total Est. Monthly Payment</b>		<b>\$ 3,158.24</b>	
<input type="checkbox"/> <b>DEMAND FEATURE:</b> This obligation has a demand feature. <input type="checkbox"/> <b>VARIABLE RATE FEATURE:</b> This loan contains a variable rate feature. A variable rate disclosure has been provided earlier.			
SECURITY: You are giving a security interest in: <b>123 Main Street, Westfield NJ 07090</b>			
<input checked="" type="checkbox"/> The goods or property being purchased <input type="checkbox"/> Real property you already own.			
FILING FEES: \$ <b>450.00</b>			
LATE CHARGE: If a payment is more than <b>15</b> days late, you will be charged <b>5.000</b> % of the payment.			
PREPAYMENT: If you pay off early, you <input type="checkbox"/> may <input checked="" type="checkbox"/> will not have to pay a penalty. <input type="checkbox"/> may <input checked="" type="checkbox"/> will not be entitled to a refund of part of the finance charge.			

**EXHIBIT 39H – Truth-In-Lending Disclosure Statement - Continued**

Amber Sky Home Mortgage LLC, NMLS# 907796 | Originator: Joseph M. Berg, NMLS# 218266

Application No. 2013092300

Date Prepared: 09/23/2013

**CREDIT LIFE/CREDIT DISABILITY:**

Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

Type	Premium	Signature
Credit Life		I want credit life insurance. Signature:
Credit Disability		I want credit disability insurance. Signature:
Credit Life and Disability		I want credit life and disability insurance. Signature:

**INSURANCE:**

The following insurance is required to obtain credit:

- ☐ Credit life insurance      ☐ Credit disability  
☒ Property insurance      ☐ Flood insurance

You may obtain the insurance from anyone you want that is acceptable to creditor.

- ☐ If you purchase      ☐ property      ☐ flood insurance from creditor  
 you will pay \$      for a one year term.

**ASSUMPTION:**

Someone buying your property

- ☐ may  
☐ may, subject to conditions  
☒ may not assume the remainder of your loan on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date and prepayment refunds and penalties.

☒ \* means an estimate

☒ all dates and numerical disclosures except the late payment disclosures are estimates.

**You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.**

**THE UNDERSIGNED ACKNOWLEDGES RECEIVING A COMPLETED COPY OF THIS DISCLOSURE.**

Applicant **Joseph Borrower** Date

Prepared By Date

**EXHIBIT 39I – ITEMIZATION OF AMOUNT FINANCED**

Amber Sky Home Mortgage LLC, NMLSR ID# 807785 | Originator: Joseph M. Hens, NMLSR ID# 216288

**ITEMIZATION OF AMOUNT FINANCED**

Applicants	Joseph Borrower	Lender	Amber Sky Home Mortgage LLC
	Jennifer Borrower		1 Route 46 West, Suite 1
Property Addr.	123 Main Street		Elmwood Park, NJ 07407
	Westfield, NJ 07090		866-965-5655
Application No.	2013092300	Date Prepared:	09/23/2013

Total Loan Amount: \$	600,000.00	Prepaid Finance Charge \$	3,734.58	Amount Financed \$	496,265.42
-----------------------	------------	---------------------------	----------	--------------------	------------

**ITEMIZATION OF PREPAID FINANCE CHARGE**

Commitment Fee	875.00
Attorney Fees	1200.00
Survey	650.00
Daily Interest Charges	989.58

<b>Total Prepaid Finance Charge</b>	<b>3,734.58</b>
-------------------------------------	-----------------

**AMOUNT PAID ON YOUR ACCOUNT / PAID TO OTHERS ON YOUR BEHALF**

Appraisal Fee	265.00
Credit Report Fee	9.99
Flood Certification Fee	12.00
Lender's Title Insurance	2,000.00
Owner's Title Insurance	1,000.00
Mortgage Recording Charge	450.00
Hazard Insurance Reserves	100.00
County Property Tax Reserves	2,000.00
Hazard Insurance Premium	900.00

<b>Total Estimated Settlement Charge</b>	<b>10,301.46</b>
--	------------------

Applicant: Joseph Borrower	Date	Applicant: Jennifer Borrower	Date
----------------------------	------	------------------------------	------

Cayx Form - AF form (09/2010)

## EXHIBIT 39J – BORROWERS' CERTIFICATION AND AUTHORIZATION

Amber Sky Home Mortgage LLC, NMLS# 907796 | Originator: Joseph M. Berg, NMLS# 215266

### Borrowers' Certification and Authorization

#### CERTIFICATION

The Undersigned certify the following:

1. I/We have applied for a mortgage loan through Amber Sky Home Mortgage LLC. In applying for the loan, I/We completed a loan application containing various information on the purpose of the loan, the amount and source of the down payment, employment and income information, and the assets and liabilities. I/We certify that all of the information is true and complete. I/We made no misrepresentations in the loan application or other documents, nor did I/We omit any pertinent information.
2. I/We understand and agree that Amber Sky Home Mortgage LLC reserves the right to change the mortgage loan review processes to a full documentation program. This may include verifying the information provided on the application with the employer and/or the financial institution.
3. I/We fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements when applying for this mortgage, as applicable under the provisions of Title 18, United States Code, Section 1014.

#### AUTHORIZATION TO RELEASE INFORMATION

To Whom It May Concern:

1. I/We have applied for a mortgage loan through Amber Sky Home Mortgage LLC. As part of the application process, Amber Sky Home Mortgage LLC and the mortgage guaranty insurer (if any), may verify information contained in my/our loan application and in other documents required in connection with the loan, either before the loan is closed or as part of its quality control program.
2. I/We authorize you to provide to Amber Sky Home Mortgage LLC and to any investor to whom Amber Sky Home Mortgage LLC may sell my mortgage, any and all information and documentation that they request. Such information includes, but is not limited to, employment history and income; bank, money market and similar account balances; credit history; and copies of income tax returns.
3. Amber Sky Home Mortgage LLC or any investor that purchases the mortgage may address this authorization to any party named in the loan application.
4. A copy of this authorization may be accepted as an original.

Borrower Signature \_\_\_\_\_

Joseph Borrower

SSN: 111-11-1111

Date: \_\_\_\_\_

Co-Borrower Signature \_\_\_\_\_

Jennifer Borrower

SSN: 222-22-2222

Date: \_\_\_\_\_

**EXHIBIT 39K – CREDIT SCORE AND PRICE OF CREDIT STATEMENT**

Amber Sky Home Mortgage LLC, NMLS# 907795 | Originator: Joseph M. Berg, NMLS# 218265

APPLICANT NAME AND ADDRESS  
 Joseph Borrower  
 125 Washington Street, Suite 1001J  
 Hoboken NJ, 07030

LENDER (ORIGINATOR) NAME AND ADDRESS  
 Amber Sky Home Mortgage LLC  
 1 Route 45 West, Suite 1  
 Elmwood Park, NJ 07407  
 (P) 866-955-5655, (F) 201-537-0731

**Amber Sky Home Mortgage LLC**  
**Your Credit Score and the Price You Pay for Credit**

<b>Your Credit Score</b>	
Your credit score	Source: _____ Date: _____
<b>Understanding Your Credit Score</b>	
<b>What you should know about credit scores</b>	<p>Your credit score is a number that reflects the information in your credit report.</p> <p>Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.</p> <p>Your credit score can change, depending on how your credit history changes.</p>
<b>How we use your credit score</b>	Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.
<b>The range of scores</b>	<p>Scores range from a low of _____ to a high of _____</p> <p>Generally, the higher your score, the more likely you are to be offered better credit terms.</p>
<b>How your score compares to the scores of other consumers</b>	Your credit score ranks higher than _____ percent of U.S. consumers.
<b>Key factors that adversely affected your credit score</b>	
<b>Checking Your Credit Report</b>	
<b>What if there are mistakes in your credit report?</b>	<p>You have a right to dispute any inaccurate information in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency.</p> <p>It is a good idea to check your credit report to make sure the information it contains is accurate.</p>
<b>How can you obtain a copy of your credit report?</b>	<p>Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year.</p> <p>To order your free annual credit report -</p> <p><i>By telephone:</i> Call toll-free: 1-877-322-8228</p> <p><i>On the web:</i> Visit <a href="http://www.annualcreditreport.com">www.annualcreditreport.com</a></p> <p><i>By mail:</i> Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at <a href="http://www.ftc.gov/bcp/online/include/requestformfinal.pdf">http://www.ftc.gov/bcp/online/include/requestformfinal.pdf</a>) to:</p> <p>Annual Credit Report Request Service        P.O. Box 105281        Atlanta, GA 30345-5281</p>
<b>How can you get more information?</b>	For more information about credit reports and your rights under federal law, visit the Consumer Financial Protection Bureau's web site at <a href="http://www.consumerfinance.gov/learnmore">www.consumerfinance.gov/learnmore</a> .

## EXHIBIT 39L – NOTICE TO HOME LOAN APPLICANT (CREDIT SCORE)

Amber Sky Home Mortgage LLC, NMLS# 907795 | Originator: Joseph M. Berg, NMLS# 218265

### Notice to the Home Loan Applicant

In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

If you have questions concerning the terms of the loan, contact the lender.

The consumer reporting agencies listed below provided a credit score that was used in connection with your home loan application.

One or more of the following consumer reporting agencies will provide the credit score:

**Experian**  
701 Experian Parkway  
P.O. Box 2002  
Allen, TX 75013  
(888) 397-3742  
[www.experian.com/reportaccess](http://www.experian.com/reportaccess)

**Equifax Credit Information Services**  
P.O. Box 740241  
Atlanta, GA 30374  
(800) 685-1111  
[www.equifax.com](http://www.equifax.com)

**TransUnion**  
P.O. Box 2000  
Chester, PA 19022  
(800) 916-8800  
[www.transunion.com](http://www.transunion.com)

I have received a copy of this disclosure.

Applicant Joseph Borrower

Date \_\_\_\_\_

## EXHIBIT 39M – DISCLOSURE NOTICES (OCCUPANCY, ANTI-COERCION, FAIR CREDIT REPORTING ACT, FHA/GOVERNMENTAL LOANS)

Amber Sky Home Mortgage LLC, NMLS# 907795 | Originator: Joseph M. Berg, NMLS# 218295

### DISCLOSURE NOTICES

Date: 09/23/2013

<b>Applicant(s):</b> Joseph Borrower Jennifer Borrower	<b>Property Address:</b> 123 Main Street Westfield, NJ 07090
<b>AFFIDAVIT OF OCCUPANCY</b>	
<p>Applicant(s) hereby certify and acknowledge that, upon taking title to the real property described above, their occupancy status will be as follows:</p> <p><input checked="" type="checkbox"/> <b>Primary Residence</b> - Applicant(s) shall occupy, establish, and use the Property as Applicant(s) principal residence within 60 days after closing and shall continue to occupy the Property as Applicant(s) principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.</p> <p><input type="checkbox"/> <b>Secondary Residence</b> - To be occupied by Applicant(s) at least 15 days yearly, as second home (vacation, etc.), while maintaining principal residence elsewhere [Please check this box if you plan to establish it as your primary residence at a future date (e.g., retirement)].</p> <p><input type="checkbox"/> <b>Investment Property</b> - Not owner occupied. Purchased as an investment to be held or rented.</p> <p>The Applicant(s) acknowledge it is a federal crime punishable by fine or imprisonment, or both, to knowingly make any false statement concerning this loan application as applicable under the provisions of Title 18, United States Code, Section 1014.</p>	
APPLICANT SIGNATURE	CO-APPLICANT SIGNATURE
<b>ANTI-COERCION STATEMENT</b>	
<p>The insurance laws of this state provide that the lender may not require the applicant to take insurance through any particular insurance agent or company to protect the mortgaged property. The applicant, subjected to the rules adopted by the Insurance Commissioner, has the right to have the insurance placed with an insurance agent or company of his choice, provided the company meets the requirement of the lender. The lender has the right to designate reasonable financial requirements as to the company and the adequacy of the coverage.</p> <p>I have read the foregoing statement, or the rules of the Insurance Commissioner relative hereto, and understand my rights and privileges and those of the lender relative to the placing of such insurance.</p> <p>I have selected the following agencies to write the insurance covering the property described above:</p> <p>Insurance Company Name _____ Agent _____</p> <p>Agent's Address _____ Agent's Telephone Number _____</p>	
APPLICANT SIGNATURE	CO-APPLICANT SIGNATURE
<b>FAIR CREDIT REPORTING ACT</b>	
<p>An investigation will be made as to the credit standing of all individuals seeking credit in this application. The nature and scope of any investigation will be furnished to you upon written request made within a reasonable period of time. In the event of credit denial due to an unfavorable consumer report, you will be advised of the identity of the Consumer Reporting Agency making such report and of your right to request within sixty (60) days the reason for the adverse action, pursuant to provisions of section 615(b) of the Fair Credit Reporting Act.</p>	
APPLICANT SIGNATURE	CO-APPLICANT SIGNATURE
<b>FHA LOANS ONLY</b>	
<p>IF YOU PREPAY YOUR LOAN ON OTHER THAN THE REGULAR INSTALLMENT DATE, YOU MAY BE ASSESSED INTEREST CHARGES UNTIL THE END OF THAT MONTH.</p>	
<b>GOVERNMENT LOANS ONLY</b>	
<p><b>RIGHT TO FINANCIAL PRIVACY ACT OF 1978</b> - This is a notice to you as required by the Right to Financial Privacy Act of 1978 that the Department of Housing and Urban Development or Department of Veterans Affairs has a right of access to financial records held by a financial institution in connection with the consideration of administration of assistance to you. Financial records involving your transaction will be available to the Department of Housing and Urban Development or Department of Veterans Affairs without further notice or authorization but will not be disclosed or released to another Government agency or Department without your consent except as required or permitted by law.</p>	
APPLICANT SIGNATURE	CO-APPLICANT SIGNATURE

## EXHIBIT 39N – EQUAL CREDIT OPPORTUNITY ACT

Amber Sky Home Mortgage LLC, NMLS# 907795 | Originator: Joseph M. Berg, NMLS# 218266

### EQUAL CREDIT OPPORTUNITY ACT

APPLICATION NO: 2013092300

Date: 09/23/2013

PROPERTY ADDRESS: 123 Main Street  
Westfield, NJ 07090

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with this law concerning this company is the Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3710, Houston, Texas 77010

We are required to disclose to you that you need not disclose income from alimony, child support or separate maintenance payment if you choose not to do so.

Having made this disclosure to you, we are permitted to inquire if any of the income shown on your application is derived from such a source and to consider the likelihood of consistent payment as we do with any income on which you are relying to qualify for the loan for which you are applying.

Joseph Borrower

(Applicant) (Date)

Jennifer Borrower

(Applicant) (Date)

## EXHIBIT 390 – PATRIOT ACT INFORMATION DISCLOSURE

Amber Sky Home Mortgage LLC, NMLS# 907795 | Originator: Joseph M. Berg, NMLS# 218266

### PATRIOT ACT INFORMATION DISCLOSURE

Applicant Name	Joseph Borrower
Co-Applicant Name	Jennifer Borrower
Present Address	129 Washington Street, Suite 100LL, Hoboken, NJ 07030
Mailing Address	129 Washington Street, Suite 100LL, Hoboken, NJ 07030

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

I/we acknowledge that I/we received a copy of this disclosure.

Applicant

Date

Applicant

Date

## EXHIBIT 39P –CUSTOMER IDENTIFICATION DOCUMENTATION – PATRIOT ACT

Amber Sky Home Mortgage LLC, NMLS# 907795 | Originator: Joseph M. Berg, NMLS# 218266

### Customer Identification Documentation Patriot Act

The USA Patriot Act requires all financial institutions to obtain, verify and record information that identifies every customer. Completion of this documentation is required in order to comply with the USA Patriot Act. A completed copy of this information must be retained with the loan file.

Application Number 2013092300 Date \_\_\_\_\_  
Name of Applicant Joseph Borrower  
Social Security # 111-11-1111 Date of Birth 01/01/1970  
Present Address 129 Washington Street, Suite 100LL / Hoboken, NJ 07030  
Mailing Address 129 Washington Street, Suite 100LL / Hoboken, NJ 07030

#### Primary Identification Documentation

Document Type Drivers License Other Document Type \_\_\_\_\_  
Document Number \_\_\_\_\_  
Issue Date \_\_\_\_\_ Expiration Date \_\_\_\_\_  
Issued by \_\_\_\_\_

#### Secondary Identification Documentation

Document Type \_\_\_\_\_ Other Document Type \_\_\_\_\_  
Document Number \_\_\_\_\_  
Issue Date \_\_\_\_\_ Expiration Date \_\_\_\_\_  
Issued by \_\_\_\_\_

#### Discrepancies and Resolution

Completed by \_\_\_\_\_

**EXHIBIT 39Q – PERSONAL INFORMATION FORM**

Amber Sky Home Mortgage LLC, NMLS# 907795, Originator: Joseph M. Berg, NMLS# 218265

Rev. 01/12

<b>FACTS</b>	<b>What Does Amber Sky Home Mortgage LLC Do With Your Personal Information?</b>	
<b>Why?</b>	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also required us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.	
<b>What?</b>	The types of personal information we collect and share depend on the product or service you have with us. This information can include: <ul style="list-style-type: none"> <li>• Social Security Number and Income</li> <li>• account balances and mortgage rates and payments</li> <li>• employment information and assets</li> </ul>	
<b>How?</b>	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Amber Sky Home Mortgage LLC chooses to share; and whether you can limit this sharing.	
<b>Reasons we can share your personal information</b>	<b>Does Amber Sky Home Mortgage LLC share?</b>	<b>Can you limit this sharing?</b>
<b>For our everyday business purposes --</b> such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	No	We Don't Share
<b>For our marketing purposes --</b> to offer our products and services to you	No	We Don't Share
<b>For joint marketing with other financial companies</b>	No	We Don't Share
<b>For our affiliates' everyday business purposes --</b> information about your transactions and experiences	No	We Don't Share
<b>For our affiliates' everyday business purposes --</b> information about your creditworthiness	No	We Don't Share
<b>For our affiliates to market to you</b>	No	We Don't Share
<b>For nonaffiliates to market to you</b>	No	We Don't Share
<b>To limit our sharing</b>	<ul style="list-style-type: none"> <li>• Call 201-393-0200 or</li> <li>• Mail the form below</li> </ul> <p><b>Please note:</b> If you are a new customer, we can begin sharing your information 30 days from the date we sent this notice. When you are no longer our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.</p>	
<b>Questions?</b>	• Call 201-393-0200 or go to <a href="http://www.amberskyhomemortgage.com">www.amberskyhomemortgage.com</a>	

<b>Mail-in Form</b>		
Mark any/all you want to limit		
<input type="checkbox"/> Do not share information about my creditworthiness with your affiliates for their everyday business purposes.		
<input type="checkbox"/> Do not allow your affiliates to use my personal information to market to me.		
<input type="checkbox"/> Do not share my personal information with nonaffiliates to market their products and services to me.		
<input type="checkbox"/> Do not share my personal information to market to me.		
<input type="checkbox"/> Do not share my personal information with other financial institutions to jointly market to me.		
<b>Name</b>		<b>Mail to:</b>
<b>Address</b>		Amber Sky Mortgage Solutions
<b>City, State Zip</b>		1 Route 46
<b>Loan #</b>		Suite 1
		Elmwood Park, NJ 07407

## Exhibit 39Q – Personal Information Form - Continued

Amber Sky Home Mortgage LLC, NMLS# 997795 | Originator: Joseph M. Berg, NMLS# 218268

Page 2	
<b>Who we are</b>	
Who is providing this notice?	Amber Sky Mortgage is a NJ based mortgage broker who collects information for the purpose of submitting an application for a mortgage with third parties in order to determine credit-worthiness and issue financing.
<b>What we do</b>	
How does Amber Sky Home Mortgage LLC protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does Amber Sky Home Mortgage LLC collect my personal information?	<p>We collect your personal information, for example, when you</p> <ul style="list-style-type: none"> <li>• apply for a loan or</li> <li>• give us your income information</li> <li>• provide your mortgage information or</li> <li>• apply for financing</li> <li>• show your driver's license</li> </ul> <p>We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.</p>
Why can't I limit all sharing?	<p>Federal law gives you the right to limit only</p> <ul style="list-style-type: none"> <li>• sharing for affiliates' everyday business purposes - information about your creditworthiness</li> <li>• affiliates from using your information to market to you</li> <li>• sharing for non-affiliates to market to you</li> </ul> <p>State Laws and individual companies may give you additional rights to limit sharing. See below for more on your rights under state law.</p>
<b>Definitions</b>	
<b>Affiliates</b>	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <p><i>Amber Sky Home Mortgage LLC has no affiliates.</i></p>
<b>Nonaffiliates</b>	<p>Companies not related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>• <i>Amber Sky Home Mortgage LLC does not share with nonaffiliates so they can market to you.</i></li> </ul>
<b>Joint marketing</b>	<p>A formal agreement between nonaffiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> <li>• <i>Amber Sky Home Mortgage LLC doesn't jointly market.</i></li> </ul>

**EXHIBIT 39R – FORM 4506 REQUEST FOR TRANSCRIPT OF TAX RETURN**

Amber Sky Home Mortgage LLC, NMLS# 907795, Originator: Joseph M. Berg, NMLS# 218266

Form <b>4506-T</b> (Rev. January 2012) Department of the Treasury Internal Revenue Service	<b>Request for Transcript of Tax Return</b>  ► Request may be rejected if the form is incomplete or illegible.	OMB No. 1545-1872
---	--	-------------------

**Tip.** Use Form 4506-T to order a transcript or other return information free of charge. See the product list below. You can quickly request transcripts by using our automated self-help service tools. Please visit us at [irs.gov](http://irs.gov) and click on "Order a Transcript" or call 1-800-908-8946. If you need a copy of your return, use Form 4506, Request for Copy of Tax Return. There is a fee to get a copy of your return.

<b>1a</b> Name shown on tax return. If a joint return, enter the name shown first:  <b>Joseph Borrower</b>	<b>1b</b> First social security number on tax return, individual taxpayer identification number, or employer identification number (see instructions) <b>111-11-1111</b>
<b>2a</b> If a joint return, enter spouse's name shown on tax return:  <b>Jennifer Borrower</b>	<b>2b</b> Second social security number or individual taxpayer identification number if joint tax return <b>222-22-2222</b>

**3** Current name, address (including apt., room, or suite no.), city, state, and ZIP code (See instructions):  
**Joseph Borrower**  
**129 Washington Street, Suite 100LL, Hoboken, NJ 07030**

**4** Previous address shown on the last return filed if different from line 3 (See instructions):

**5** If the transcript or tax information is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number:

**Caution:** If the transcript is being mailed to a third party, ensure that you have filed in lines 6 through 9 before signing. Sign and date the form once you have filed in these lines. Completing these steps helps to protect your privacy. Once the IRS discloses your IRS transcript to the third party listed on line 5, the IRS has no control over what the third party does with the information. If you would like to limit the third party's authority to disclose your transcript information, you can specify this limitation in your written agreement with the third party.

**6** Transcript requested. Enter the tax form number here (1040, 1065, 1120, etc.) and check the appropriate box below. Enter only one tax form number per request. ► **Form 1040**

<b>a</b> Return Transcript, which includes most of the line items of a tax return as filed with the IRS. A tax return transcript does not reflect changes made to the account after the return is processed. Transcripts are only available for the following returns: Form 1040 series, Form 1065, Form 1120, Form 1120A, Form 1120H, Form 1120L, and Form 1120S. Return transcripts are available for the current year and returns processed during the prior 3 processing years. Most requests will be processed within 10 business days.	<input checked="checked" type="checkbox"/>
<b>b</b> Account Transcript, which contains information on the financial status of the account, such as payments made on the account, penalty assessments, and adjustments made by you or the IRS after the return was filed. Return information is limited to items such as tax liability and estimated tax payments. Account transcripts are available for most returns. Most requests will be processed within 30 calendar days.	<input type="checkbox"/>
<b>c</b> Record of Account, which is a combination of line item information and later adjustments to the account. Available for current year and 3 prior tax years. Most requests will be processed within 30 calendar days.	<input type="checkbox"/>
<b>7</b> Verification of Nonfiling, which is proof from the IRS that you did not file a return for the year. Current year requests are only available after June 15th. There are no availability restrictions on prior year requests. Most requests will be processed within 10 business days.	<input type="checkbox"/>
<b>8</b> Form W-2, Form 1099 series, Form 1098 series, or Form 5498 series transcript. The IRS can provide a transcript that includes data from these information returns. State or local information is not included with the Form W-2 information. The IRS may be able to provide this transcript information for up to 10 years. Information for the current year is generally not available until the year after it is filed with the IRS. For example, W-2 information for 2007, filed in 2008, will not be available from the IRS until 2009. If you need W-2 information for retirement purposes, you should contact the Social Security Administration at 1-800-772-1213. Most requests will be processed within 45 days.	<input type="checkbox"/>

**Caution:** If you need a copy of Form W-2 or Form 1099, you should first contact the payer. To get a copy of the Form W-2 or Form 1099 filed with your return, you must use Form 4506 and request a copy of your return, which includes all attachments.

**9** Year or period requested. Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than four years or periods, you must attach another Form 4506-T. For requests relating to quarterly tax returns, such as Form 941, you must enter each quarter or tax period separately. **12/31/2012** **12/31/2011**

Check this box if you have notified the IRS or the IRS has notified you that one of the years for which you are requesting a transcript involved identity theft on your federal tax return. ☐

**Caution:** Do not sign this form unless all applicable lines have been completed.

**Signature of taxpayer(s).** I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax information requested. If the request applies to a joint return, either husband or wife must sign. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506-T on behalf of the taxpayer. **Note:** For transcripts being sent to a third party, this form must be received within 120 days of signature date.

<b>Sign Here</b> Signature (see instructions) _____ Date _____ Title (if line 1a above is a corporation, partnership, estate, or trust) _____ Spouse's signature _____ Date _____	Telephone number of taxpayer on line 1a or 2a: <b>201-345-5533</b>
--	---

For Privacy Act and Paperwork Reduction Act Notice, see page 2. Cat No. 37567N Form **4506-T** (Rev. 1-2012)  
 Calyx Form - Tax4506T1.fm (03/08/12)

## EXHIBIT 39S – APPRAISAL REPORT DELIVERY DISCLOSURE



NMLS # 907795 ♦ 1 Route 46 West ♦ Ste. 1 ♦ Elmwood Park, NJ ♦ (201) 393-0200 ♦ Fax (201) 393-0240

## APPRAISAL REPORT DELIVERY DISCLOSURE

Borrower: Joseph Borrower Jennifer Borrower

Subject Property: 123 Main Street, Westfield, NJ, 07090

Date: 09/23/2013

**Loan Number: 2013092300**

Case Number:

If we used an appraisal report in connection with your mortgage loan application (other than a VA guaranteed mortgage), you are entitled to receive a copy of the appraisal report at least three business days prior to your loan closing.

While we try to provide you with the appraisal in a timely manner, there may be times when it is not feasible. In that case, if you wish to exercise the three business day review, you must tell your loan processor at least 24 hours prior to the scheduled closing date to delay your loan closing. When you do not properly notify us, or when you execute closing documents, you will be deemed to have waived this requirement. We will still provide you with a copy of the appraisal report no later than loan closing.

You will not be required to pay an additional amount to us to receive a copy of the appraisal report.

Any appraisal report used in connection with your loan application was prepared solely for our use in evaluating a request for an extension of credit. The appraisal should not be relied upon by any other person or entity. We make no express or implied representation or warranty of any kind, and we expressly disclaim any liability to any person or entity with respect to the property valuation.

Borrower	Date
----------	------

Borrower	Date
----------	------

Borrower	Date
----------	------

Borrower	Date
----------	------

**EXHIBIT 39T – NEW JERSEY RIGHT TO OWN ATTORNEY DISCLOSURE**

NEW JERSEY RIGHT TO OWN ATTORNEY DISCLOSURE			
<b>Borrower Name (s):</b>  Joseph Borrower Jennifer Borrower		<b>Lender/Broker:</b> Amber Sky Home Mortgage LLC 1 Route 46 West, Suite 1 Elmwood Park, NJ 07407  <b>Date:</b> 09/23/2013	
<b>Property Address:</b>  123 Main Street, Westfield, NJ 07090			
<p>Under New Jersey Stat Ann Section 46:10A-6 the lender is required to advise you of the following prior to you accepting a written offer:</p> <ol style="list-style-type: none"> <li>1. The lender's attorney only represents the interest of the lender;</li> <li>2. The interest of the lender and your interest may differ and could conflict; and</li> <li>3. You should employ an attorney of your choice who is licensed to practice law in New Jersey and who will represent your interest.</li> </ol> <p>I/We acknowledge receipt of this notice at time of application.</p> <p>_____ I will select an attorney.</p> <p>_____ I do not wish to exercise my right to select an attorney.</p> <p>I/We have read the above disclosure and acknowledge receiving a copy by signing below.</p>			
Borrower _____	Date _____	Co-Borrower _____	Date _____

**EXHIBIT 39U – NEW JERSEY APPLICATION DISCLOSURE**

<b>NEW JERSEY APPLICATION DISCLOSURE</b>			
Borrower Name (s): Joseph Borrower Jennifer Borrower		Lender/Broker: Amber Sky Home Mortgage LLC	
Property Address:  123 Main Street, Westfield, NJ 07090		Date: 09/23/2013	
The following fees are being charged in connection with the processing of your loan application. Other fees not shown here may be payable later and are shown on the Good Faith Estimate of Closing Costs.			
<u>Name of Fee</u>	<u>Amount</u>	<u>Important Information</u>	
Application Fee	\$ <u>0.00</u>	The application fee will be applied toward the cost of processing the loan. This fee is non-refundable.	
Appraisal Fee Deposit	\$ <u>395.00</u>	The deposit will be applied toward the total cost of the appraisal, which may exceed the amount of the deposit. The deposit is refundable only if the loan is denied or withdrawn prior to the Lender ordering the appraisal.	
Credit Report Fee	\$ <u>9.90</u>	The deposit will be applied toward the total cost of the credit report, which may exceed the amount of the deposit. The deposit is refundable only if the loan is denied or withdrawn prior to the Lender ordering the credit report.	
The Lender estimates it will take no more than 60 days following its receipt of your completed mortgage loan application to issue a loan commitment.			
<b>CONDITIONS OF REFUND</b>			
The borrower may withdraw an application at any time prior to acceptance of a commitment, without penalty or responsibility to pay additional fees or charges. Upon withdrawal, lender shall refund to the borrower only those fees and charges to which the borrower may be entitled, except that:			
1. If lender fails to provide this disclosure, the lender shall promptly refund to the borrower all funds paid to lender.			
2. If lender fails to issue a commitment or justifiable credit denial within its realistic estimate of the time needed to do so and the borrower has withdrawn the application, the lender shall promptly refund to the borrowers all funds paid to lender.			
3. If the application is denied or commitment issued on terms and conditions substantially different to those for which the application was submitted and which are unacceptable to the borrower, for reasons (other than underwriting considerations), which the lender knew or should have known at the time of application from the facts disclosed on the face of the application, the lender shall promptly refund all funds paid to the lender.			
If you have questions regarding your application, please contact: Amber Sky Home Mortgage 1 Route 46 West, Suite 1 Elmwood Park, NJ 07407 (201) 393-0200			
I/We have read the above disclosure and acknowledge receiving a copy by signing our name(s) below.			
Borrower	Date	Co-Borrower	Date

**EXHIBIT 39V – NEW JERSEY DISCLOSURES FORM**

**NEW JERSEY DISCLOSURES FORM**  
**Amber Sky Home Mortgage LLC - NMLS# 907795**  
**1 Route 46, Suite 1, Elmwood Park, NJ 07407**  
Licensed by the NJ Department of Banking and Insurance

Loan Number:  
Applicant: Joseph Borrower  
Property Address: 123 Main Street, Westfield, NJ, 07090

Thank you for your application. This acknowledges receipt of the fee(s) shown below:

Amber Sky Home Mortgage LLC ("Company" or "We") is approved by the New Jersey Department of Banking and Insurance under the Residential Mortgage Lending Act. We are acting as an independent contractor and not as your agent. We estimate that you will be issued a commitment or loan denial in 30 days.

**SECTION 1. SETTLEMENT FEES.**

**BLOCK A - YOUR ADJUSTED ORIGATION CHARGES**

1. Our origination charge

Application fee	
Commitment fee	<u>895.00</u>
Lock-in fee	
Origination Fees (charged to you by Lender)	
Broker fee (charged to you by Broker)	
Lender Payment to Broker	
TOTAL	<u>895.00</u>

2. Your credit or charge (points for the specific interest rate chosen)  
Check one option

- a. ☐ Credit or charge for the interest rate of \_\_\_\_\_%  
is included in "Our origination charge"  
(See item # 1 above)
- b. ☐ You receive a credit of \_\_\_\_\_ for this interest  
rate of 4.750. This credit reduces your  
settlement charges.
- c. ☐ You pay a charge of \$ \_\_\_\_\_ for this interest  
rate of 4.750%. This charge (points) increases  
your total settlement charge.

BLOCK A Your Adjusted Origination Charges 895.00

Initial \_\_\_\_\_

**EXHIBIT 39V – New Jersey Disclosures Form – Continued**

**BLOCK B - YOUR CHARGES FOR ALL OTHER SETTLEMENT SERVICES**

<b>3. REQUIRED SERVICES THAT WE COLLECT</b>	
Appraisal fee	<u>395.00</u>
Credit report fee	<u>9.90</u>
Warehouse fee	.....
Overnight fee, messenger, fax, etc	.....
Flood certification fee	<u>12.00</u>
Final inspection fee	.....
Update fees (credit report/appraisal fees)	.....
One-time Mortgage Insurance fees, up to 1 year	.....
Tax Service fee	.....
Mortgage Cancellation fee (not to exceed \$25)	.....
Veterans Administration Funding Fee	.....
.....	
<b>4. TITLE SERVICES and LENDER TITLE INSURANCE</b>	
Title Premium	<u>3,200.00</u>
Title Search	.....
<b>5. OWNER'S TITLE INSURANCE</b>	
	<u>1,000.00</u>
<b>6. REQUIRED SERVICES THAT YOU CAN SHOP FOR</b>	
Survey	<u>650.00</u>
Pest Inspection	.....
Radon Test fees	.....
.....	
<b>7. Government Recording Charges</b>	
Recording fees from deed, mortgage, note	<u>450.00</u>
<b>8. Transfer Taxes</b>	
State and local fees on mortgages and home sales	.....
<b>9. Initial Deposit for your escrow account</b>	
	<u>2,100.00</u>
<b>10. Daily Interest Charges</b>	
	<u>989.58</u>
<b>11. Homeowners Insurance</b>	
	<u>600.00</u>
<b>TOTAL BLOCK B SETTLEMENT CHARGES</b>	<u>9,406.48</u>
<b>TOTAL A and B SETTLEMENT CHARGES</b>	<u>10,301.48</u>

Initial .....

**SECTION 2. FEE REFUND POLICY**

**EXHIBIT 39V – New Jersey Disclosures Form – Continued**

a. Application fee is NON-REFUNDABLE except as required by N.J.A.C. 3:1-16.3(e) when: (a) The lender or broker fails to provide the borrower with this written disclosure; (b) The lender fails to issue a commitment or justifiable credit denial within its realistic estimate through no substantial fault of the borrower, and the borrower withdraws the application; or (c) The application is denied or a commitment is issued on terms and conditions substantially dissimilar to those for which the application was submitted and which are unacceptable to the borrower, for reasons other than bona fide underwriting considerations which the lender knew or should have known at the time of application.

b. Lock-In Fee and Commitment Fee are NON-REFUNDABLE except as required by N.J.A.C. 3:1-16.6. When the loan does not close before the expiration date of the lock-in agreement (whether executed or not) or any commitment issued through no substantial fault of the borrower, the borrower may withdraw the application or terminate the commitment, whereupon the lender shall promptly refund to the borrower any lock-in fee and any commitment fee paid by the borrower; or the borrower may have the lock-in agreement extended for up to 14 calendar days.

c. Third Party Charges, including the costs of the appraisal and credit report, are not refundable after the service has been performed and the expense has been incurred.

**SECTION 3. INSURANCE  
NOTICE TO BORROWER**

**YOU MAY BE REQUIRED TO PURCHASE PROPERTY INSURANCE AS A CONDITION OF RECEIVING THE LOAN. IF PROPERTY INSURANCE IS REQUIRED, YOU MAY SECURE INSURANCE FROM A COMPANY OR AGENT OF YOUR OWN CHOOSING.**  
[New Jersey Statute 17:11C-21 (d).]

**SECTION 4. CHOICE OF ATTORNEY.**

**THE INTERESTS OF THE BORROWER AND LENDER ARE OR MAY BE DIFFERENT AND MAY CONFLICT. THE LENDER'S ATTORNEY REPRESENTS ONLY THE LENDER AND NOT THE BORROWER. THE BORROWER IS, THEREFORE, ADVISED TO EMPLOY AN ATTORNEY OF THE BORROWER'S CHOICE LICENSED TO PRACTICE LAW IN THIS STATE TO REPRESENT THE INTERESTS OF THE BORROWER.**

**SECTION 5. MISCELLANEOUS**

Company shall not be liable for any losses sustained by You as a result of the inability to obtain a commitment or the failure of any loan commitment to close. If You have paid any of the above fees by check and the check is refused for payment, We may immediately (1) terminate Your loan application and (2) cancel Your interest rate lock-in and/or commitment. You may address questions or comments about any application to Amber Sky Home Mortgage.

Initial \_\_\_\_\_

**EXHIBIT 39V – New Jersey Disclosures Form - Continued**

By signing below, You acknowledge receipt of a copy of this signed Agreement. You agree to be bound by the terms and conditions of this Agreement and acknowledge that this Agreement is the complete understanding between You, the Applicant, and Company, and may not be changed except by written agreement signed by both parties.

COMPANY

APPLICANT(S)

By:

Name

Date:

Date:

Name

Date:

**EXHIBIT 39W – DELIVERY SERVICES AND FEES ACKNOWLEDGEMENT**

**DELIVERY SERVICES & FEES ACKNOWLEDGEMENT**

**Amber Sky Home Mortgage LLC  
NMLS# 907795  
1 Route 46 West, Suite 1  
Elmwood Park, NJ 07407**

Loan Number:

Applicant: Joseph Borrower Jennifer Borrower

Property Address: 123 Main Street, Westfield, NJ, 07090

Pursuant to N.J.A.C. 3:1-16.2, I/We authorize you to use special delivery services in connection with the processing and closing of our loan. These services include, but are not limited to, courier, overnight delivery, messenger, fax, electronic document delivery and other delivery services. I/(We) agree to pay the cost of all delivery services used, and agree that these delivery costs and fees are not refundable.

APPLICANT(S)

\_\_\_\_\_  
Joseph Borrower                      Date

\_\_\_\_\_  
Jennifer Borrower

**EXHIBIT 39X –ADDENDUM TO THE LOAN APPLICATION  
(CIVIL UNION/REGISTERED DOMESTIC PARTNERSHIP)**

**Addendum to the Loan Application**

Borrower: Joseph Borrower

Property Address: 123 Main Street, Westfield, NJ 07090

Some states' laws recognize relationships that are similar to marriage but are known by different names, such as "civil union" or "registered domestic partnership." Sometimes, the parties to such a relationship will have rights and obligations similar to those of a married couple. One of those rights might be having an interest in property owned by the other party to the relationship. For example, a spouse in a marriage sometimes has an interest, such as a "homestead interest," in property owned by the other spouse. Similarly, a party to a civil union or a registered domestic partnership might have an interest in property owned by the other party to the relationship. Potential creditors are interested in whether or not a loan applicant is married or a party to one of these other relationships. The creditor is interested because it needs to have full access to property offered as collateral for the loan and if there is a spouse or other party with an interest in the collateral, it will interfere with the creditor's enforcement of the debt. If a spouse or such a party exists, the creditor will often have the spouse or the party sign the security instrument that lists the collateral.

For these reasons, we are asking you:

Can anyone, other than you, claim a homestead interest in the property that will secure repayment of the loan?

Yes • No

Are you a party to a civil union, registered domestic partnership, or substantially similar relationship?

Yes • No

If you answered "Yes" to either question, please identify the other party:

\_\_\_\_\_  
Borrower:                      Date

\_\_\_\_\_  
Borrower:                      Date

☐ Please refer to the attached Signature Addendum for additional parties and signatures.

---

**EXHIBIT 39Y –NOTICE TO BORROWERS (CREDIT CHANGES)**



**IMPORTANT**

**NOTICE TO BORROWERS**

In an effort to make the processing of your mortgage loan be as hassle-free as possible; please understand that any of the actions listed below may result in one or more of the following:

- Additional information requested by the underwriters/lender
- Delay in loan closing
- Loan being declined regardless of prior loan approval

\_\_\_\_\_ No new inquiries on your credit report  
\_\_\_\_\_ Do not incur more debt  
\_\_\_\_\_ No late payments on any accounts  
\_\_\_\_\_ Do not pay off collections or charge off accounts  
\_\_\_\_\_ Do not consolidate your debt into one or two credit cards or close credit cards  
\_\_\_\_\_ Do not dispute any item on your credit report  
\_\_\_\_\_ No large deposits other than payroll  
\_\_\_\_\_ - All deposits above \$500 other than payroll must be documented and accounted for  
\_\_\_\_\_ Do not make any large cash purchases which result in lowering verified bank  
\_\_\_\_\_ balances  
\_\_\_\_\_ No increases in balances on credit cards or lines of credit which would increase  
\_\_\_\_\_ your minimum monthly payment  
\_\_\_\_\_ Do not change jobs without notifying your loan officer  
\_\_\_\_\_ If commission, bonus or overtime income decreases notify your loan officer.  
\_\_\_\_\_ **A NEW CREDIT REPORT MAY BE ORDERED PRIOR TO CLOSING!** Should  
\_\_\_\_\_ the second credit report reveal a decrease in your credit scores, the rate and/or  
\_\_\_\_\_ costs involved may change or could result in your loan being declined.  
\_\_\_\_\_ You will need to obtain a **homeowner's insurance quote** from an agent of your  
\_\_\_\_\_ choosing within five days of application.  
\_\_\_\_\_ **I/we understand that should my/our loan be declined, I/we will not be**  
\_\_\_\_\_ **approved for the mortgage loan or refunded any fees paid in advance.**

\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Date

\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Date

## EXHIBIT 39Z – APPRAISAL PAYMENT AUTHORIZATION FORM



NMLS # 907795 ♦ 1 Route 46 West ♦ Ste. 1 ♦ Elmwood Park, NJ ♦ (201) 393-0200 ♦ Fax (201) 393-0240

### APPRAISAL PAYMENT AUTHORIZATION FORM

Borrower: Joseph Borrower Jennifer Borrower

Subject Property: 123 Main Street, Westfield, NJ, 07090

Amber Sky Home Mortgage LLC requires a credit card payment for the appraisal services that will be performed on the subject property of your recent mortgage application. Amber Sky Mortgage will not be performing the appraisal services on the subject property, nor collecting the payment. Amber Sky Mortgage will be ordering the appraisal services through a randomly selected Appraisal Management Company, on your behalf.

You or an agent acting on your behalf will be contacted by an Appraisal Management Company that was selected to schedule the inspection of the subject property. Amber Sky Mortgage will not be responsible, or held liable, for scheduling appointments.

Per the standards set by the Federal National Mortgage Association and the Federal Housing Finance Agency, Amber Sky Mortgage will not be selecting the appraiser who will perform the appraisal services on the subject property. Amber Sky Mortgage will not have direct contact with the appraiser at any time. Therefore, Amber Sky Mortgage does not take any responsibility and is not liable for the scope, quality, speed, or accuracy of the appraisal services performed. Amber Sky Mortgage cannot guarantee that any disputes, disagreements, or revisions, can or will be made to the appraisal report and/or the appraisal services performed on the subject property.

By signing below, I acknowledge receipt of the Good Faith Estimate of Settlement Costs and Truth in Lending Disclosure Statement for this transaction. I also acknowledge receipt of a copy of this appraisal order policy and authorization. My signature on this document also indicates my intention to proceed with this loan transaction and authorizes Amber Sky Home Mortgage LLC to order the appraisal services on the subject property.

#### Card Holder Information

Credit Card Type: ☐ Visa ☐ MasterCard ☐ Amex

Name on the card: \_\_\_\_\_

Card Number: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Billing Address: \_\_\_\_\_ City, State, Zip: \_\_\_\_\_

Expiration Date: \_\_\_\_\_ / \_\_\_\_\_ 3 or 4 Digit Security Code \_\_\_\_\_

I, \_\_\_\_\_, authorize Amber Sky Home Mortgage LLC and/or the Appraisal Management Company randomly selected to perform the appraisal services on the above mention subject property to charge my credit card for those services. I further authorize Amber Sky Mortgage to release my credit card number for the purposes of ordering appraisal services on the subject property. I understand that the appraisal services fee is non-refundable, regardless of outcome. I also understand that the appraisal report prepared on the subject property may or may not be utilized or qualify for utilization with any other lenders or financial institutions. Amber Sky Mortgage is not responsible if an additional or appraisal forms need to be ordered, at the borrower's expense, on the subject property by other lenders or financial institutions. Additionally, by signing below, I agree that I have read, agree with, and understand Amber Sky's appraisal ordering policy.

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT 39AA – NEW JERSEY CHOICE OF INSURANCE NOTICE**

NEW JERSEY CHOICE OF INSURANCE NOTICE			
Borrower Name (s): Joseph Borrower Jennifer Borrower		Lender/Broker: Amber Sky Home Mortgage L.L.C 1 Route 46 West, Suite 1 Elmwood Park, NJ 07407	
		Date: 09/23/2013	
Property Address: 123 Main Street, Westfield, NJ 07090			
<p style="text-align: center;"><b>NOTICE TO BORROWER</b></p> <p><b>YOU MAY BE REQUIRED TO PURCHASE PROPERTY INSURANCE AS A CONDITION OF RECEIVING THE LOAN. IF PROPERTY INSURANCE IS REQUIRED, YOU MAY SECURE INSURANCE FROM A COMPANY OR AGENT OF YOUR OWN CHOOSING.</b></p> <p><b>[New Jersey Statute 17: 11C-21(d).]</b></p> <p>I/We have read the above disclosure and acknowledge receiving a copy by signing below.</p>			
Borrower _____		Co-Borrower _____	
Date _____		Date _____	

## EXHIBIT 39BB – SERVICING DISCLOSURE STATEMENT



NMLS # 907795 ♦ 1 Route 46 West ♦ Ste. 1 ♦ Elmwood Park, NJ ♦ (201) 393-0200 ♦ Fax (201) 393-0240

### SERVICING DISCLOSURE STATEMENT

Borrower: Joseph Borrower Jennifer Borrower  
Subject Property: 123 Main Street, Westfield, NJ, 07090  
Date: September 23, 2013  
Loan Number: 2013092300

#### NOTICE TO FIRST LIEN MORTGAGE LOAN APPLICANTS: THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED.

You are applying for a mortgage loan covered by the Real Estate Settlement Procedures ACT ("RESPA") (12 U.S.C. Section 2601 et. Seq.). RESPA gives you certain rights under Federal law. This statement describes whether the servicing for this loan may be transferred to a different loan servicer. "Servicing" refers to collecting your principal, interest, and escrow account payments, if any, as well as sending any monthly or annual statements, tracking account balances, and handling other aspects of your loan. You will be given advanced notice before a transfer occurs.

#### Servicing Transfer Information

- ☐ We may assign, sell or transfer the servicing of your loan while the loan is outstanding.
- ☒ We do not service mortgage loans of the type for which you applied. We intend to assign, sell, or transfer the servicing of your mortgage loan before the first payment is due.
- ☐ The loan for which you have applied will be serviced at this financial institution and we do not intend to sell, transfer, or assign the servicing of the loan.

#### Flood Insurance Coverage Subject to Change

We may assign, sell, or transfer the servicing of your mortgage loan. Your new lender/servicer may require more flood insurance coverage than the minimum amount that has been identified in your Notice of Special Flood Hazards ("NSFH"). The new lender/servicer may require coverage in an amount greater than the minimum, and has the right to require flood coverage at least equal to 100% of the insurable value (also known as replacement cost value) of the building(s) used as collateral to secure the loan or the maximum available under the National Flood Insurance Program ("NFIP") for the particular type of building. You should review your exposure to flood damage with your insurance provider, as you may wish to increase your coverage above the minimum amount required at the time of closing your loan versus what subsequently the new lender/servicer may require.

#### Acknowledgement of Mortgage Loan Applicant(s)

I/We have read this disclosure form, and understand its contents, as evidenced by my/our signature(s) below. I/We understand that this acknowledgement is required as part of the mortgage loan application.

_____ Borrower	_____ Date	_____ Borrower	_____ Date
-------------------	---------------	-------------------	---------------

_____ Borrower	_____ Date	_____ Borrower	_____ Date
-------------------	---------------	-------------------	---------------

(d) **Mortgage Commitment.** A mortgage commitment or denial will issue approximately thirty (30) days after the application has been submitted. The length of time required by the mortgage lender to process an application and issue a determination depends on various factors such as the extensiveness of the borrower's credit history, difficulty in confirming the credit sources reported by the purchaser, and any backlog in processing applications. The advice given by mortgage lenders as to the length of time required to process the application ranges anywhere from ten (10) days to forty-five (45) days. The purchaser should be aware that there may be factors outside the control of the purchaser and/or the mortgage processor, e.g. the delay in the return of verifications of the borrower's income and debt, which will cause a delay in the issuance of a mortgage determination and should plan accordingly for the possibility of a delay.

As discussed in Section 3.3.8(k), it is important that the time allowed under the mortgage contingency be monitored so that, if the purchaser is not able to get a determination from a lender within the time specified, a timely extension of the mortgage contingency is sought. Even if the clause is one where either party must cancel the contract if a commitment has not been issued by a certain date (rather than a clause which allows a seller to assume that the purchaser has received a commitment if notice of a denial has not been given by a date specified in the contract), the request for an extension prior to the termination of the mortgage contingency presents an opportunity to update the seller's attorney as to the status of the application and provide sufficient assurances that the mortgage application is proceeding so that the seller does not exercise the right to terminate the contract under the mortgage contingency clause.

A sample mortgage loan commitment letter appears as Exhibit 40. A copy of the mortgage commitment should be delivered to the purchaser's attorney as soon as the purchaser receives it and prior to its acceptance if there are any concerns regarding the commitment's terms. At the outset, the attorney should determine from the mortgage commitment the deadline by which the purchaser must accept the commitment. The commitment should be reviewed with the purchaser and the purchaser should confirm that the terms are acceptable. If there are any conditions in the commitment, the ability of the purchaser to satisfy those conditions at or prior to closing should be discussed. Many lenders require the payment of a non-refundable fee at the time of the acceptance of the commitment which will be forfeited in the event that the purchaser decides to close the mortgage with the lender to which the fee was paid.

Of importance to both the attorney and the purchaser will be the expiration date of the commitment. If title does not close by the expiration date specified in the commitment, and any granted extensions, the lender will not be obligated to fund the loan after that date. The attorney should make an assessment as to whether the closing date is realistic and if it is not, discuss the modification of that date prior to the acceptance of a commitment by the purchaser. The commitment may also set forth the materials to be submitted and approved by the lender and the time required by the lender to review and approve the submitted materials before the lender will schedule the mortgage closing. If the commitment is accepted by the purchaser, the seller's attorney should be advised that the purchaser has accepted a mortgage commitment and, therefore, the mortgage contingency in the contract has been satisfied.

If a commitment is contingent upon the purchaser's satisfaction of conditions in the commitment which the purchaser may not be able to readily satisfy, e.g. the sale of the purchaser's

existing home, the purchaser will not want to advise the seller of the unconditional satisfaction of the mortgage contingency in the contract until the purchaser has either satisfied or is confident that the conditions in the mortgage commitment can be satisfied. After there has been an assessment by the purchaser and the purchaser's attorney of any conditions in the commitment, the attorney should apprise the seller's attorney of their impact, if any, upon the satisfaction of the mortgage contingency by the purchaser. The purchaser should be sensitive to the seller's concern that the purchaser either unconditionally satisfy the mortgage contingency, or waive the contingency and proceed toward closing as soon as possible after the contract has been signed. Accordingly, the uncertainty arising from the advice of any conditions and an effort to preserve rights of the purchaser to terminate the contract if the purchaser is unable to satisfy the conditions may cause the seller to respond by terminating the contract if the seller has other options available in disposing of the property.

**EXHIBIT 40 - LOAN COMMITMENT LETTER**



1 Route 46 West • Ste. 1 • Elmwood Park, NJ 07407 • (201) 393-0200 • Fax (201) 393-0240

---

September 23, 2013

Joseph Borrower Jennifer Borrower  
129 Washington Street, Suite 100LL  
Hoboken, NJ, 07030

Re: 123 Main Street  
Westfield, NJ 07090

Dear Applicants:

We are pleased to advise you that we have approved your application subject to certain conditions. Our commitment and loan approval conditions are attached for your review and signature.

Our goal is, and continues to be, to help you obtain quick loan approval and close your mortgage loan as soon as possible thereafter.

Please review these documents, sign and date in the applicable spaces, and return them to our office via fax, email, or mail as soon as possible.

If you have questions, please contact your mortgage loan originator at 201-393-0200.

We look forward to receiving the signed and dated commitment.

Sincerely,

Amber Sky Home Mortgage LLC  
NMLS ID #907795

Enclosure

**Exhibit 40 - Loan Commitment Letter - Continued**



1 Route 46 West • Ste. 1 • Elmwood Park, NJ 07407 • (201) 393-0200 • Fax (201) 393-0240

**NEW JERSEY COMMITMENT**

(Items are checked if applicable.)

**DATE:** 09/23/2013

**BORROWER(S):** Joseph Borrower Jennifer Borrower

**PROPERTY ADDRESS:** 123 Main Street, Westfield, NJ 07090

**TYPE OF MORTGAGE:**

<b>Loan Program:</b>	<b>Conventional</b>
<b>Amortization:</b>	<b>Fixed/360/360</b>
<b>Loan Purpose:</b>	<b>Purchase</b>

We are pleased to advise you that your application for a mortgage loan on the above-captioned property has been approved subject to the following terms and conditions:

1. **LOAN AMOUNT:** \$ 500,000      **TERM:** 360  
    N/A Your loan has a balloon payment.
2. **POINTS:** The number of points that you will have to pay us will depend upon the interest rate that is set prior to closing. You will be required to pay a minimum of 0 points to a maximum of 3 points. These charges are reflected in your rate locked Good Faith Estimate.
3. **DISCOUNT POINTS:** The discount points are \$0
4. **COMMITMENT FEE:** The commitment fee is \$895.00  
    This fee is not included in the Discount Points stated above.
6. **INTEREST RATE:** 4.750%  
    Your interest rate will be determined at or prior to the closing date.
7. **ANNUAL PERCENTAGE RATE (APR):** 4.798%
8. **MAXIMUM RATE:** Should the rate of interest at the time closing is scheduled exceed the rate for which you qualify, this commitment shall be null and void.  
    The maximum rate of interest for which you qualify is 4.750 %.
9. **INTEREST RATE LOCK-IN AGREEMENT:**

**Exhibit 40 - Loan Commitment Letter - Continued**



1 Route 46 West • Ste. 1 • Elmwood Park, NJ 07407 • (201) 393-0200 • Fax (201) 393-0240

---

NA This is a prevailing rate. You have the option to lock this loan based on the current rate as of the day of the lock. You must execute a lock option form or Interest Rate Notice when you exercise this option. If the lock option expires prior to closing, the interest rate will be a rate established by the lender in its discretion. The fees and margin will be set three (3) business days before closing at the prevailing rate or the locked-in rate, whichever is higher. You may request re-disclosure once the rate and points are set.

X Interest rate is locked-in until 11/07/2013. If the loan does not close on or before this date, your interest rate will be set three (3) business days prior to closing at the higher of the initial locked rate or the current rate. For refinances, loan must fund prior to interest rate lock expiration.

10. **EXPIRATION DATE:** The expiration date of this commitment is 11/07/2013.  
If your loan does not close by this date, we have no obligation to honor the terms of this agreement.
11. **ORIGINATION FEES:** Please refer to your Good Faith Estimate (GFE) for any additional fees paid for the interest rate chosen.
12. **ADJUSTABLE RATE MORTGAGE INFORMATION (ARM):** If your loan is an ARM, the 1<sup>st</sup> adjustment will be in months for a maximum of %. Each subsequent adjustment will be every months for a maximum of %. The margin is % and the current index is %. The maximum your rate can increase over the life of the loan is % above your initial start rate.
14. **HAZARD INSURANCE:** Prior to closing you shall furnish this office with an original hazard (homeowner's) insurance policy or a Binder Agreement, satisfactory to the lender which is effective at the time of settlement. Homeowner's Insurance Declaration Page must confirm adequate coverage as follows: the lesser of:
  - a. 100% of the insurable value of the improvements as established by the property insurer (Cost Estimator), or
  - b. the unpaid principal balance, as long as it equals 80% of the insurable value of the improvementsIf the amount of coverage does not meet the minimum requirement, additional coverage must be obtained. Deductible cannot exceed 5% of the policy amount. Receipt to verify policy is paid in full is required.
14. **FLOOD INSURANCE:** Flood insurance may be required as a condition of this loan. Please contact your settlement agent.
16. **PRIVATE MORTGAGE INSURANCE ("PMI"):** PMI is not required as a condition of making this loan. See Good Faith Estimate for details.
17. **ATTORNEY DISCLOSURE:** The interests of the borrower and the lender are or may be different and may conflict. The lender's attorney represents only the lender and not the borrower. You are therefore advised to employ an attorney of your choice licensed to practice law in this state to represent your interests
18. **REAL ESTATE TAX AND HAZARD INSURANCE ESCROWS:** At closing, an escrow impound account may or may not be established. Please review your GFE. If escrow is included an initial escrow deposit will be required in accordance with RESPA.
19. **MONTHLY PRINCIPAL & INTEREST PAYMENT:** \$ 2,608.24

**Exhibit 40 - Loan Commitment Letter - Continued**



1 Route 46 West • Ste. 1 • Elmwood Park, NJ 07407 • (201) 393-0200 • Fax (201) 393-0240

---

20. **ASSUMPTION:** Someone buying your house may not assume your loan.
21. **NO ORAL MODIFICATION:** This agreement cannot be changed orally.
22. **REFUNDABILITY:**

Your Commitment Fee and/or points are non-refundable, except for the following conditions:

In the event that a lock-in agreement has not been executed and a commitment has been issued, and the loan does not close before the expiration date of the commitment through no substantial fault of the borrower, the borrower may:

- a. Terminate the commitment, whereupon the lender shall promptly refund to the borrower any commitment fee paid by the borrower; or
- b. Have the commitment extended for a reasonable period of time, not to exceed 14 calendar days, to permit closing.

Borrower's rights, as explained in the preceding paragraphs, to withdraw and obtain a refund or extend the commitment are not available to the Borrower if the failure to close was through the Borrower's substantial fault. This means that the delay will be deemed to be the Borrower's fault if the Borrower or the Borrower's agents (including the Seller, the Borrower's attorney, depository institution, title insurer, employer, spouse, surveyor, etc.):

- (1) Fails to provide in a timely manner (within 7 calendar days or any later date specified by Lender) information or documentation required by the Lender;
  - (2) Provides or omits any information, in the application or subsequently, which upon verification proves to be significantly inaccurate (as defined below);
  - (3) Fails to produce on or before the date specified by the Lender all of the documentation specified in the commitment or closing instructions as being required for closing (which date may be less than seven calendar days following the date of receipt of the commitment or closing instructions); or
  - (4) Fails to be ready, willing and able to close the loans on or before the date specified by the Lender.
  - (5) If the interest rate exceeds the rate for which you qualify and therefore, this commitment becomes null and void.
23. **DOCUMENTATION:**

The following is a list of information and conditions that we may require you to produce and/or satisfy prior to closing your loan, if applicable:

Title report and insurance, property survey, copy of Certificate of Occupancy for use, satisfactory final inspection (if new construction), evidence of appropriate hazard insurance, evidence of flood insurance as appropriate, master policy insurance certificate (if applicable in the case of condominiums), termite inspection report, radon test, well water test report and septic inspection report.

24. **OTHER CONDITIONS:** See attached Loan Approval Addendum.
25. **PREPAYMENT PENALTY:** This mortgage will not contain a pre-payment penalty.

**Exhibit 40 - Loan Commitment Letter – Continued**



1 Route 46 West • Ste. 1 • Elmwood Park, NJ 07407 • (201) 393-0200 • Fax (201) 393-0240

**26. ACCEPTANCE OF COMMITMENT:**

**THIS COMMITMENT MUST BE SIGNED AND RECEIVED WITH THE COMMITMENT FEE WITHIN 10 DAYS FROM THE DATE OF THIS LETTER OR THE COMMITMENT WILL BE NULL AND VOID.**

Amber Sky Home Mortgage LLC

BY: Deborah Taylor Pintado

DATE:

If you sign this commitment, and you do not close this loan in accordance with the described terms, you may lose some or all of the fees or charges you have paid.

I/We hereby accept this Commitment and all conditions set forth therein and agree to proceed with the closing of the loan. I/We have received a duplicate original of this document.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

### **Section 4.2.1 Refinance**

The refinance of a property involves the procurement of a mortgage commitment for a loan not for purchasing a property but rather for satisfying the existing mortgage on the property. The refinance of a property allows the homeowner to obtain a new loan to replace the existing loan in order to take advantage of more favorable mortgage terms, e.g. lower interest rate, reduced term of years, or to borrow an amount greater than that required to satisfy the existing mortgage loan if the homeowner is in need of additional funds.

Most of the same procedural requirements which apply to the closing of a loan obtained to purchase a property apply to a refinance of an existing mortgage. The lender will require a title commitment and a mortgagee's policy of title insurance. Title insurance companies impose a reduced rate for insuring the lender's interest in the refinance of a property if that title insurance company provided the coverage at the time of the acquisition of the property by the borrower. While a lender will customarily require a new survey of the property, the lender should be consulted as to its willingness to accept the current survey of the property together with the survey affidavit of the borrower. The use of a survey affidavit is discussed in Section 5.5.6. Obviously, title to the property will already be vested in the borrower and the acquisition and title closing efforts will not apply to the transaction.

It should be noted that the loan proceeds from the refinance of a property may not be disbursed until three (3) days after the closing. This fact will have an impact upon the manner in which the payoff of the existing mortgage loan is calculated as discussed in Section 5.6.4. A notice of the right to cancel given to the borrower by lender at the closing setting forth the manner in which the borrower may cancel the transaction appears as Exhibit 41.

### **Section 4.3 Title Insurance**

Title searches are customarily performed by a title insurance company or abstract company, as an agent for a title insurance company, rather than by the attorney. For purposes of this discussion, "title company" will be used to refer to a title insurance company or an abstract company. The title company then issues insurance based on the results of the searches, the removal of any exceptions to title which are reported, and the status of title upon the closing of title. As an attorney involved in residential real estate transactions, it is beneficial to establish a professional relationship with a limited number of title insurance companies in order to ensure priority service to clients.

#### **Section 4.3.1 Title Searches and the Title Commitment**

Before making the request for a title search to be performed for the property, inquiries should be made of the seller's attorney as to whether any "back title" exists for the property. Back title is the current title work for the property, which the seller's attorney may provide in the form of the policy issued insuring the interests of the seller at the time the seller took title to the property. By either using the title company which insured the interests of the seller or providing a copy of that policy to the title company which the purchaser's attorney intends to use, the performance of the searches will be expedited since the efforts of the title company will commence with the point in time that the company issued the seller's title insurance for the property. Also, the reliance upon the existing title work for the property may also entitle your client to a reissue rate which allows for a reduction in the standard fee imposed for the title insurance. The general information to be provided to the title company when the title insurance is ordered appears on the form which appears as Exhibit 42.

# EXHIBIT 41 - NOTICE OF RIGHT TO CANCEL

## NOTICE OF RIGHT TO CANCEL

Loan Number: 1064

Borrowers:

Property Address: 21 , MILLSTONE TOWNSHIP, NEW JERSEY 08535

### YOUR RIGHT TO CANCEL

You are entering into a transaction that will result in a mortgage, lien or security interest on or in your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

1. the date of the transaction, which is SEPTEMBER 5, 2013 ; or
2. the date you receive your Truth in Lending disclosures; or
3. the date you receive this notice of your right to cancel.

If you cancel the transaction, the mortgage, lien or security interest is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the mortgage, lien or security interest on or in your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

### HOW TO CANCEL

If you decide to cancel this transaction, you may do so by notifying us in writing, at  
AMBER SKY HOME MORTGAGE LLC  
1 ROUTE 46 WEST, SUITE 1  
ELMWOOD PARK, NEW JERSEY 07407

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of SEPTEMBER 9, 2013 (or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

### I WISH TO CANCEL

Consumer's Signature

Date

### ACKNOWLEDGMENT OF RECEIPT

EACH OF THE UNDERSIGNED HEREBY ACKNOWLEDGES THE RECEIPT OF TWO (2) COMPLETED COPIES OF THIS NOTICE OF RIGHT TO CANCEL.

9/5/13  
Date

NOTICE OF RIGHT TO CANCEL-RESCISSON MODEL FORM H-8 (GENERAL)  
15 U.S.C. 1605(a); 12 CFR 1026.23; Model Form H-8  
NOTEC.MSC 12/30/11

DocMagic eForms  
www.docmagic.com



## EXHIBIT 42 - TITLE INSURANCE SEARCH ORDER FORM



### CHICAGO TITLE - NJ DIRECT OPERATIONS

Phone: 1-888-TITLE-NJ (1-888-848-5365)  
Fax orders to: 201-489-1346  
Email orders to: njapplications@cti.com



CTI Representative Name: _____			
Application from: _____		Date: _____	
_____		Phone: _____	
_____		Fax: _____	
_____		Email: _____	
Purchase <input type="checkbox"/>	Refinance <input type="checkbox"/>	Property Type: Residential <input type="checkbox"/>	Commercial <input type="checkbox"/>
Purchase Price: \$ _____	Mortgage Amount: \$ _____		
Buyer: _____			
Maiden Name Search (if required): _____			
Present Owner: _____			
Property Address: _____			
County: _____	Municipality: _____	Lot: _____	Block: _____
Mortgagee: _____			
Address: _____			
Back Title:	Attached <input type="checkbox"/>	Not Available <input type="checkbox"/>	To Follow <input type="checkbox"/>
Survey:	New one will be provided <input type="checkbox"/>	Use existing w/Affidavit of No Change <input type="checkbox"/>	No survey/survey endorsement <input type="checkbox"/>
Survey (continued)	CTI to order <input type="checkbox"/>	Set corners: Yes <input type="checkbox"/> No <input type="checkbox"/>	Preferred Surveyor: _____
Flood Search:	Order <input type="checkbox"/>	Need Life of Loan: Yes <input type="checkbox"/> No <input type="checkbox"/>	<input type="checkbox"/> Standard Flood Certificate <input type="checkbox"/> 15 year life of loan <input type="checkbox"/> 30 year life of loan
Notice of Settlement:	Chicago to file: Yes <input type="checkbox"/> No <input type="checkbox"/>		
Send Copies to: _____			
Special Requirements: _____			
Preferred Delivery Method: <input type="checkbox"/> Electronic link via email: <input type="checkbox"/> FedEx Overnight <input type="checkbox"/> Regular Mail <input type="checkbox"/>			
CTI to perform Closing: Yes <input type="checkbox"/> No <input type="checkbox"/> IF YES PROVIDE COPY OF 1003 LOAN APPLICATION (RESIDENTIAL ONLY)		Anticipated Closing Date: _____	
Submitted By: _____		Date: _____	

Thank You For Choosing Chicago Title Insurance Company  
www.titleinsurancenj.com

**EXHIBIT 42 - Title Insurance Search Order Form – Continued**



**CHICAGO TITLE COMPANY, LLC**

NEW JERSEY DIRECT OPERATIONS    WWW.TITLEINSURANCENJ.COM    PHONE: 1-888-TITLENJ

**Your file Reference:** HARI / FELDMAN

Order Number: 2013-00326  
Application Date: 03/04/2013  
Closing Date:  
Sales Person: House Account  
Prior Policy No.  
Prior Policy Date:

CUSTOMER PH:732  
E-MAIL:

Thank you for your application for Title Insurance. We will process your order based upon the following information. Should any information be incorrect, please notify us so that we may make the necessary changes to process your order as quickly as possible.

**Property:** STREET: 22 RED COAT DRIVE  
CITY: EAST BRUNSWICK  
COUNTY: Middlesex  
**Municipality:** Block 317.08, Lot 24 on the official tax map of the TOWNSHIP OF EAST BRUNSWICK, County of Middlesex, State of New Jersey

**Owner:**

**Owner's Policy:** ALTA OWNERS POLICY (6/17/06): \$333,837.00

**Proposed Insured:**

**Loan Policy:** ALTA LOAN POLICY (6/17/06) \$243,837.00

**Proposed Insured:**

Copy of Commitment to:

**Survey Instructions:** APPLICANT TO ADVISE

A schedule reflecting the cost of title insurance based upon the amount of the premium appears as Exhibit 43. The premium will be based upon the amount of the owner's policy, which amount will be in excess of the mortgagee's (lender's) policy. The title company will simultaneously issue the mortgagee's policy for a nominal additional charge. It should be noted that the rate on the schedule based upon the required amount of coverage must be added the other applicable charges and fees, such as those associated with upper court searches, municipal tax and assessment searches, corporate reports, and endorsements. As of March 1, 2009, the "basic rate" and "reissue rate" schedules were no longer applicable, and the new "standard rate" became applicable to all policies (owner's or loan), except to the extent that the refinance, mortgage modification or construction loan rate is applicable. The refinance rate applies where the transaction involves the insurance of the refinance of a property by the title company that previously insured the mortgage being satisfied as the result of the refinance. Also included as part of Exhibit 43 are the costs associated with some endorsements to the title policy which are discussed in Section 4.3.7. For a complete list of endorsements, refer to the New Jersey Land Title Insurance Rating Bureau's Manual of Rates and Charges.

If a copy of a policy insuring the seller's interest in the property is not available, the seller's attorney should be asked if a copy of the deed by which the seller took title is available. By providing a copy of that deed to the title company, any uncertainty regarding the property which is to be the subject of the search will be eliminated and the deed will serve as the basis for the title search.

Absent the availability of either the title work for the property or copy of the deed vesting title in the seller, the title company will be able to proceed based upon certain basic information provided to it. In particular, the title company will require (a) the name(s) of the seller, as such seller was identified on the deed by which the seller took title to the property, including the maiden name of the wife, if applicable; and (b) the street address and, if known, the tax lot and block reference for the property on the municipal tax map. In anticipation of the issuance of the title commitment and, subsequently, the title insurance policy, the title company will also ask for (a) the name(s) of the purchaser including the maiden name of the wife, if applicable; (b) the name of the lender providing mortgage financing; (c) the purchase price; and (d) the amount of the mortgage.

The information provided by the mortgage lender should be reviewed to be certain that the lender is identified in the title policy in the manner required in the mortgage closing instructions. Frequently, the lender will require that a designation such as "and/or its successors and/or assigns" appear after its name in order for the policy to provide coverage to any entity to which the mortgage may be assigned such as the Federal National Mortgage Association (sometimes referred to as FNMA or Fannie Mae). Should any of this information regarding the identification of the purchaser, lender or the amounts of the insurance not be available or subsequently change, the advice of that information should be given to the title company as soon as it becomes known. As long as the property can be adequately identified, the order for the title commitment should be placed even if all of the supplementary information is not available at the outset.

**EXHIBIT 43 - TITLE INSURANCE RATES AND CHARGES****SUMMARY OF NJLTIRB RATE MANUAL  
(Effective as of Sept. 1, 2013)**

•••••

**Standard Rate [Manual §4.2]  
Cost per \$1,000 of Policy Coverage**

\$0 -- \$100,000 .....	\$5.25
\$100,001 -- \$500,000 .....	4.25
\$500,001 -- \$2,000,000 .....	2.75
Over \$2,000,000 .....	2.00

**Refinance Rate [Manual §4.6.1]  
Cost per \$1,000 of Policy Coverage**

\$0 -- \$100,000 .....	\$ 2.75
\$100,001 -- \$500,000 .....	2.50
\$500,001 -- \$2,000,000 .....	2.25
Over \$2,000,000 .....	1.75

**Mtge. Modification Rate [Manual §4.6.2]  
Cost per \$1,000 of Policy Coverage**

0 -- \$100,000 .....	\$1.75
\$100,001 -- \$500,000 .....	1.50
\$500,001 -- \$2,000,000 .....	1.25
Over \$2,000,000 .....	1.00

**Construction Loan Rate [Manual §4.5]  
Cost per \$1,000 of Policy Coverage for  
Three (3) Year Term Policy**

.....	\$1.00
-------	--------

•••••

The title searches being prepared by the title company will be issued in the form of what is commonly referred to as the title report, title binder, title commitment, or commitment to insure title. For purposes of this discussion, the term "title commitment" will be used. The title commitment will include the results of (a) a search of the county recording records to determine the chain of title to the property and to obtain copies of the deed vesting title in the current owner, liens, encumbrances and other instruments imposing restrictions on the property; (b) an "upper court" search consisting of a search for judgments in the Office of the Clerk of the Superior Court of New Jersey and the Clerk of the United States District Court for the District of New Jersey in order to determine if there are any judgments against the seller and purchaser docketed during the past twenty (20) years as well as against prior record owners if the seller has not held title to the property for a twenty (20) year period; and (c) a municipal search for all municipal liens against the property for real estate taxes, assessments, water charges, and sewer charges (to the extent water and sewer service is provided by the municipality). Searches will be performed against the name(s) of the seller (and prior record owners, if appropriate) to ensure that there are no judgments which have been docketed against those names that will be a lien against the real property. If the purchaser is obtaining mortgage financing, searches will also be performed against the name of the purchaser since the lender has an interest in ensuring that no judgments exist against the purchaser, as the prospective borrower. A title commitment appears as Exhibit 44.

The form of letter under which the title commitment is transmitted to the purchaser's attorney appears as Exhibit 45. Some title insurance companies prepare a form of notice of settlement, which is discussed in Section 4.3.4, and payoff request letter, which is discussed in Section 4.3.3(a), based upon the information in the title searches performed by the title company. In using either of these forms prepared by the title company, the attorney for the purchaser should confirm the accuracy of the information and ascertain that the concerns raised in those Sections, e.g. the correct address to which the request for the payoff should be made, have been considered.

# EXHIBIT 44 - TITLE COMMITMENT

## COMMITMENT FOR TITLE INSURANCE

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

Chicago Title Insurance Company, a Nebraska corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate Six (6) months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

**IN WITNESS WHEREOF**, Chicago Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

Issued by:  
Chicago Title Company, LLC  
2 University Plaza, Suite 206  
Hackensack, NJ 07601

Countersigned:



**CHICAGO TITLE INSURANCE COMPANY**  
By:

*Raymond R. Quirk*

Raymond R. Quirk  
President

By:

*Michael L. Gravelle*

Michael L. Gravelle  
Secretary

By: \_\_\_\_\_  
Authorized Officer or Agent

### CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <<http://www.alta.org>>.*

Alta Commitment - 2006

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



Exhibit 44 - Title Commitment - Continued

COMMITMENT FOR TITLE INSURANCE

Issued By:



CHICAGO TITLE INSURANCE COMPANY

2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK, NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336

SCHEDULE A

Your Ref: HARI / FELDMAN

Title No.

2013-00326

This Commitment expires six (6) months after the Commitment Date.

Title Officer: Renee Pulsifer (Direct Dial: 732-504-0421)

Escrow Officer:

Escrow No.:

Loan No: 246994188

File No. 2013-00326

Address Reference: 22 RED COAT DRIVE,  
EAST BRUNSWICK, NJ 08816

1. Effective Date: February 08, 2013 Revised: 04/23/2013 at

2. Policy or Policies to be issued:

ALTA OWNERS POLICY (6/17/06)

Amount: \$333,837.00

Proposed Insured:

ALTA LOAN POLICY (6/17/06)

Amount: \$243,837.00

Proposed Insured:

3. The estate or interest in the land described or referred to in this Commitment is Fee Simple

4. Title to the FEESIMPLE estate or interest in the land is at the Effective Date vested in:

WILLIAM FELDMAN and PEARL FELDMAN, HUSBAND AND WIFE

Under Deed From: JANROB CONSTRUCTION CO., A CORPORATION OF THE STATE OF  
NEW JERSEY

Dated: DECEMBER 20, 1968 Recorded: DECEMBER 31, 1968

Deed Book: 2646 Page: 759

Records of Middlesex County, New Jersey

ALTA Commitment - Schedule A-06

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



Print date: September 30, 2013 10:33:17 AM

**Exhibit 44 - Title Commitment - Continued**

**COMMITMENT FOR TITLE INSURANCE**

Issued By:



CHICAGO TITLE INSURANCE COMPANY

2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK, NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336

**SCHEDULE A (Continued)**

**Your Ref:** HARJ / FELDMAN

**Title No.**

2013-00326

5. The land referred to in this Commitment is described as follows:

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF**

ALTA Commitment - Schedule A-06 Continued

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



Print date: September 30, 2013 at 9/30/2013

Exhibit 44 - Title Commitment - Continued

COMMITMENT FOR TITLE INSURANCE

Issued By:



CHICAGO TITLE INSURANCE COMPANY

2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336

SCHEDULE A (Continued)

Your Ref: HARI / FELDMAN

Title No.

2013-00326

EXHIBIT "A"

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE TOWNSHIP OF EAST BRUNSWICK, COUNTY OF MIDDLESEX, AND STATE OF NEW JERSEY, AND IS DESCRIBED AS FOLLOWS:

BEING KNOWN AND DESIGNATED AS LOT 24 IN BLOCK 317-H, AS SHOWN ON A CERTAIN FILED MAP ENTITLED "MAP OF DEERFIELD ESTATES, SITUATE IN THE TOWNSHIP OF EAST BRUNSWICK, MIDDLESEX COUNTY, NEW JERSEY" DULY FILED IN THE OFFICE OF THE CLERK/REGISTER OF MIDDLESEX COUNTY, ON NOVEMBER 3, 1967 AS MAP 3137, FILE 955.

BEING FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF REDCOAT DRIVE, 50.00 FEET WIDE, SAID POINT BEING DISTANT 105.30 FEET EASTERLY FROM THE EASTERLY TERMINUS OF A 15.00 FOOT RADIUS ARC CONNECTING THE EASTERLY LINE OF COLONIAL DRIVE, 50.00 FEET WIDE, WITH THE SOUTHERLY LINE OF REDCOAT DRIVE, AND RUNNING; THENCE

(1) ALONG THE SOUTHERLY LINE OF REDCOAT DRIVE, AND ALONG AN ARC HAVING A RADIUS OF 525.00 FEET AND CURVING TO THE LEFT, A DISTANCE OF 100.00 FEET TO A POINT; THENCE

(2) SOUTH 02 DEGREES 39 MINUTES 05 SECONDS EAST, A DISTANCE OF 180.65 FEET TO A POINT; THENCE

(3) NORTH 75 DEGREES 42 MINUTES 10 SECONDS WEST, A DISTANCE OF 134.34 FEET TO A POINT; THENCE

(4) NORTH 08 DEGREES 15 MINUTES 45 SECONDS EAST, A DISTANCE OF 153.76 FEET TO THE POINT AND PLACE OF BEGINNING.

BEING IN ACCORDANCE WITH A SURVEY PREPARED BY A-1 LAND SURVEYS, INC., PROFESSIONAL LAND SURVEYORS, DATED MAY 16, 2013.

BEING ALSO KNOWN AS (REPORTED FOR INFORMATIONAL PURPOSES ONLY):

Block 317.08, Lot 24 on the official tax map of the TOWNSHIP OF EAST BRUNSWICK, County of Middlesex, State of New Jersey

Print date: September 30, 2013 10:33:19 AM

Exhibit 44 - Title Commitment - Continued

COMMITMENT FOR TITLE INSURANCE

Issued By:



CHICAGO TITLE INSURANCE COMPANY

2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336

SCHEDULE B - Section I

Your Ref: HARI / FELDMAN

Title No.

2013-00326

SCHEDULE B - SECTION I  
REQUIREMENTS

Commitment No: 2013-00326

The following are the requirements to be complied with:

1. Instrument(s) creating the estate or interest to be insured must be approved, executed, delivered, recorded and properly indexed in the land records.
2. Payment of the full consideration to, or for the account of, the grantors and/or mortgagor(s).
3. Payment of all applicable rates and charges to the Company.
4. If the present transaction is an assignment of a mortgage or lease, an estoppel certificate executed by the owner of the fee must be obtained.
5. If the present transaction consists in whole or in part of a conveyance, mortgage or lease by a corporation, a certified copy of the Resolution of the Board of Directors authorizing the transaction together with a certificate that the corporation is solvent and the By-Laws have been complied with must be obtained.
6. An affidavit of title executed by the seller(s) and/or mortgagor(s) must be obtained and the facts set forth therein must be considered.
7. The Company requires that you order a title continuation search ("Run-Down" or "Bring-Down") at least 24 hours prior to the scheduled closing or settlement. If the date of closing or settlement is postponed, you must order a new title continuation search.
8. The Company requires that a Notice of Settlement in connection with this transaction be filed, pursuant to N.J.S.A. 46:26A-11, as nearly as possible to, but not more sixty (60) days before, the anticipated date of recording of the closing documents. If the closing is postponed, a second Notice must be filed before the expiration of the first. If both a deed and mortgage are to be insured, two (2) Notices must be filed: one for the deed, and the other for the mortgage.
9. If the present transaction involves a mortgage to be insured and in the event the proceeds of the loan to be secured by the mortgage to be insured are not to be fully disbursed at closing (or if any of the proceeds of the loan are to be deposited into a construction disbursement or similar account), the Company must be notified prior to closing and this Commitment will be modified accordingly.

ALTA Commitment - Schedule BI-06

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



Print date: September 30, 2013 10:33:20 AM

Exhibit 44 - Title Commitment - Continued

COMMITMENT FOR TITLE INSURANCE

Issued By:



CHICAGO TITLE INSURANCE COMPANY

2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336

SCHEDULE B - Section I (Continued)

Your Ref: HARI / FELDMAN

Title No. 2013-00326

This Commitment expires six (6) months after the Commitment Date.

10. Deed from WILLIAM FELDMAN and PEARL FELDMAN, husband and wife to
11. Mortgage from , husband and wife to
12. Mortgage Policy insures that the mortgage set forth under Schedule A is a valid first mortgage lien on the premises in question.
13. In accordance with requests from certain lenders, the company has been asked to include in the loan policy the loan number assigned by the lender to the mortgage to be insured. Please provide the company with any information you may have received from the lender reflecting the loan number as soon as possible. The loan number will be used for reference only.

Note: United States Patriot Search dated March 8, 2013, see attached.

14. Mortgage Book 2134, page 663, between WILLIAM FELDMAN and PEARL FELDMAN, husband and wife (mortgagor/borrower) and NINTH FEDERAL SAVINGS AND LOAN ASSOCIATION OF NEW YORK CITY (mortgagee/lender) dated December 20, 1968, recorded December 31, 1968 in the Office of the County Clerk/Register of Middlesex; in the initial amount of \$17,900.00.

SAID MORTGAGE MUST BE CANCELLED OR DISCHARGED OF RECORD.

15. Note: Results of Flood Hazard Search attached.  
This service has been ordered on your behalf as an accommodation only, no liability for same is assumed.
16. Results of Tidelands Search dated MARCH 5, 2013 reveals no tidelands claim.
17. Informational note: Pursuant to the provisions of P.L..2009, C. 123 (the "County Homelessness Trust Fund Act"), N.J.S.A. 22a:4-17 is amended to permit counties to impose a recording surcharge of \$3.00 per document for any instrument submitted for recording (except assignments of mortgages).

As of January 1, 2010, Middlesex and Passaic Counties will impose this surcharge.

ALTA Commitment - Schedule BI (Continued)

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



Print date: September 30, 2013 10:33:19 AM

**Exhibit 44 - Title Commitment - Continued**

**COMMITMENT FOR TITLE INSURANCE**

Issued By:



CHICAGO TITLE INSURANCE COMPANY

2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336

**SCHEDULE B - Section I (Continued)**

**Your Ref:** HARI / FELDMAN

**Title No.** 2013-00326

This Commitment expires six (6) months after the Commitment Date.

As of February 1, 2010, Bergen County will impose this surcharge.

As of March 1, 2010, Hudson County will impose this surcharge.

As of June 1, 2010, Somerset County will impose this surcharge.

As of July 1, 2010, Mercer County will impose this surcharge.

As of June 1, 2011, Camden County will impose this surcharge.

Please be guided accordingly when collecting funds at closing for recordings.

**(END OF SCHEDULE B - SECTION I)**

ALTA Commitment - Schedule B1 (Continued)

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



Print date: September 30, 2013 10:33:19 AM

Exhibit 44 - Title Commitment - Continued

COMMITMENT FOR TITLE INSURANCE

Issued By:



CHICAGO TITLE INSURANCE COMPANY

2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336

SCHEDULE B - Section II

Your Ref: HARI / FELDMAN

Title No. 2013-00326

This Commitment expires six (6) months after the Commitment Date

SCHEDULE B - SECTION II  
EXCEPTIONS

Taxes become a lien on land on January 1<sup>st</sup> of each year and are payable in quarterly installments on February 1<sup>st</sup>, May 1<sup>st</sup>, August 1<sup>st</sup> and November 1<sup>st</sup>.

Our policy will not insure against taxes, water rates, assessments and other matters relating to taxes which have not become a lien up to the date of the policy or installments due after the date of the policy. Neither the tax search nor our policy covers any part of the streets on which the premises to be insured abut.

This Commitment does not purport to show all the terms and provisions of the mortgage(s) contained herein, if any. Interested parties should communicate with the holder(s) thereof to consider the terms thereof, the obligation(s) secured and the effect of any unrecorded agreements in modification thereof.

For Information Only: If the instrument to be insured is a purchase money mortgage covering a 1 to 4 family dwelling and owner's insurance is not desired, written notice declining right to purchase same is required from mortgagor pursuant to statutory requirement. (Notice and Waiver form enclosed)

**Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:**

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof, but prior to the date the Proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Rights or claims of parties in possession not shown by the Public Records.
3. Notwithstanding any provision of the policy to the contrary, the following matters are expressly excepted from the coverage of the policy, and the Company will not pay loss or damage, costs, attorney's fees or expense that arise by reason of any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the land.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law, and not shown by the Public Records.
5. Liability for any additional assessment for taxes in connection with new construction pursuant to N.J.S.A. 54:4-63.1.
6. Taxes, charges and assessments.

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



Print date: September 30, 2013 10:33:21 AM

# Exhibit 44 - Title Commitment - Continued

## COMMITMENT FOR TITLE INSURANCE

Issued By:



CHICAGO TITLE INSURANCE COMPANY

2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336

### SCHEDULE B - Section II (Continued)

Your Ref: HARI / FELDMAN

Title No.

2013-00326

This Commitment expires six (6) months after the Commitment Date

7. Municipal Department Searches attached.
8. Municipal Liens, if any, for utility services due and payable at or prior to the policy effective date are hereby excepted from coverage.
9. Subsurface conditions and/or encroachments not disclosed by an instrument of record. (Fee policy only)
10. The exact quantity of land in number of acres or square feet contained within the premises described herein is not insured. (if street address or acreage is reported, report same for informational purposes only)
11. SUBJECT TO SET BACK LINES, EASEMENTS AND RESTRICTIONS, AS SHOWN ON FILED MAP ENTITLED "MAP OF DEERFIELD ESTATES, SITUATE IN THE TOWNSHIP OF EAST BRUNSWICK, MIDDLESEX COUNTY, NEW JERSEY" DULY FILED IN THE OFFICE OF THE CLERK/REGISTER OF MIDDLESEX COUNTY, ON NOVEMBER 3, 1967 AS MAP 3137, FILE 955.
12. UTILITY EASEMENT AS SET FORTH IN DEED BOOK 2585, PAGE 878 AND DEED BOOK 2588, PAGE 965 TO PUBLIC SERVICE ELECTRIC AND GAS COMPANY.
13. UTILITY EASEMENT AS SET FORTH IN DEED BOOK 3015, PAGE 97 TO PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND NEW JERSEY BELL TELEPHONE COMPANY.
14. EXCEPTION NO. 3 OF SCHEDULE B - 2 IS REMOVED. NOTWITHSTANDING ANY PROVISION IN THE POLICY TO THE CONTRARY UNLESS AN EXCEPTION IS TAKEN IN SCHEDULE B, THE POLICY INSURES AGAINST LOSS ARISING FROM ANY ENCROACHMENT, ENCUMBRANCE, VIOLATION, VARIATION, OR ADVERSE CIRCUMSTANCE AFFECTING THE TITLE. THE FOLLOWING MATTERS SHOWN ON A SURVEY MADE BY A-1 LAND SURVEYS, INC., PROFESSIONAL LAND SURVEYORS, DATED MAY 16, 2013, ARE ADDED TO SCHEDULE B:
  - A. 10 FOOT WIDE DRAINAGE EASEMENT THROUGH PREMISES;
  - B. OVERHEAD WIRES CROSSING PREMISES;
  - C. POSSIBLE MISLOCATION OF FENCES
  - D. SETBACK LINE HAS BEEN VIOLATED.

MORTGAGE POLICY INSURES THAT SAID VIOLATION WILL NOT RESULT IN A FORFEITURE OR REVERSION OF TITLE.

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



Print date: September 30, 2013 10:33:20 AM

## Exhibit 44 - Title Commitment - Continued

### COMMITMENT FOR TITLE INSURANCE

Issued By:



CHICAGO TITLE INSURANCE COMPANY

2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336

### SCHEDULE B - Section II (Continued)

**Your Ref:** HARI / FELDMAN

**Title No.**

2013-00326

This Commitment expires six (6) months after the Commitment Date

OWNER'S POLICY INSURES THAT THE VIOLATION OF FRONT YARD SETBACK LINE AS SHOWN ON THE AFOREMENTIONED SURVEY WILL NOT RESULT IN A FORFEITURE OR REVERSION OF TITLE.

THIS POLICY DOES NOT INSURE AGAINST ERRORS OR INACCURACIES IN THE SURVEY WITH RESPECT TO MATTERS WHICH DO NOT AFFECT TITLE.

**END OF SCHEDULE B - SECTION II**

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



Print date: September 30, 2013 10:33:20 AM

Exhibit 44 - Title Commitment - Continued

COMMITMENT FOR TITLE INSURANCE

Issued By:



CHICAGO TITLE INSURANCE COMPANY

2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336

NOTES

Your Ref: HARI / FELDMAN

Title No.

2013-00326

This Commitment expires six (6) months after the Commitment Date

NOTES

For your information:

This Title Commitment was examined and prepared by:

**Exhibit 44 - Title Commitment - Continued**



**CHICAGO TITLE INSURANCE COMPANY**  
(hereinafter the "Company")

**IMPORTANT NOTICE AND DISCLOSURE**

1. By law the Company is required to advise you that the title insurance commitment issued by us may contain conditions, exceptions, exclusions, limitations and requirements governing our liability and the coverage you may receive.

REAL ESTATE TITLE TRANSACTIONS ARE COMPLEX. THE COMPANY DOES NOT REPRESENT YOU AND CANNOT GIVE YOU LEGAL ADVICE. YOU ARE ENTITLED TO REVIEW THE TITLE INSURANCE COMMITMENT WITH AN ATTORNEY AT LAW OF YOUR OWN CHOOSING AT YOUR EXPENSE, PRIOR TO THE TRANSFER OF TITLE. WE STRONGLY ADVISE THAT YOU DO SO.

2. THE ATTORNEY RETAINED BY YOU, OR BY YOUR LENDER, CLOSING OR SETTLING THIS TITLE IS NOT AN AGENT FOR AND DOES NOT ACT ON BEHALF OF THE COMPANY. THE COMPANY ASSUMES NO LIABILITY FOR ANY LOSS, COST OR EXPENSE INCURRED BY YOU BECAUSE YOUR ATTORNEY OR YOUR LENDER'S ATTORNEY HAS MADE A MISTAKE OR MISAPPLIED YOUR FUNDS.

Because the attorney is not our agent, we assume no responsibility for any information, advice or title insurance promises the attorney may give or make. Our only liability to you is under the terms of the Commitment, Policy and Closing Service Letter, if you choose to obtain one.

3. By law we are also required to advise you that we have been asked to issue a mortgage policy to the lender in the amount shown on Schedule A for the enclosed title insurance commitment. If you have not already requested it, you will have the right and opportunity to obtain title insurance in your own favor for an additional premium, which we will quote on request.

## Exhibit 44 - Title Commitment - Continued

Effective Date: 5/1/2008

### Fidelity National Financial, Inc. Privacy Statement

Fidelity National Financial, Inc. and its subsidiaries ("FNF") respect the privacy and security of your non-public personal information ("Personal Information") and protecting your Personal Information is one of our top priorities. This Privacy Statement explains FNF's privacy practices, including how we use the Personal Information we receive from you and from other specified sources, and to whom it may be disclosed. FNF follows the privacy practices described in this Privacy Statement and, depending on the business performed, FNF companies may share information as described herein.

#### Personal Information Collected

We may collect Personal Information about you from the following sources:

- Information we receive from you on applications or other forms, such as your name, address, social security number, tax identification number, asset information, and income information;
- Information we receive from you through our Internet websites, such as your name, address, email address, Internet Protocol address, the website links you used to get to our websites, and your activity while using or reviewing our websites;
- Information about your transactions with or services performed by us, our affiliates, or others, such as information concerning your policy, premiums, payment history, information about your home or other real property, information from lenders and other third parties involved in such transaction, account balances, and credit card information; and
- Information we receive from consumer or other reporting agencies and publicly recorded documents.

#### Disclosure of Personal Information

We may provide your Personal Information (excluding information we receive from consumer or other credit reporting agencies) to various individuals and companies, as permitted by law, without obtaining your prior authorization. Such laws do not allow consumers to restrict these disclosures.

Disclosures may include, without limitation, the following:

- To insurance agents, brokers, representatives, support organizations, or others to provide you with services you have requested, and to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure in connection with an insurance transaction;
- To third-party contractors or service providers for the purpose of determining your eligibility for an insurance benefit or payment and/or providing you with services you have requested;
- To an insurance regulatory authority, or a law enforcement or other governmental authority, in a civil action, in connection with a subpoena or a governmental investigation;
- To companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements and/or
- To lenders, lien holders, judgment creditors, or other parties claiming an encumbrance or an interest in title whose claim or interest must be determined, settled, paid or released prior to a title or escrow closing.

We may also disclose your Personal Information to others when we believe, in good faith, that such disclosure is reasonably necessary to comply with the law or to protect the safety of our customers, employees, or property and/or to comply with a judicial proceeding, court order or legal process.

## Exhibit 44 - Title Commitment - Continued

Effective Date: 5/1/2008

Disclosure to Affiliated Companies - We are permitted by law to share your name, address and facts about your transaction with other FNF companies, such as insurance companies, agents, and other real estate service providers to provide you with services you have requested, for marketing or product development research, or to market products or services to you. We do not, however, disclose information we collect from consumer or credit reporting agencies with our affiliates or others without your consent, in conformity with applicable law, unless such disclosure is otherwise permitted by law.

Disclosure to Nonaffiliated Third Parties - We do not disclose Personal Information about our customers or former customers to nonaffiliated third parties, except as outlined herein or as otherwise permitted by law.

### **Confidentiality and Security of Personal Information**

We restrict access to Personal Information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard Personal Information.

### **Access to Personal Information/**

#### **Requests for Correction, Amendment, or Deletion of Personal Information**

As required by applicable law, we will afford you the right to access your Personal Information, under certain circumstances to find out to whom your Personal Information has been disclosed, and request correction or deletion of your Personal Information. However, FNF's current policy is to maintain customers' Personal Information for no less than your state's required record retention requirements for the purpose of handling future coverage claims.

For your protection, all requests made under this section must be in writing and must include your notarized signature to establish your identity. Where permitted by law, we may charge a reasonable fee to cover the costs incurred in responding to such requests. Please send requests to:

Chief Privacy Officer  
Fidelity National Financial, Inc.  
601 Riverside Avenue  
Jacksonville, FL 32204

### **Changes to this Privacy Statement**

This Privacy Statement may be amended from time to time consistent with applicable privacy laws. When we amend this Privacy Statement, we will post a notice of such changes on our website. The effective date of this Privacy Statement, as stated above, indicates the last time this Privacy Statement was revised or materially changed.

**Exhibit 44 - Title Commitment - Continued**



**CHICAGO TITLE INSURANCE COMPANY**

NEW JERSEY DIRECT OPERATIONS    [WWW.TITLEINSURANCE.NJ.COM](http://WWW.TITLEINSURANCE.NJ.COM)    PHONE: 1-888-TITLENJ

DATE:

Order Number: 2013-00326

**CUSTOMER REFERENCE:**

22 RED COAT DRIVE,  
EAST BRUNSWICK, NJ 08816  
Middlesex County

**ENDORSEMENT**

ATTACHED TO AND FORMING A PART OF THE ABOVE ORDER NUMBER, WHICH IS HEREBY  
AMENDED AS FOLLOWS:

SCHEDULE A ITEM 2 ALTA LOAN POLICY SHALL READ \$243,837.00

THIS ENDORSEMENT IS MADE PART OF THE COMMITMENT OR POLICY. IT IS SUBJECT TO ALL  
THE TERMS OF THE COMMITMENT OR POLICY AND PRIOR ENDORSEMENTS, EXCEPT AS  
EXPRESSLY STATED ON THIS ENDORSEMENT, THE TERMS, DATE AND AMOUNT OF THE  
COMMITMENT OR POLICY AND PRIOR ENDORSEMENTS ARE NOT CHANGED.

---

AUTHORIZED SIGNATORY  
END. #

Exhibit 44 - Title Commitment - Continued

104-0110 - BARGAIN AND SALE MORTGAGE AGAINST GRANTEE CO. COPYRIGHT 1966 BY ALL-STATE OFFICE SUPPLY CO. 40 EIGHTH PLACE, NEWARK, N.J. 07102

**This Indenture,**

Made the 20th day of December 1968

**JANROB CONSTRUCTION CO.,**

a corporation existing under and by virtue of the laws of the State of New Jersey,  
having its principal office at 1225 Morris Avenue,  
in the Township of Union, in the County of  
and State of New Jersey, herein designated as the Grantor,  
Do hereby

**WILLIAM FELDMAN and PEARL FELDMAN, his wife,**

reading or located at 22 Redcoat Drive,  
in the Township of East Brunswick, in the County of  
Middlesex and State of New Jersey, herein designated as the Grantee:

Witnesseth, that the Grantor, for and in consideration of

THIRTY-FIVE THOUSAND NINE HUNDRED NINETY and 00/100--(\$35,990.00)--Dollars  
lawful money of the United States of America, to & in hand well and truly paid by the Grantee, at or  
before the signing and delivery of these presents, the receipt whereof is hereby acknowledged, and the  
Grantor being thereunto fully satisfied, does by these presents grant, bargain, sell and convey unto the  
Grantee forever.

With that certain tract or parcel of land and premises, situate, lying and being in the  
County of Middlesex and State of New Jersey, more particularly described as follows:  
BEING KNOWN AND DESIGNATED as Lot 24, Block 317-H as shown and set  
forth on a certain map entitled: "Map of Deerfield Estates, situate  
in East Brunswick Twp., Middlesex Co., N. J." which map is dated  
September 1967 and which map was filed in the Office of the Clerk of  
Middlesex County on November 3, 1967 as Map No. 3137, File No. 959.  
BEING COMMONLY KNOWN AND DESIGNATED as No. 22 Redcoat Drive, East  
Brunswick, New Jersey.

BEING a portion of the same premises conveyed to the Grantor herein  
by Deed from Deerfield Estates, Inc., dated May 9, 1968 and recorded  
in the Middlesex County Clerk's Office on May 17, 1968 in Book 2620  
of Deeds for said County at Page 487.

SUBJECT TO: (a) easements and restrictions in effect as of the date  
hereof; (b) such facts as an accurate survey and inspection of  
premises may disclose; (c) ordinances, statutes and regulations of  
Municipal, County, State and Federal Governments, and the effect  
thereof.

2646 759

2646-759

12-31-68

## Exhibit 44 - Title Commitment - Continued

REC-2846 PAGE 760

Together with all and singular the buildings, improvements, ways, woods, waters, watercourses, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof; With also all the estate, right, title, interest, use, possession, property, claim and demand whatsoever of the Grantor both in law and in equity, of, in and to the premises herein described, and every part and parcel thereof, with the appurtenances. To Have and to Hold all and singular, the premises herein described, together with the appurtenances, unto the Grantees and to Grantees' proper use and benefit forever.

And the Grantor covenants that it has not done or caused, or knowingly suffered to be done or executed, any act, deed or thing whatsoever whereby or by means whereof the premises conveyed herein, or any part thereof, now are or at any time hereafter, will or may be charged or encumbered in any manner or way whatsoever.

In all reference herein to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the fact of the within instrument may require.

Wherever in this instrument any party shall be designated or referred to by name or general reference, such designation is intended to and shall have the same effect as if the words "heirs, executors, administrators, personal or legal representatives, successors and assigns" had been inserted after each and every such designation.

In Witness Whereof, the Grantor has caused these presents to be signed and attested by its proper corporate officers and its corporate seal to be hereunto affixed the day and year first above written.

**WITNESSES:**  
 Gwenth H. Ruppert, Secretary  
 Wilbur Gatter, President  
 JANROB CONSTRUCTION CO.

State of New Jersey,  
 County of Union  
 We It Remembered, that on this 20th day of December 1960, before me,

the undersigned, An Attorney at Law of New Jersey,

personally appeared Gwenth H. Ruppert,  
 who, being by me duly sworn on her oath, deposes and makes proof to my satisfaction, that she is the Assistant Secretary of JANROB CONSTRUCTION CO.,

that Wilbur Gatter is the President of said Corporation; that the execution, as well as the making of this instrument, has been duly authorized by a proper resolution of the Board of Directors of the said Corporation; that

deponent well knows the corporate seal of said Corporation; and that the seal affixed to said instrument is the proper corporate seal and was thereto affixed and said instrument signed and

delivered by said President as and for the voluntary act and deed of said Corporation.

That the full and actual consideration paid or to be paid for the transfer of title is fully and actually evidenced by the within deed, as such consideration is defined in P. L. 1963, c. 49, Sec. 1 (c), in \$35,950.00.

Given by and subscribed before me, Ernest Lebowitz, a Notary Public in and for the State of New Jersey, on this 20th day of December 1960.

ERNEST LEBOWITZ  
 An Attorney at Law of New Jersey

Exhibit 44 - Title Commitment - Continued

00600003 022 215R656

RECEIVED  
NOTARY PUBLIC  
JAN 10 1968  
BOOK 12-216 PAGE 72  
PLANT SHEDS  
CLERK

15692  
**Deed**

JANOR CONSTRUCTION CO.,  
A corporation of  
New Jersey  
TO  
WILLIAM FELDMAN and  
PEARL FELDMAN, his wife

Dated: December 20, 1968

REC-2040 PEX 761

Return  
MORRIS MARKOWITZ to J...  
Commissioner of Land  
1215 Adams Avenue  
Union, New Jersey  
07083

## Exhibit 44 - Title Commitment - Continued

Derivational Form (C-30) NEW JERSEY

### MORTGAGE

THIS MORTGAGE, made the 20th day of December, Nineteen Hundred and Sixty Eight between

WILLIAM F. [REDACTED] and PEARL F. [REDACTED], his wife,

hereinafter designated as the

Mortgagor, who reside(s) at: Lot 24, Block 317-H, No. 22 Redcoat Drive, East Brunswick, Middlesex County, New Jersey,

and HUNT FEDERAL SAVINGS AND LOAN ASSOCIATION OF NEW YORK CITY, a savings and loan association chartered and existing under the laws of the United States of America, having its office and principal place of business at No. 147 Broadway, in the Borough of Manhattan, City, County and State of New York, hereinafter designated as the Mortgagee.

WITNESSETH, That in order to secure the payment of an indebtedness in the sum of ----- \$ 17,000.00 Dollars, lawful money of the United States, together with any additional advance which may be made by the mortgagee to the mortgagee or any subsequent owner of the mortgaged premises, at any time before the indebtedness secured by this mortgage is paid, with interest thereon according to a certain bond, note or obligation bearing even date herewith, providing that at no time shall the maximum amount secured by this mortgage be in excess of the sum above mentioned, the mortgagee hereby mortgages to the mortgagee, its successors and assigns forever:—

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of East Brunswick, County of Middlesex, and State of New Jersey:

BEING KNOWN AND DESIGNATED as Lot 24, Block 317-H as shown and set forth on a certain map entitled: "Map of Deerfield Estates, situate in East Brunswick Twp., Middlesex Co., N. J." which map is dated September 1967 and which map was filed in the Office of the Clerk of Middlesex County on November 8, 1967 as Map No. 3137, File No. 866.

TOGETHER with all the right, title and interest, if any, of the mortgagee of, in and to strips and pores of land or land under water adjacent to or adjoining said premises, and to the land lying in the bed of any street, road, avenue, lane or right of way as they now exist or heretofore existed and included in, in front of or adjoining said premises to the centre line thereof.

TOGETHER with the easements, riparian rights and appurtenances, and all the estate and rights of the mortgagee in and to said premises.

TOGETHER with all buildings, structures and improvements now or hereafter erected or constructed upon said premises.

2134 563

2134-663

12-31-68

# Exhibit 44 - Title Commitment - Continued

BOOK 2134 PAGE 664

TOGETHER with all fixtures and articles of personal property, now or hereafter attached to or used in connection with the premises, all of which are covered by this mortgage.

TOGETHER with any and all awards which have heretofore been made or may hereafter be made by any authority to the then owner of the above described premises for any reason whatsoever, which said awards are hereby assigned to the mortgagee, with full power to collect and receive the proceeds thereof and give acquittance therefor, and to apply the same toward the amount then owing on account of this mortgage and the bond, note or obligation accompanying the same.

This mortgage is a purchase money mortgage given in security of the above mentioned sum which the mortgagee herein has advanced on account of the purchase price of the heretofore described premises, the deed of which is intended to be recorded simultaneously with this mortgage, and which deed is being delivered to the mortgagee herein by JANROB CONSTRUCTION CO.

AND the MORTGAGOR further covenants with the MORTGAGEE as follows:—

1. That the mortgagee will pay the indebtedness as herein and in the accompanying bond, note or obligation provided.
2. That no buildings, fixtures, chattels or articles of personal property covered by this mortgage shall be altered, removed or demolished without the prior written consent of the mortgagee. That the mortgagee will maintain the premises and all improvements now or hereafter created thereon in a reasonable and tenable condition and in a state of good and substantial repair, will not suffer or permit any waste, and will promptly comply with all the requirements of the Federal, State and Municipal Governments, or of any departments or boards thereof having jurisdiction; and, if the mortgagee shall neglect to do so, the mortgagee, at its option may enter upon said premises from time to time in order to establish such reasonable and tenable condition, to repair and keep said premises in repair, and to comply with such governmental requirements, without thereby becoming liable to the mortgagee, or to any person holding or in possession through the mortgagee, and, in such event, the mortgagee may pay for any and all of the foregoing, including all necessary expenses incident thereto, all as specified in Article 4 hereof.
3. That neither the value of the mortgaged premises nor the lien of this mortgage will be diminished or impaired in any way by any act or omission of the mortgagee and that said mortgagee will not do or permit to be done to, in, upon or about said premises or any part thereof, anything that may in any wise substantially impair the value thereof, or substantially weaken, diminish or impair the security of this mortgage. This covenant shall run with the land and bind the mortgagee, its heirs and all subsequent owners of said premises.
4. That upon any default by the mortgagee in the compliance with, or performance of, any of the terms, covenants, or conditions of this mortgage or of the bond, note or obligation secured hereby, the mortgagee may at its option remedy such default, and that all payments made by the mortgagee to remedy a default by the mortgagee as aforesaid (including reasonable attorneys' fees for collections, foreclosures, or other reasons) and the total of any payment or payments due from the mortgagee in the mortgage and in default, together with interest thereon at the rate stipulated in the accompanying mortgage bond, note or obligation shall be and the interest thereon shall be a lien on the premises, prior to any other lien attaching or securing subsequent to the lien of this mortgage.
5. That if any action or proceeding be commenced by any person other than the mortgagee, to which action or proceeding the mortgagee is or may be made a party, or in which it becomes necessary to defend or uphold the lien of this mortgage or the bond, note or obligation which it is given to secure, all sums paid by the mortgagee for the expense of any such litigation to prosecute or defend the right and lien created by this mortgage or the bond, note or obligation which it is given to secure (including reasonable counsel fees) shall be added to the debt secured by this mortgage, be repaid to the mortgagee with interest and be secured all as specified in Article 4 hereof.
6. That the mortgagee or any subsequent owner of the premises, within six (6) days upon request in person, or within ten (10) days upon request by mail, will furnish to the mortgagee or to the then holder of this mortgage a written statement, duly acknowledged, certifying the amount then due on this mortgage.
7. That any notice, demand, or request may be made in writing and may be served upon the mortgagee or upon any other signatory to the bond, note or obligation secured hereby, or upon any subsequent owner of the premises, in person or by mail, in the latter case by depositing same in any post-office or letter box, enclosed in a sealed post-paid envelope, addressed and directed to such party at the mortgaged premises or at the last address of such party actually furnished to the holder of this mortgage; in either of which event such notice, demand or request shall be sufficient in any case arising under this instrument.
8. That the mortgagee warrants the title to the premises, and will execute any further assurance of title thereto and that this mortgage is, and will be maintained as a valid first lien on the premises.
9. That in case of sale under foreclosure the premises may be sold in one parcel.
10. That the mortgagee will not assign, absolutely, conditionally or otherwise, the rents or any part of the rents of the mortgaged premises without first obtaining the written consent of the mortgagee to such assignment.
11. That upon a default under this mortgage or under the bond, note or obligation secured hereby, the mortgagee may prosecute and pay for tax, assessment and water rate searches of the premises and the cost thereof shall be added to the debt secured by this mortgage, be repaid to the mortgagee with interest and be secured, all as specified in Article 4 hereof.
12. That the mortgagee shall comply with all lien laws of the State in which the premises are located and receive the proceeds secured by this mortgage, and will hold the right to receive such proceeds as a trust fund to be applied first for the purpose of paying the cost of any improvements heretofore made or now being made in and under the premises hereby mortgaged and will apply the same first to the payment of the cost of the improvements before using any part of the total of the same for any other purpose.

## Exhibit 44 - Title Commitment - Continued

13. That after any default hereunder or under the accompanying bond, note or obligation, the mortgagee or any subsequent owner shall upon demand, surrender possession of the premises to the holder of this mortgage, and the holder of this mortgage may enter upon the premises and let the same and collect all the rents therefrom which are due, or to become due, and apply the same, after payment of all charges and expenses on account of the indebtedness hereby secured; and the said rents and all the leases existing at the time of such default, in the event of any such default, are hereby assigned to the holder of this mortgage as further security for the payment of said indebtedness. The holder of this mortgage may also, in the event of any such default, in the event that the mortgagee or any subsequent owner of said premises occupies the same, the mortgagee agrees for himself and for each owner to surrender possession of the premises to the holder of this mortgage immediately upon the default hereunder and if such mortgagee or subsequent owner remains in possession after any default, the mortgagee shall be an agent of the holder of this mortgage and the mortgagee or such subsequent owner agrees to pay in advance upon demand to the holder of this mortgage as a reasonable monthly rental for the premises an amount at least equivalent to one-twelfth (1/12) of the aggregate of the twelve monthly installments payable in the then current year, plus the actual amount of the annual taxes, assessments, water rates, and insurance premiums for such year not covered by the aforesaid monthly payments, and in default of so doing such mortgagee or subsequent owner may also be discontinued by the usual summary proceedings. This covenant shall become effective immediately after the happening of any such default, solely on the determination of the then holder of this mortgage, who shall give notice of such determination to the mortgagee or subsequent owner of the mortgaged premises. In case of foreclosure and the appointment of a receiver of the rents, this covenant shall inure to the benefit of such receiver.
14. That the holder of this mortgage in any action to foreclose it, shall be entitled to the appointment of a receiver without notice as a matter of right and without regard to the value of the mortgaged premises, or the solvency or insolvency of any person or persons liable for the payment of the mortgage obligations.
15. That in the event default be made by the mortgagee under this mortgage or under the bond, note or obligation which it secures, interest on the debt secured thereby, during such default, at the option of the mortgagee, shall be at the rate of six per centum (6%) per annum, nothing herein or in said bond, note or obligation contained to the contrary notwithstanding.
16. The whole of the said principal sum and of any other sums of money secured by this mortgage shall, at the option of the mortgagee, become due and payable upon the failure of the mortgagee to perform or comply with any covenant, agreement, term, or condition of this mortgage or of the bond, note or obligation secured hereby in accordance with the terms hereof and thereof, irrespective of whether or not the same be remedied by the mortgagee.
17. That the mortgagee will give immediate notice in writing to the mortgagee of any transfer, conveyance, devolution of title by law or other change in the ownership of the premises. In the event of any such change of ownership, the mortgagee, without notice, may deal with such successor or successors in interest with reference to this mortgage and the debt hereby secured in the same manner as with the mortgagee without in any way affecting or discharging the liability of the mortgagee hereunder or any other party liable to the bond, note or obligation secured hereby, or any person who has become subsequently obligated, by reason of the assumption in whole or in part of the debt secured hereby.
18. That all the terms, conditions, agreements and covenants contained in the bond, note or obligation accompanying this mortgage, and executed and delivered simultaneously herewith, and for the payment of which this mortgage is executed and delivered as collateral security, are made a part of this mortgage, notwithstanding that the same are not specifically and at length herein set forth.
19. That the exercise by the mortgagee of any of its rights hereunder or under the accompanying bond, note or obligation or of any of its options under the terms or covenants contained herein or therein shall not preclude or prejudice the mortgagee from thereafter exercising the same or any other right it may have under this mortgage or said bond, note or obligation, irrespective of any previous action or proceeding taken by the mortgagee hereunder or thereunder.
20. The mortgagee covenants and agrees that he will not claim credit for the principal indebtedness hereby evidenced, or on the interest payable thereon for the amount of taxes levied against the mortgaged premises, or claim deduction from the taxable value of such premises by reason of this mortgage debt.

Wherever the word "mortgagee" is used it shall be held to mean "mortgagee" when this instrument is executed by more than one person.

IN WITNESS WHEREOF, this mortgage has been duly executed by the mortgagee, the day and year first above written.

ATTEST:

*William Feldman*  
WILLIAM FELDMAN L. S.

XXXXXXXXXXXX


*Pearl Feldman*  
PEARL FELDMAN, his wife L. S.

IN THE PRESENCE OF

*Ernest Libovitz*  
ERNEST LIBOVITZ L. S.

EX-2134 685

Exhibit 44 - Title Commitment - Continued

STATE OF NEW JERSEY COUNTY OF UNION		BOOK 2134 PAGE 666	
Be it Remembered, That on this 20th day of December			
In the year One Thousand Nine Hundred and Sixty-Eight, before me, the subscriber, personally appeared William Feldman and Pearl Feldman, his wife,			
who, I am satisfied, are the mortgagors mentioned in the within instrument and thereupon acknowledged that they acknowledged that they signed, sealed and delivered the same as their act and deed, for the uses and purposes therein expressed.			
		 ERNEST LEBOWITZ AN ATTORNEY AT LAW OF NEW JERSEY	
STATE OF NEW JERSEY COUNTY OF		Be it Remembered, That on this day of	
In the year One Thousand Nine Hundred and personally appeared before me, the subscriber,			
the who, I am satisfied, is the person who has signed the within instrument; and I having first made known to him the contents thereof, he thereupon acknowledged that he signed, sealed with the corporate seal and delivered the said instrument as such officer aforesaid; that the within instrument is the voluntary act and deed of said corporation, made by virtue of authority from its Board of Directors.			
<div style="display: flex; justify-content: space-between;"> <div> <p>13589</p> <p>STATE OF NEW JERSEY</p> <p>RECEIVED &amp; RECORDED</p> <p>APPL NO. 58-344</p> <p>LOAN NO. U-28321</p> <p>BOOK 2134 PAGE 666</p> <p>WILLIAM FELDMAN and PEARL FELDMAN, his wife</p> <p>FRANK J. HARRIS, JR. CLERK</p> <p>DEC 31 1968</p> </div> <div> <p>TO</p> <p>NINTH FEDERAL SAVINGS AND LOAN ASSOCIATION OF NEW YORK CITY</p> </div> </div>			
MORTGAGE			
Dated December 20, 19 68 THE LANE AFFIXED BY THE WITHIN INSTRUMENT LIKE IN BLOCK IN SECTION OF THE LAND MAP OF THE COUNTY OF			
Remitted and return to MONSIEUR MARGOLITZ 1219 LIGHTS AVENUE NEW YORK, N. Y.			

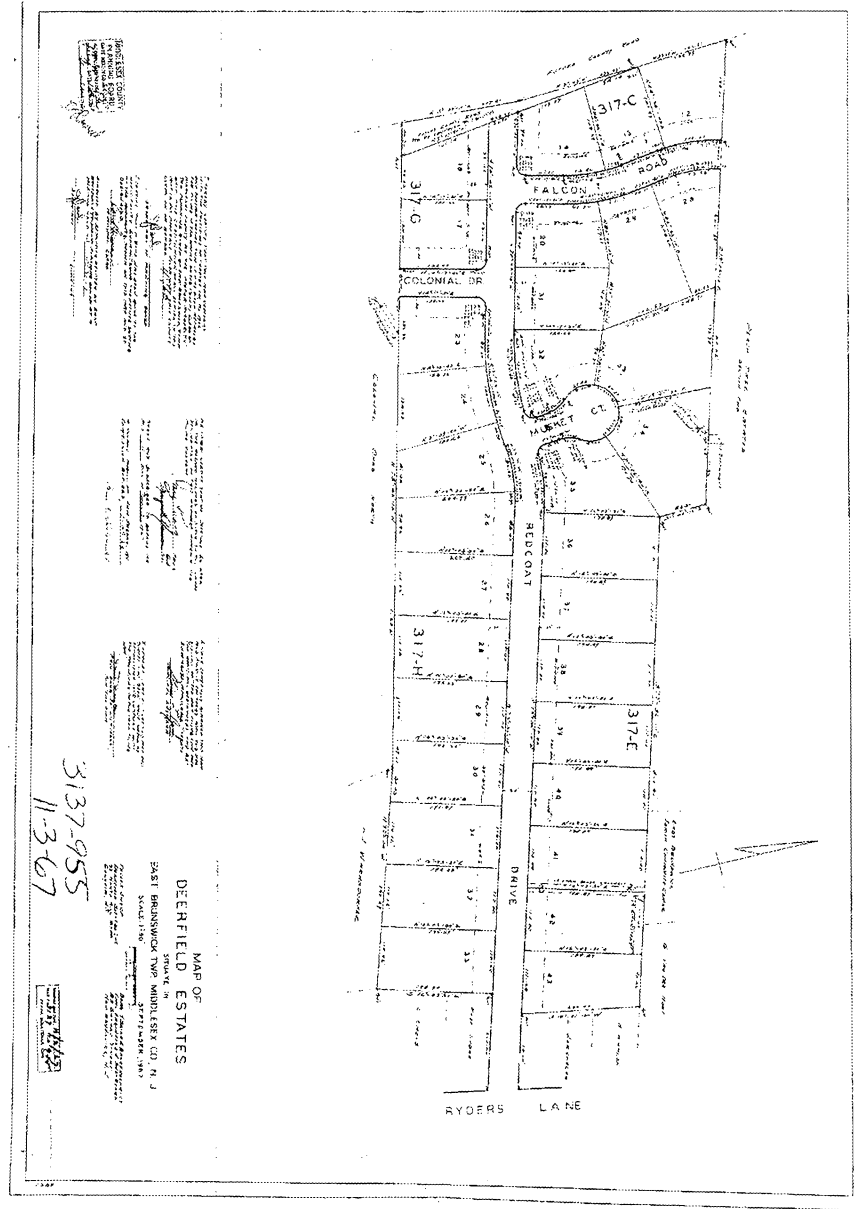


Exhibit 44 - Title Commitment - Continued

2585-878

2585 878

This Indenture, made this 6th day of June, nineteen hundred and sixty-seven, between DEERFIELD ESTATES, INC.,

hereinafter called "Owner", and PUBLIC SERVICE ELECTRIC AND GAS COMPANY, a corporation of the State of New Jersey, having its principal office at 80 Park Place, in the City of Newark, County of Essex, and State of New Jersey, hereinafter called "Gas",

WITNESSETH:

WHEREAS, Gas is desirous of constructing and installing gas mains, pipes, connections, and appurtenances for the conduct of its gas business, in and under the property of Owner in the Township of East Brunswick

County of Middlesex, and State of New Jersey, in the actual or proposed street areas as said street areas are shown on a drawing entitled "PRELIMINARY PLAN 'B' MADE FOR DEERFIELD ESTATES, INC. SITUATE IN EAST BRUNSWICK TWP. - MIDDLESEX CO., N.J. SCALE: 1" = 100' JAN. 1966 REV. JUNE 1966 REV. JULY 1966 REV. OCT. 1966 PREPARED BY BERG, O'BRIEN & BAUERSCHEIT CIVIL ENGINEERS & SURVEYORS 85 HATARD STREET NEW BRUNSWICK, N.J.",

which drawing is attached hereto and hereby made a part hereof.

NOW, THEREFORE, Owner in consideration of the sum of One Dollar (\$1.00) to Owner in hand paid, receipt of which is hereby acknowledged, by these presents do make the following grant to Gas, to wit:

-1-

2585-878

7-667

Exhibit 44 - Title Commitment - Continued

FIRST: Owner hereby grants to Gas the right, privilege, authority, and easement to construct, install, reconstruct, maintain, operate, inspect, repair, remove, and replace gas mains, pipes, connections and appurtenances in and under the property of Owner as aforesaid for the transmission and distribution of gas in the conduct of its business. Said gas facilities shall be constructed in the actual or proposed street areas

said construction and installation not to interfere, however, with any utility or other structures already in place.

SECOND: Owner hereby grants to Gas the right of access to said property at any time and without notice as far as may be necessary for any of the purposes aforesaid.

THIRD: No buildings or structures of any kind whatsoever shall be erected on, in, or above the aforesaid street areas wherein Gas installs and maintains any of its pipes, mains, connections or appurtenances, to the end that Gas shall at all times have ready access to any of its aforesaid facilities as may be necessary for any of the purposes aforesaid, and this covenant is to run with the land.

FOURTH: Gas covenants with Owner that after the installation of the aforesaid mains, pipes, connections and appurtenances, and after each subsequent disturbance of any of the lands wherein they are installed and maintained for any of the purposes aforesaid, Gas at its own cost and expense will restore the surface of the lands as nearly as possible to the condition in which it was immediately prior to the doing of the work.

FIFTH: If Public Service shall cease to use or shall not use the aforesaid property for a period of one year for the aforesaid mains, pipes, connections, and appurtenances, then the easement herein granted shall terminate and all interest of Public Service in the said property shall cease.

SIXTH: By the acceptance of this indenture Gas agrees to abide by the terms and conditions herein on its part to be performed and shall be deemed a signatory hereto.

Exhibit 44 - Title Commitment - Continued

BOOK 2585 PAGE 880

The provisions of this agreement shall inure to the benefit of and be obligatory upon the respective parties hereto and their successors and assigns.

IN WITNESS WHEREOF, Owner has signed, sealed and delivered these presents the day and year first above written.

DEERFIELD ESTATES, INC.

By: *Daniel Picaro*  
President  
DANIEL PICARO

*John Picaro*  
Secretary  
JOHN PICARO

DEERFIELD ESTATES, INC.  
INCORPORATED IN THE STATE OF ILLINOIS  
JAN 1 1980

-3-


NO PAGE TO BE PRINTED

Exhibit 44 - Title Commitment - Continued

STATE OF NEW JERSEY  
COUNTY OF MIDDLESEX

BE IT REMEMBERED, that on this 6th day of June, nineteen hundred and sixty-seven, before me the subscriber, an Attorney at Law of the State of New Jersey, personally appeared Daniel Picaro, who, I am satisfied, is the President of DEERFIELD ESTATES, INC.

the corporation named in and which executed the foregoing instrument, and is the person who signed the said instrument as such officer for and on behalf of such corporation and he acknowledged that said instrument was made by such corporation and sealed with its corporate seal as the voluntary act and deed of such corporation by virtue of authority from its Board of Directors.

  
Carmelo R. Maria  
Attorney at Law of New Jersey

BOOK 2585 PAGE 881

Exhibit 44 - Title Commitment - Continued

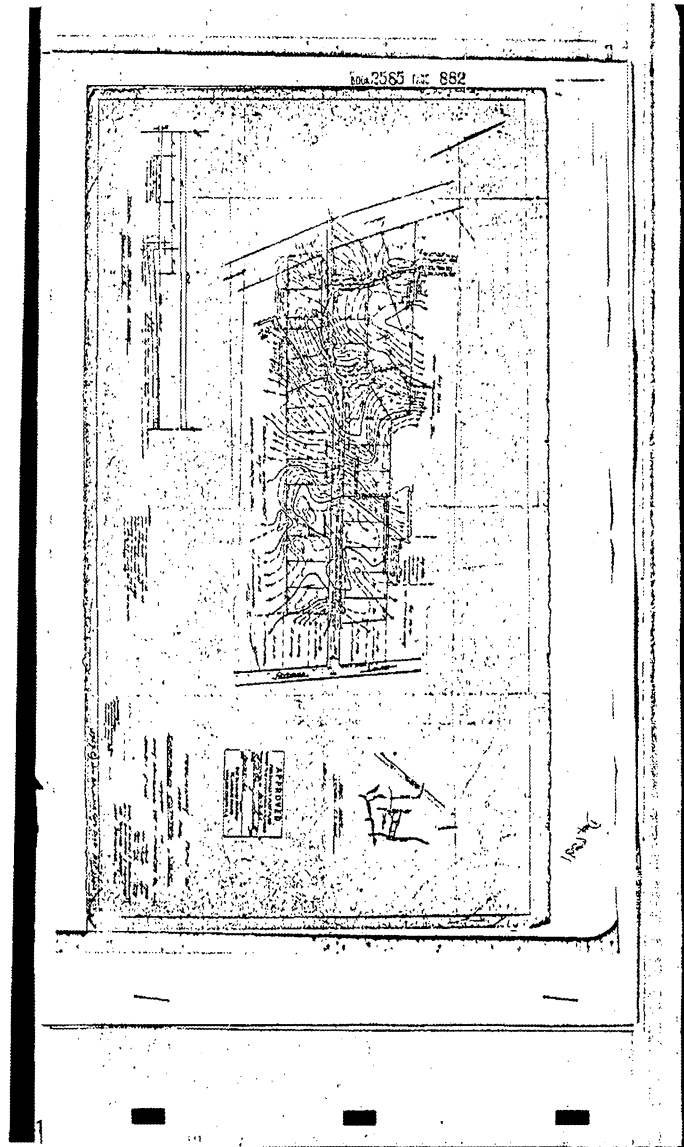


Exhibit 44 - Title Commitment - Continued

6291 INDENTURE	DEERFIELD ESTATES, INC.
TO	PUBLIC SERVICE ELECTRIC AND GAS COMPANY
DATE June 6, 1957	

RECEIVED & RECORDED  
MIDDLESEX COUNTY, N.J.  
JUL 6 AM 9:21  
BOOK 2565 PAGE 883  
FRANK SCHATZMAN  
CLERK

Page 2 of 2  
Manager - Real Estate Department  
Public Service Terminal  
80 Park Place, Newark, N.J. 07102

BOOK 2565 PAGE 883

Exhibit 44 - Title Commitment - Continued

Rec'd 8-1-67

THIS INDENTURE, made this 27 day of  
August, Nineteen hundred and sixty-seven (1967),  
between DEERFIELD ESTATES, INC., a corporation having its  
office at 32 Northhill Road, Colonia, New Jersey, hereinafter  
called "Owner," PUBLIC SERVICE ELECTRIC AND GAS COMPANY, a  
corporation having its office at 80 Park Place, Newark, New  
Jersey, hereinafter called "Electric," and NEW JERSEY BELL  
TELEPHONE COMPANY, a corporation having its office at 540  
Broad Street, Newark, New Jersey, hereinafter called "Tele-  
phone,"

WITNESSETH:

WHEREAS, Owner has requested Electric and Telephone  
to supply electric and telephone services to Owner's property  
situate in the Township of East Brunswick, Middlesex County,  
New Jersey, as delineated or shown on drawing number DNB-22-  
1583, hereto attached, and has agreed for that purpose to  
grant to Electric and Telephone, severally and jointly, eas-  
ements for the installation of their respective utility  
facilities;

NOW, THEREFORE, Owner, Electric, and Telephone by  
these presents do covenant and agree, for the benefit of them  
as follows:

FIRST: Owner grants to Electric and Telephone,  
jointly and severally, the right, privilege, authority, and  
easement to install, maintain, operate, repair, reconstruct,  
and replace their respective utility facilities in the area  
designated utility easement on drawing number DNB-22-1583,  
hereto attached and hereby made a part hereof.

SECOND: Owner also grants to Electric and Telephone,  
jointly and severally, the right to install, maintain, operate,  
repair, reconstruct, and replace under and across any of the  
areas designated on the attached drawing as proposed roadways

RECEIVED  
2588 965 2568 m2 965 '8-1-67

Rec'd 8-1-67

Exhibit 44 - Title Commitment - Continued

BOOK 2588 PAGE 966

whatever conduits, cables, wires or other facilities are necessary to install the utility facilities mentioned in paragraph First hereof, the location of such crossings to be determined by Electric or Telephone, as the case may be.

THIRD: Owner also grants to Electric and Telephone, jointly and severally, the right to install, maintain, operate, repair, reconstruct, and replace whatever conduits, cables, wires, or other facilities are necessary to connect the utility facilities mentioned in paragraph First hereof with houses erected on the lots shown on the attached drawing, the location of such connections to be determined by Electric or Telephone, as the case may be, to afford proper service, depending upon the location of the houses erected and the soil conditions encountered.

FOURTH: Owner also grants to Electric the right to install, maintain, operate, repair, reconstruct, and replace whatever street lighting poles, conduits, cables, wires or other facilities necessary to connect the utility facilities mentioned in paragraph First hereof to supply future street lighting service in the area as shown on the attached drawing, the location of such connections to be determined by Electric.

FIFTH: Owner grants to Electric and Telephone, and to each of them, the right of access to said property at any time without notice to inspect, maintain, replace or repair any or all of their utility facilities.

SIXTH: Owner agrees that no fences, trees, shrubbery, post, or other objects or structures shall be placed within said easement area so that said area shall be kept free for the aforesaid uses and purposes herein granted.

SEVENTH: Electric and Telephone covenant and agree that when either of them shall open or disturb the surface

RECORDED

Exhibit 44 - Title Commitment - Continued

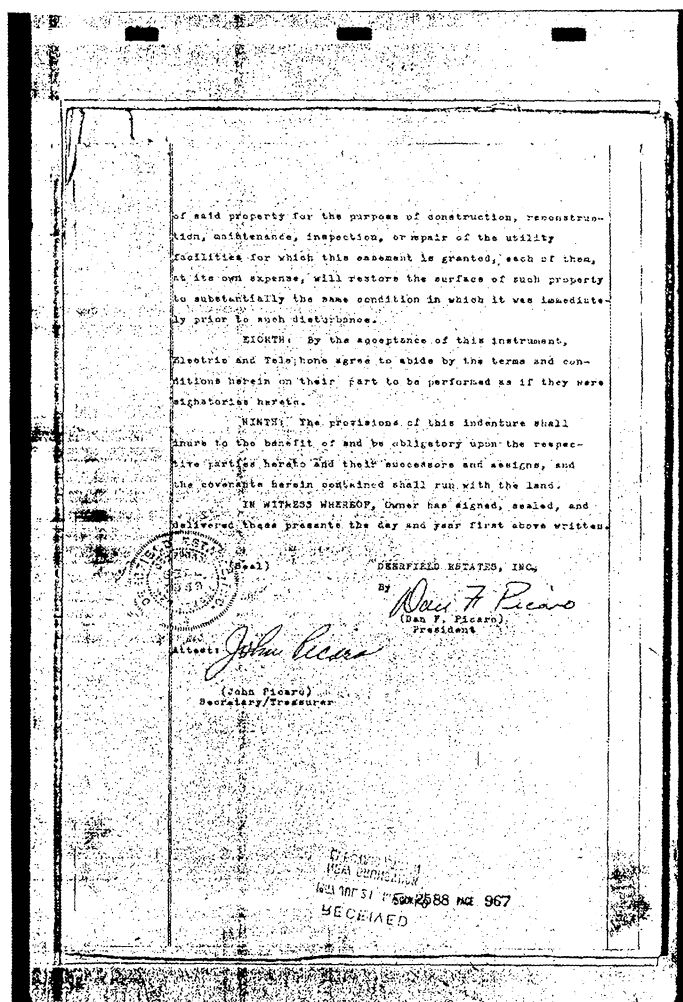


Exhibit 44 - Title Commitment - Continued

BOOK 2568 PAGE 968

(STATE OF NEW JERSEY )  
COUNTY OF MIDDLESEX ) SS.

BE IT REMEMBERED, that on this 27 day of July, nineteen hundred and sixty-seven, before me, a Notary Public of New Jersey, personally appeared Dan F. Picore, who, I am satisfied, is President of DEERFIELD ESTATES, INC., the corporation named in and which executed the foregoing instrument, and is the person who signed said instrument as such officer for and on behalf of said corporation, and he did acknowledge that said instrument was made by said corporation and sealed with its corporate seal as the voluntary act and deed of said corporation, by virtue of authority from its Board of Directors.

*Margaret O. Schuman*  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires May 18, 1974

RECORDED

Exhibit 44 - Title Commitment - Continued

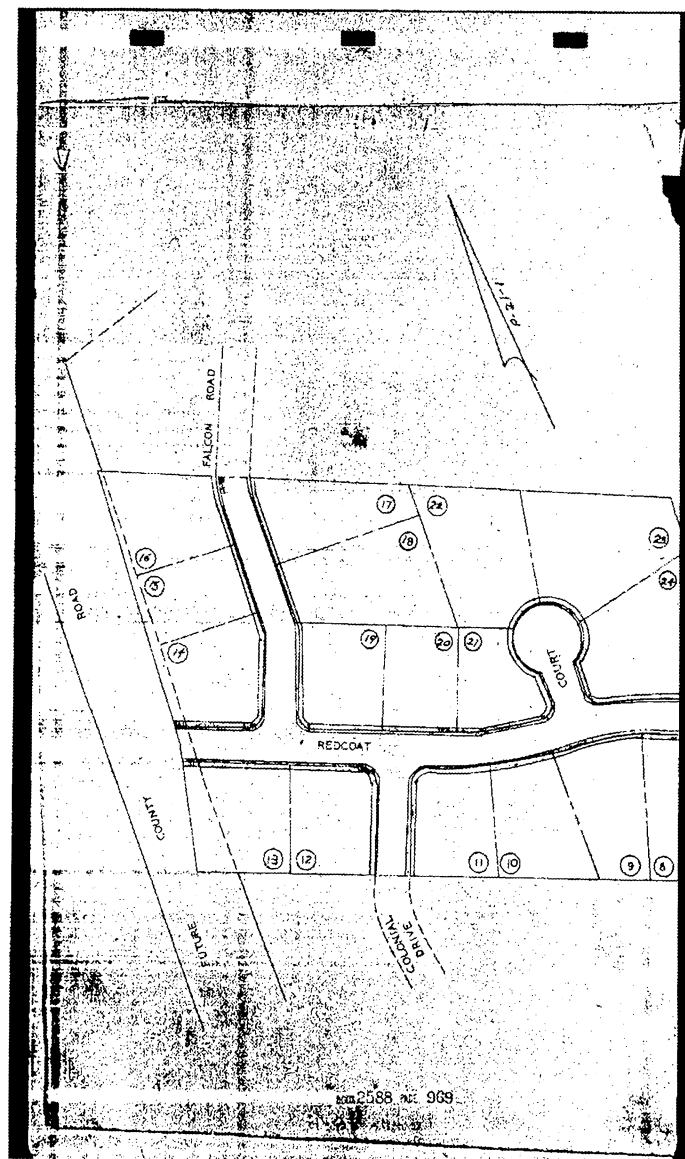


Exhibit 44 - Title Commitment - Continued

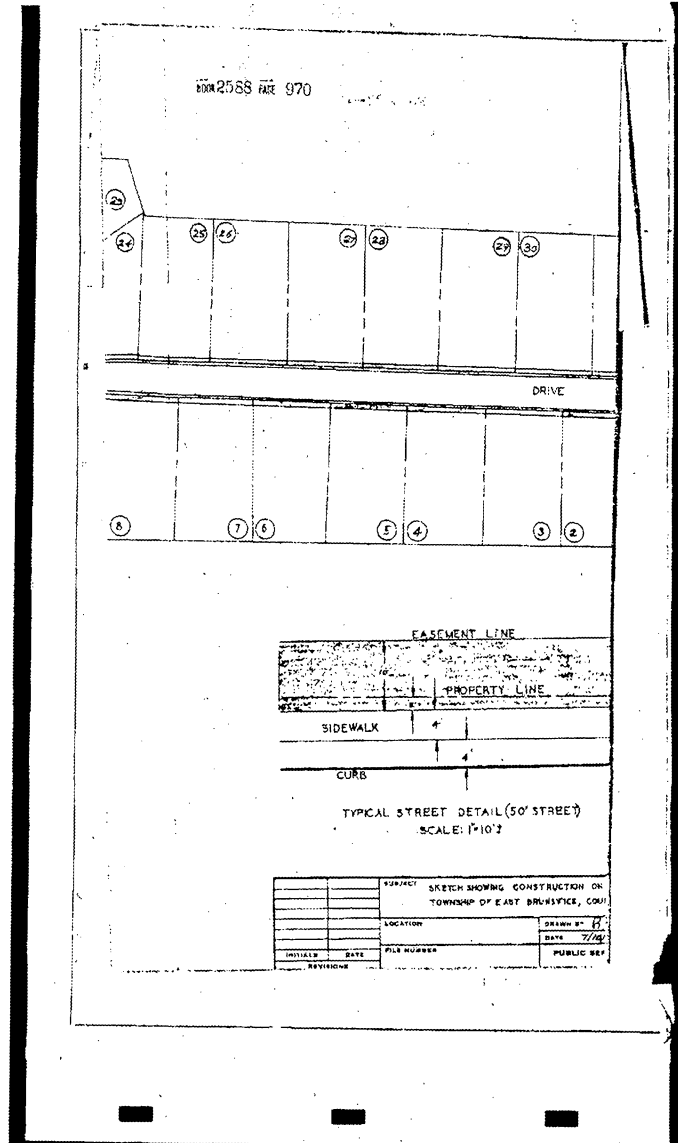
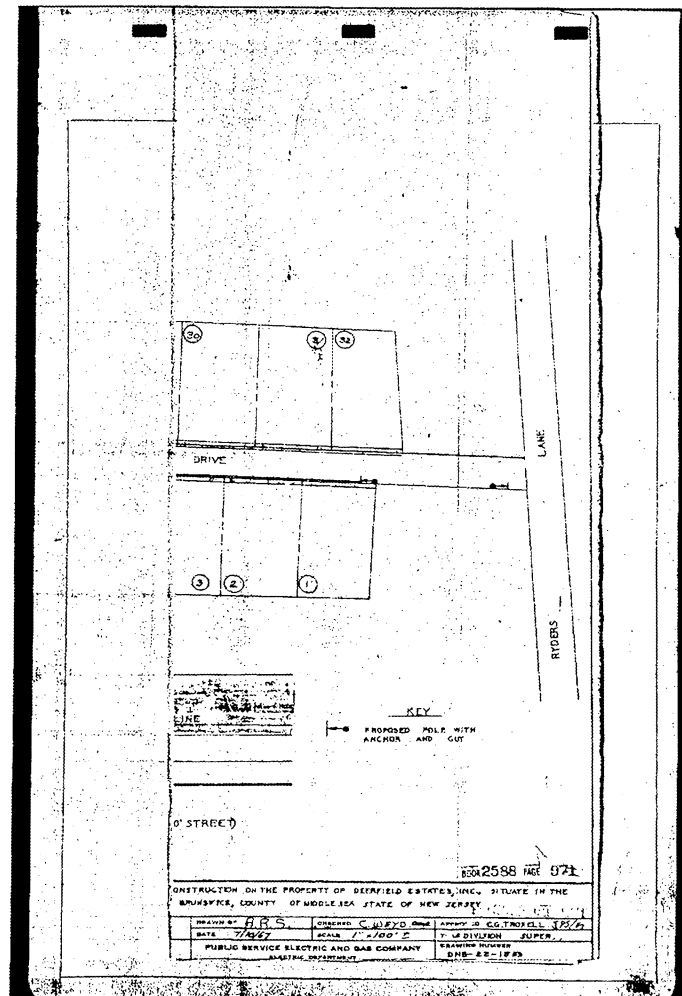


Exhibit 44 - Title Commitment - Continued



[illegible]

Exhibit 44 - Title Commitment - Continued

THIS INDENTURE, made this 19th day of December, nineteen hundred and seventy-seven (1977), between J.P.P. LTD, a corporation of the State of New Jersey, having offices at 137 Fern Road, East Brunswick, New Jersey, hereinafter called "Owner", PUBLIC SERVICE ELECTRIC AND GAS COMPANY, a corporation of the State of New Jersey, having its principal office at 80 Park Place, Newark, New Jersey, hereinafter called "Electric" and NEW JERSEY BELL TELEPHONE COMPANY, a corporation of the State of New Jersey, having its principal office at 540 Broad Street, Newark, New Jersey, hereinafter called "Telephone",

W I T N E S S E T H :

WHEREAS, Owner has requested Electric and Telephone to supply electric and telephone services to Owner's property, situate in the Township of East Brunswick, Middlesex County, New Jersey, as delineated or shown on drawing number DNB-RW-3024, hereto attached and has agreed for that purpose to grant to Electric and Telephone, severally and jointly, easements for the installation of their respective utility facilities.

NOW, THEREFORE, Owner for and in consideration of the sum of One Dollar (\$1.00), lawful money of the United States of America to it in hand paid by Electric and Telephone, the receipt whereof is hereby acknowledged, and in consideration of the premises, the covenants and conditions hereinafter contained, by these presents do covenant and agree as follows:

FIRST: Owner grants to Electric and Telephone, jointly and severally, the right, privilege, authority and easement in perpetuity to install, maintain, operate, repair, reconstruct and replace their respective utility facilities in the area designated "Easement Area", as shown on drawing DNB-RW-3024, hereto attached and hereby made a part hereof.

3015-97  
3015 97

1-18-78

Exhibit 44 - Title Commitment - Continued

EX-38915-1-1 93

SECOND: Owner grants to Electric and Telephone, jointly and severally, the right to install, maintain, operate, repair, reconstruct and replace under and across any of the areas designated on the attached drawing as proposed roadways whatever conduits, cables, wires or other facilities are necessary to install the utility facilities mentioned in Paragraph First hereof, the location of such crossings to be determined by Electric or Telephone, as the case may be.

THIRD: Owner grants to Electric and Telephone, jointly and severally, the right to install, maintain, operate, repair, reconstruct and replace whatever conduits, cables, wires or other facilities are necessary to connect the utility facilities mentioned in Paragraph First hereof with buildings erected on the lots shown on the attached drawing, the location of such connections to be determined by Electric or Telephone, as the case may be, to afford proper service, depending upon the location of the buildings erected and the soil conditions encountered.

FOURTH: Owner grants to Electric the right to install, maintain, operate, repair, reconstruct and replace whatever street lighting poles, conduits, cables, wires or other facilities necessary to connect the utility facilities mentioned in Paragraph First hereof to supply future street lighting service in the area as shown on the attached drawing, the location of such connections to be determined by Electric.

FIFTH: Owner grants to Electric and Telephone, and to each of them, the right of access to said property at any time without prior notice to inspect, maintain, replace, or repair any or all of their utility facilities.

SIXTH: Owner agrees that no fences, trees, shrubbery, posts, or other objects or structures shall be placed within said utility easement area so that said area shall be kept free for the aforesaid uses and purposes herein granted.

Exhibit 44 - Title Commitment - Continued

SEVENTH: Owner agrees that after any of the facilities covered by this easement are installed, Owner shall not change the grade of the area of easement without first obtaining the written permission of Electric and Telephone.

EIGHTH: Electric and Telephone covenant and agree that when either of them shall open or disturb the surface of said property for the purpose of construction, reconstruction, maintenance, inspection or repair of the utility facilities for which this easement is granted, each of them, at its own expense, will restore the surface of such property to substantially the same condition in which it was immediately prior to such disturbance.

NINTH: By the acceptance of this instrument, Electric and Telephone agree to abide by the terms and conditions herein on their part to be performed as if they were signatories hereto.

TENTH: The provisions of said indenture shall inure to the benefit of and be obligatory upon the respective parties hereto and their successors and assigns, and the covenants herein contained shall run with the land.

IN WITNESS WHEREOF, Owner has duly signed, sealed, and delivered these presents the day and year first above written.

(Seal)

J.P.F. LTD.

by

(Raymond Blomquist)  
Vice President

Witness:


(Twin Seal)  
Secretary

Exhibit 44 - Title Commitment - Continued

RECORDED IN 100

STATE OF NEW JERSEY )  
COUNTY OF MIDDLESEX ) SS.

BE IT REMEMBERED, that on this 19th day of December, nineteen hundred and seventy-seven (1977), before me, a Notary Public of New Jersey, personally appeared Raymond Slomick, who, I am satisfied, is <sup>Vice</sup> President of J.P.P. LTD., the corporation named in and which executed the foregoing instrument, and is the person who signed said instrument as such officer for and on behalf of said corporation, and he did acknowledge that said instrument was made by said corporation and sealed with its corporate seal as the voluntary act and deed of said corporation, by virtue of authority from its Board of Directors. The full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within deed, as such consideration is defined in P.L. 1968, C. 49, Sec. 1 (c), is less than \$100.00.

  
DOROTHY F. CROSS, JR.  
Notary Public of New Jersey  
My Commission Expires 1/1/79

Prepared by: Howard W. Cross, Jr.

# Exhibit 44 - Title Commitment - Continued

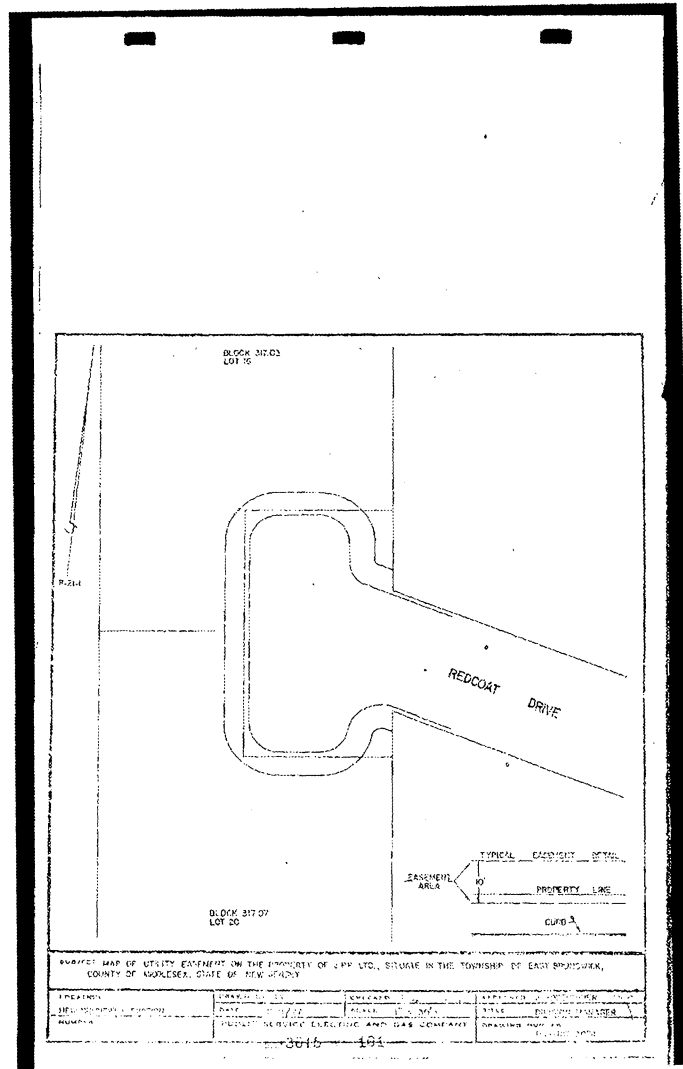


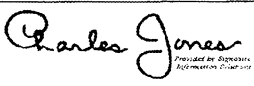
Exhibit 44 - Title Commitment - Continued

RECEIVED & RECORDED  
HUNTERDON COUNTY, N. J.  
78 JUN 18 AM 10:07  
88-3015-97  
FRANK H. HARTMAN  
CLERK

88-3015-97

PLEASE RETURN TO  
PUBLIC SERVICE  
P. O. BOX 190  
NEW BRUNSWICK, NEW JERSEY 08903

## Exhibit 44 - Title Commitment - Continued

DEPARTMENT OF HOMELAND SECURITY FEDERAL EMERGENCY MANAGEMENT AGENCY STANDARD FLOOD HAZARD DETERMINATION *		Adapted from FEMA Form 086-0-32		O.M.B. No. 1660-0040 Expires May 30, 2015	
<b>SECTION I - LOAN INFORMATION</b>					
1. LENDER NAME AND ADDRESS  THE PROPOSED LENDER		2. COLLATERAL (Building/Mobile Home/Personal Property) PROPERTY ADDRESS (Legal Description may be attached) Owner: <del>REDACTED</del> , WILLIAM & PEARL Address Supplied: Address Found: 22 RED COAT DR 22 RED COAT DR EAST BRUNSWICK, NJ 08816 EAST BRUNSWICK NJ 08816 BLOCK: 317.08 BLOCK: 317.08 LOT: 24 LOT: 24 QUALIFIER: QUALIFIER:			
3. LENDER ID. NO.		4. LOAN IDENTIFIER		5. AMOUNT OF FLOOD INSURANCE REQUIRED \$	
<b>SECTION II</b>					
<b>A. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) COMMUNITY JURISDICTION</b>					
1. NFIP Community Name  EAST BRUNSWICK TOWNSHIP		2. County(ies)  MIDDLESEX		3. State  NJ	4. NFIP Community Number  340260
<b>B. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) DATA AFFECTING BUILDING/MOBILE HOME</b>					
1. NFIP Map Number or Community-Panel Number (Community name, if not the same as "A")  34023C 0141 F		2. NFIP Map Panel Effective/ Revised Date  06-JUL-2010		3. LOMA/LOMR <input type="checkbox"/> yes Date	4. Flood Zone  X [C]  5. No NFIP Map
<b>C. FEDERAL FLOOD INSURANCE AVAILABILITY (Check all that apply)</b>					
<input checked="" type="checkbox"/> Federal Flood insurance is available (community participates in NFIP). <input checked="" type="checkbox"/> Regular Program <input type="checkbox"/> Emergency Program of NFIP <input type="checkbox"/> Federal Flood insurance is not available because community is not participating in the NFIP. <input type="checkbox"/> Building/Mobile Home is in a Coastal Barrier Resources Area (CBRA) or Otherwise Protected Area (OPA). Federal Flood insurance may not be available. CBRA/OPA designation date: _____					
<b>D. DETERMINATION</b>					
<b>IS BUILDING/MOBILE HOME IN SPECIAL FLOOD HAZARD AREA (ZONES CONTAINING THE LETTERS "A" OR "V")?</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, flood insurance is required by the Flood Disaster Protection Act of 1973. If no, flood insurance is not required by the Flood Disaster Protection Act of 1973.					
<b>E. COMMENTS (Optional):</b>					
<p>THIS CHARLES JONES DETERMINATION IS CERTIFIED BY SIGNATURE INFORMATION SOLUTIONS LLC TO THE PROPOSED LENDER FOR THE SOLE PURPOSE OF ITS COMPLYING WITH THE FLOOD DISASTER PROTECTION ACT OF 1973. SIGNATURE INFORMATION SOLUTIONS LLC HAS PROVIDED THIS FLOOD DETERMINATION TO BE USED BY THE ENTITY NAMED IN SECTION 1, BOX 1 FOR COMPLIANCE WITH THE 1994 REFORM ACT. IT MAY NOT BE UTILIZED FOR ANY OTHER PURPOSE, INCLUDING, BUT NOT LIMITED TO, PROPERTY PURCHASE CONSIDERATION OR PROPERTY VALUE DETERMINATION.</p> <p>Requested By: Customer Name: CHICAGO TITLE INSURANCE COMPANY  Attention: Address: PLAZA 14 2 UNIVERSITY PLAZA HACKENSACK, NJ 07601-7584  Account: 848536588  Customer Reference: 2013-00326</p>					
This determination is based on examining the NFIP map, any Federal Emergency Management Agency revisions to it, and other information needed to locate the building/mobile home on the NFIP map.					
<b>F. PREPARER'S INFORMATION</b>					
NAME, ADDRESS, TELEPHONE NUMBER (if other than Lender)   Signature Information Solutions LLC P.O. Box 8488 Trenton, NJ 08650-0488 www.charlesjones.com				Date of Determination 05-MAR-2013 Search Number: FL13-064-1021	

**Exhibit 44 - Title Commitment - Continued**

Loan Number:

Order Number: FL13-064-1021

Determination Date: 05-MAR-2013

**NOTICE IS GIVEN TO:** FELDMAN, WILLIAM & PEARL

The Flood Disaster Protection Act of 1973, as amended, requires that Federally regulated lending institutions shall not make, increase, extend, or renew any loan secured by improved real estate, or a mobile home located or to be located, in an area that has been identified by the Director of the Federal Emergency Management Agency (FEMA) as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, through the National Flood Insurance Program (NFIP), unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the Act with respect to the particular type of property, whichever is less.

**NOTICE TO BORROWER ABOUT SPECIAL FLOOD HAZARD AREA STATUS**

☐ Notice of Property in Special Flood Hazard Area (SFHA)

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards. The area has been identified by the Director of FEMA as an SFHA using FEMA's Flood Insurance Rate Map or the Flood Hazard Boundary Map for the following community: EAST BRUNSWICK TOWNSHIP

This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a SFHA is 26 percent (26%). Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in an SFHA. If you would like to make such a request, please contact us for further information.

☒ Notice of Property Not in Special Flood Hazard Area (SFHA)

The building or mobile home described in the attached instrument is not currently located in an area designated by the Director of FEMA as a SFHA. NFIP flood insurance is not required, but may be available. If, during the term of this loan, the subject property is identified as being in a SFHA, as designated by FEMA, you may be required to purchase and maintain flood insurance at your expense.

**NOTICE TO BORROWER ABOUT FEDERAL FLOOD DISASTER ASSISTANCE**

☒ Notice in Participating Communities

The community in which the property securing the loan is located participates in the NFIP. The Flood Disaster Protection Act of 1973, as amended, mandates federally insured or regulated lenders to require the purchase of flood insurance on all buildings being financed that are located in SFHAs of communities participating in the NFIP. The flood insurance must be maintained for the term of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance at your expense.

Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.

At a minimum, flood insurance purchased must cover the lesser of

- (1) the outstanding principal balance of the loan; or
- (2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

☐ Notice in Nonparticipating Communities

Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the nonparticipating community has been identified for at least one year as containing an SFHA, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

Borrower's Signature

Date

Borrower's Signature

Date

Lending Institution

Date

Lending Institution Authorized Signature

Date



### Exhibit 44 - Title Commitment - Continued

Exhibit 44 - Title Commitment - Continued

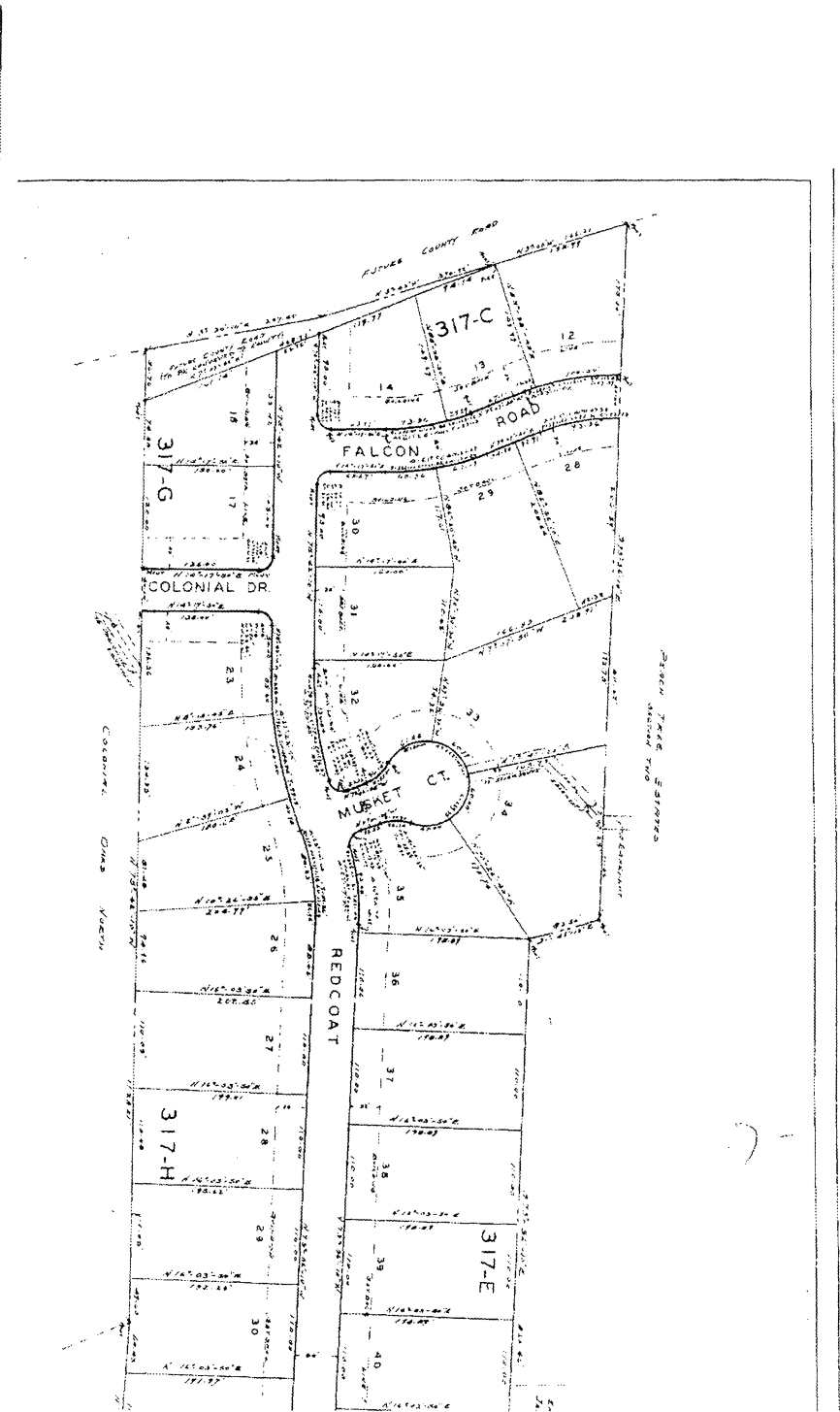






Exhibit 44 - Title Commitment - Continued



Title #: 2013-00326 Order #: MT-064-3930764

NEW JERSEY TAX & ASSESSMENT SEARCH

For: CHICAGO TITLE INSURANCE COMPANY

BLOCK : 317.08	ASSESSED OWNER :	RENNETT, WILLIAM & PEARL
LOT : 24	BILLING ADDRESS :	22 REDCOAT DR EAST BRUNSWICK, NJ 08816-2759
QUAL :	LOT ADDRESS :	22 RED COAT DR
XLOT :	MIDDLESEX :	EAST BRUNSWICK TWP (732) 390-6835
	(MUNI CODE: 1204)	1 JEAN WALLING CIVIC CENTER DR P.O. BOX 1081 EAST BRUNSWICK NJ 08816

WATER ACCOUNT # : EAST BRUNSWICK WATER/SEWER DEPT. 1 JEAN WALLING CIVIC CENTER EAST BRUNSWICK,NJ 08816 732-390-6835 ACCT #: 100045 TO: 11/05/2012 \$123.34 PAID; SUBJECT TO FINAL READING.

Signature Information Solutions LLC guarantees that the above information accurately reflects the contents of the public record as of 03/05/2013

03/05/13

Phone (800) 477-8288 ■ Fax (800) 677-3272 ■ P.O. Box 8488, Trenton, NJ 08650-0488

Exhibit 44 - Title Commitment - Continued

 Charles Jones  
Established 1911

\*\*\*\*\*  
\*\*\* UNITED STATES PATRIOT NAME SEARCH \*\*\*  
\*\*\*\*\*

848-5365-88

RE: 2013-00326

CERTIFIED TO:

CHICAGO TITLE INSURANCE COMPANY  
PLAZA 14  
2 UNIVERSITY PLAZA  
HACKENSACK NJ 07601-7584

SIGNATURE INFORMATION SOLUTIONS LLC HEREBY CERTIFIES THAT IT HAS SEARCHED THE LIST OF SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS MAINTAINED BY THE OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEPARTMENT OF THE TREASURY, PURSUANT TO EXECUTIVE ORDER 13224 AS AMENDED BY EXECUTIVE ORDER 13268, AND REPORTS THE FOLLOWING FINDINGS WITH RESPECT TO THE NAME(S) LISTED BELOW:

	THROUGH
WILLIAM [REDACTED] (Individual)	03-06-2013
PEARL [REDACTED] (Individual)	03-06-2013
VIJAY [REDACTED] (Individual)	03-06-2013
PIERINA [REDACTED] (Individual)	03-06-2013

\*\*\*\*\*  
\*\*\*\*\* CLEAR PATRIOT NAME SEARCH \*\*\*\*\*  
\*\*\*\*\*

NOTE: According to the U.S. Department of Treasury, no U.S. person may deal with any Libyan or Iraqi government official whether their name appears on the list or not.

DATE ISSUED: 03-08-2013

FEES: \$ 8.00  
TAX: \$ 0.00  
TOTAL: \$ 8.00

PA13-067-02324 067 0653067 02

CHARLES JONES SEARCH  
PROVIDED BY  
SIGNATURE INFORMATION SOLUTIONS  
P.O. BOX 8488  
TRENTON, NJ 08650

Exhibit 44 - Title Commitment - Continued

  
Charles Jones  
Provided by Signature  
Information Solutions

HEREBY ISSUED TO: TIDELAND SEARCH CERTIFICATE

ACCOUNT: 848536588

REFERENCE: 2013-00326

CHICAGO TITLE INSURANCE COMPANY  
PLAZA 14  
2 UNIVERSITY PLAZA  
HACKENSACK, NJ 07601-7584

SIGNATURE INFORMATION SOLUTIONS LLC CERTIFIES THAT NO PORTION OF THE PROPERTY HEREINAFTER DESIGNATED IS PRESENTLY CLAIMED BY THE STATE OF NEW JERSEY AS AREA NOW OR FORMERLY BELOW MEAN HIGH WATER AS SHOWN ON THE APPLICABLE TIDELANDS MAP PREPARED BY THE OFFICE OF ENVIRONMENTAL ANALYSIS AND APPROVED BY THE TIDELANDS RESOURCE COUNCIL, SUBJECT TO THE RESERVATIONS WHICH APPEAR ON THE ADOPTED MAP AND OVERLAY.

APPLICABLE TIDELANDS MAP

TIDELANDS MAP NUMBER: NO MAP

TIDELANDS MAP DATE:

DESIGNATED PROPERTY

COUNTY: MIDDLESEX

STATE: NEW JERSEY

MUNICIPALITY: TOWNSHIP OF EAST BRUNSWICK

BLOCK: 317.08

LOT: 24

STREET NUMBER & NAME: 22 RED COAT DR

AS SHOWN ON TAX MAP DATED OR LAST REVISED ON: 01-JAN-2008

SEARCH RESULTS:

FINDINGS: UNCLAIMED

DATED: 05-MAR-2013

FEE: \$30.00

TAX: \$.00

TOTAL: \$30.00

Signature Information Solutions LLC  
has executed this certificate.

TD13-064-1022

Exhibit 44 - Title Commitment - Continued

  
Established 1911

CERTIFICATE OF CONTINUATION  
OF  
UPPER COURT SEARCH

848-5365-88

RE: 2013-00326

CERTIFIED TO:

CHICAGO TITLE INSURANCE COMPANY  
PLAZA 14  
2 UNIVERSITY PLAZA  
HACKENSACK NJ 07601-7584

SIGNATURE INFORMATION SOLUTIONS LLC HEREBY CERTIFIES THAT IT HAS SEARCHED THE INDEX OF THE CIVIL JUDGMENT AND ORDER DOCKET OF THE SUPERIOR COURT OF NEW JERSEY, THE INDEX OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, AND THE INDEX OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY AND DOES NOT FIND REMAINING UNSATISFIED OF RECORD IN ANY OF THESE COURTS A JUDGMENT OR OTHER DOCKETED RECORD REFERRED TO BY THE RESPECTIVE INDICES WHICH CONSTITUTES A GENERAL LIEN ON REAL PROPERTY IN NEW JERSEY, NOR ANY CERCLA LIEN ON SPECIFIC REAL PROPERTY WITHIN NEW JERSEY NOR ANY PETITION COMMENCING PROCEEDINGS IN BANKRUPTCY EXCEPT AS BELOW SET FORTH AGAINST:

	FROM	TO
WILLIAM [REDACTED] *** Name is CLEAR ***	03-05-2013	05-22-2013
PEARL [REDACTED] *** Name is CLEAR ***	03-05-2013	05-22-2013
VIJAY [REDACTED] *** Name is CLEAR ***	03-05-2013	05-22-2013
PIERINA [REDACTED] *** Name is CLEAR ***	03-05-2013	05-22-2013

DATED 05-22-2013  
TIME 08:45 AM

FEES: NO CHARGE

RC13-144-01470 144 0554144 02

CHARLES JONES SEARCH  
PROVIDED BY  
SIGNATURE INFORMATION SOLUTIONS  
P.O. BOX 8488  
TRENTON, NJ 08650

Exhibit 44 - Title Commitment - Continued

  
Established 1911

NEW JERSEY SUPERIOR COURT,  
UNITED STATES DISTRICT COURT AND  
UNITED STATES BANKRUPTCY COURT

848-5365-88

RE: 2013-00326

CERTIFIED TO:

CHICAGO TITLE INSURANCE COMPANY  
PLAZA 14  
2 UNIVERSITY PLAZA  
HACKENSACK NJ 07601-7584

SIGNATURE INFORMATION SOLUTIONS LLC HEREBY CERTIFIES THAT IT HAS SEARCHED THE INDEX OF THE CIVIL JUDGMENT AND ORDER DOCKET OF THE SUPERIOR COURT OF NEW JERSEY, THE INDEX OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, AND THE INDEX OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY AND DOES NOT FIND REMAINING UNSATISFIED OF RECORD IN ANY OF THESE COURTS A JUDGMENT OR OTHER DOCKETED RECORD REFERRED TO BY THE RESPECTIVE INDICES WHICH CONSTITUTES A GENERAL LIEN ON REAL PROPERTY IN NEW JERSEY, NOR ANY CERCLA LIEN ON SPECIFIC REAL PROPERTY WITHIN NEW JERSEY NOR ANY PETITION COMMENCING PROCEEDINGS IN BANKRUPTCY EXCEPT AS BELOW SET FORTH AGAINST:

	FROM	TO
WILLIAM F. [REDACTED] *** With Judgments ***	03-06-1993	03-06-2013
PEARL [REDACTED] *** Name is CLEAR ***	03-06-1993	03-06-2013
VIJAY [REDACTED] *** Name is CLEAR ***	03-06-1993	03-06-2013
PIERINA [REDACTED] *** Name is CLEAR ***	03-06-1993	03-06-2013

(SEE ATTACHED 1 PAGE)

DATED 03-06-2013  
TIME 08:45 AM

FEES: \$ 40.00  
TAX: \$ 0.00  
TOTAL: \$ 40.00

RN13-067-02323 067 0654067 02

CHARLES JONES SEARCH  
PROVIDED BY  
SIGNATURE INFORMATION SOLUTIONS  
P.O. BOX 8488  
TRENTON, NJ 08650

Exhibit 44 - Title Commitment - Continued

RN13-067-02323  
848-5365-88

RE: 2013-00326

1

1.

INIT

UNITED STATES BANKRUPTCY COURT  
BANKRUPTCY NUMBER: BK-030381-1997  
PETITION FILED: 01/14/97  
ORDER FOR RELIEF: 01/14/97  
IN THE MATTER OF:

VOLUNTARY  
CHAPTER: 07

WILLIAM Z. [REDACTED] SSN#:XXX-XX-5907  
43 PARTCH PL, EDISON, NJ 08817  
ATTORNEY: PHILIP SHORE-

TRUSTEE: JOHN BRACAGLIA

DISCHARGE OF BANKRUPT: 04/25/97

FINAL DECREE: 05/30/97  
WILLIAM Z. [REDACTED]

\*\*\* End of Abstract \*\*\*

Charles Jones

**EXHIBIT 45 - TITLE COMPANY TRANSMITTAL LETTER**



Christopher M. Carton  
Richard A. Carton  
J. Gerard Carton, Jr.  
Andrew P. Carton  
John N. Conforti  
John J. McDonough

October 5, 20

Christine F. Li, Esquire  
Greenbaum, Rowe, Smith & Davis, LLP  
Metro Corporate Campus 1  
P.O. Box 5600  
Woodbridge, NJ 07095

**Re:** Title No. TA-

2111 Court  
Wall, NJ 07719

Dear

Enclosed please find the original and one copy of our TRANSNATION TITLE NSURANCE COMPANY Commitment bearing the above captioned number, together with Flood Search and our invoice for same.

For your convenience, we are also enclosing herewith a prepared Notice of Settlement form which you may wish to file prior to closing.

A prepared Mortgage Payoff Request Letter is also included herewith for each Mortgage shown on Schedule B, Section II of the enclosed title commitment.

Thanking you, I remain

Very truly yours,

Richard A. Carton

RAC/m

cc: , Esquire

Exhibit 45 - Title Company Transmittal Letter - Continued

---

**“ NOTICE OF SETTLEMENT ”**

---

**TITLE NO.** TA-108659

**NAME(S) and ADDRESS(ES)**

Matthew A. \_\_\_\_\_ and Patricia L. \_\_\_\_\_, husband and wife  
2111 Princeton Court  
Wall, NJ 07719

**SELLER(S)**

-AND-

**NAME(S) and ADDRESS(ES)**

(about to reside at) Kevin T. \_\_\_\_\_ single  
2111 Princeton Court  
Wall, NJ 07719

**PURCHASER(S)/MORTGAGOR(S)**

-AND-

**NAME(S) and ADDRESS(ES)**

World Savings  
Its Successors And/Or Assigns, As Their Interest May Appear

**MORTGAGEE(S)**

NOTICE is hereby given of a CONTRACT and a MORTGAGE COMMITMENT (respectively) between the parties hereto.

THE lands to be affected are described as follows:

All that certain tract or parcel(s) of land and premises situate, lying and being in the Township of Wall, County of Monmouth and State of New Jersey, commonly known as 2111 Princeton Court and more particularly described as follows:

Being known and designated as Lot(s) 133, Block 826 as shown on the Township of Wall Tax Map.

By: \_\_\_\_\_  
Christine F. Li, Esquire

**ADDRESS:**

Greenbaum, Rowe, Smith & Davis, LLP  
Metro Corporate Campus 1  
P.O. Box 5600  
Woodbridge, NJ 07095

**Exhibit 45 - Title Company Transmittal Letter - Continued**

Christine F. Li, Esquire  
Greenbaum, Rowe, Smith & Davis, LLP  
Metro Corporate Campus 1  
P.O. Box 5600  
Woodbridge, NJ 07095

Monmouth County Clerk  
Market Yard  
PO Box 1251  
Freehold, NJ 07728-1251

**Re:** Title No. TA-  
to  
2111 Court  
Wall, NJ 07719

Dear County Clerk:

☐ Enclosed please find our check in the amount of \$40.00 for recording of the enclosed Notice of Settlement(s).

☐ Please charge our account number \_\_\_\_\_ for the enclosed Notice of Settlement(s).

Thank you for your attention in this matter.

Very truly yours,

\_\_\_\_\_  
Christine F. Li, Esquire

**Exhibit 45 - Title Company Transmittal Letter - Continued**

Date: \_\_\_\_\_

Christine F. Li, Esquire  
Greenbaum, Rowe, Smith & Davis, LLP  
Metro Corporate Campus 1  
P.O. Box 5600  
Woodbridge, NJ 07095

Paragon Federal Credit Union  
P.O. Box 1203  
Westwood, NJ 07675

**Re:**    Loan Number: \_\_\_\_\_  
         Title No. TA-  
                 to  
         2111            Court  
         Wall, NJ 07719  
         Lot(s) 133, Block 826

Dear Sir or Madam;

Your institution holds a mortgage made by the above captioned owners, encumbering the above captioned premises.

This office represents the purchaser of the property.

The date set for closing is \_\_\_\_\_.

In order to make the necessary adjustments at the time of closing and to facilitate the transaction, will you kindly send me the following information.

1. The full amount of principal, interest and prepayment penalties, if any, to completely pay and satisfy the mortgage by the date set for closing.
2. The per diem of interest after the date set for closing in the event the closing is postponed.
3. Indicate through what quarter taxes have been paid.

Very truly yours,

By: \_\_\_\_\_  
Christine F. Li, Esquire

### **Section 4.3.2 Closing Services Letter**

The title company issuing the title commitment will ask the identity of the attorney who will conduct the closing for the purpose of issuing a Closing Services Letter ("CSL") with the title commitment. The use of the CSL became effective on August 1, 1994 in an effort to comply with the New Jersey Supreme Court's dictates in *Sears Mortgage Corp. v. Michael Rose, et al.*, 134 N.J. 326 (1993). The CSL replaced the usage of that which had been referred to as the approved attorney letter or closing protection letter. The CSL incorporated language disclaiming an agency relationship between the attorney closing the transaction, who is no longer referred to as the "approved attorney" for the title company.

The CSL insures the lender against (1) the failure of the attorney to comply with the written closing instructions of the lender to the extent that they relate to (a) the title to the lender's interest in the land or the validity, enforceability and priority of the lien of the lender's mortgage on its interest in the land; or (2) fraud or misapplication of the attorney in handling the funds of the lender in connection with the matters set forth in item (1). There are also several minor changes in the form which clarify language which may have been misleading or ambiguous. More importantly, the coverage under this form was expanded to include, in addition to the lender, the purchaser of residential one to four family dwelling, including a condominium unit, which is the purchaser's principal residence, and is paying cash for the purchase, but only to the extent of Paragraph 2 of the CSL. A CSL appears as Exhibit 46.

Also included with the title commitment will be a notice captioned "Important Notice and Disclosure" (a) disclaiming any representation of the interests of the purchaser by the title company and advising the purchaser to secure the services of an attorney; (b) advising that the attorney retained by the purchaser is not an agent for the title company and that the title company's liability is limited to the terms of the title commitment, title insurance policy and the CSL; and (c) advising that the title company has been asked to issue a mortgagee policy to the lender and that the purchaser has the right to obtain insurance in favor of the purchaser's interests for an additional premium. The notice appears of Exhibit 47.

A title company may require newly licensed attorney or attorneys who have not previously used the services of the company to complete and submit an application for approved attorney status which includes information regarding the education of the attorney, the year of admission to the State Bar, and names of other attorneys to serve as references.

## EXHIBIT 46 - CLOSING SERVICES LETTER



CHICAGO TITLE INSURANCE COMPANY

ATTENTION:  
Bank of America N.A.  
its affiliates and/or subsidiaries  
6400 Legacy Drive MS: TX2-972-04-02  
Attn: Enterprise Closing Protection Department  
Plano, TX 75024

Date: April 23, 2013  
ISSUING AGENT OR ATTORNEY:  
Chicago Title Company, LLC  
2446 Church Rd  
Toms River, NJ 08753  
Tel: (732) \_\_\_\_\_  
Attorney: \_\_\_\_\_

Title #: 2013-00326  
Transaction: Loan Number 246994188  
Premises: 22 Red Coat Drive, East Brunswick, New Jersey 08816  
RE: Borrower: Vijay Hari and Pierina F. Hari, Husband and Wife;

When title insurance of Chicago Title Insurance Company ("Company") is specified for your protection in connection with the closing of the above described real estate transaction in which you are to be a lender secured by a mortgage of an interest in land, the Company, subject to the Conditions and Exclusions set forth below, hereby agrees to reimburse you for actual loss incurred by you in connection with that closing when conducted by the above named Issuing Agent (an agent authorized to issue title insurance for the Company) of Chicago Title Insurance Company or the above named Attorney and when such loss arises out of:

1. Failure of the Issuing Agent or Attorney to comply with your written closing instructions to the extent that they relate to (a) the title to said interest in land or the validity, enforceability and priority of the lien of said mortgage on said interest in land including the obtaining of documents and the disbursement of funds necessary to establish such status of title or lien, or (b) the collection and payment of funds due you, or
2. Fraud of or misapplication by the Issuing Agent or Attorney in handling your funds or documents in connection with the matters set forth in numbered paragraph 1 above.

If you are a lender protected under the foregoing paragraph, your borrower in connection with a loan secured by a mortgage on a one to four family dwelling, which is the principal residence of the borrower, shall be protected, but only to the extent of the foregoing paragraph 2, as if this letter were addressed to your borrower. If you are a purchaser of a one to four family dwelling, including a condominium unit, which is your principal residence, and are paying cash for the purchase, you are protected, but only to the extent of the foregoing paragraph 2.

**Conditions and Exclusions:**

A. The Company will not be liable to you for loss arising out of:

1. Failure of the Issuing Agent or Attorney to comply with your closing instructions which require title insurance protection inconsistent with that set forth in the title insurance binder or commitment issued by the Company. Instructions which require the removal of specific exceptions to title or compliance with the requirements contained in said binder or commitment shall not be deemed to be inconsistent.
  2. Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except such as shall result from failure of the Issuing Agent or the Attorney to comply with your written closing instructions to deposit the funds in a bank which you designated by name.
  3. Mechanics' and materialmen's liens in connection with a construction loan transaction, except to the extent that protection against such liens is afforded by a title insurance binder, commitment or policy of the Company.
- B. If the closing is to be conducted by an Issuing Agent or Attorney, a title insurance binder or commitment for the issuance of a policy of title insurance of the Company must have been received by you prior to the transmission of your final closing instructions to the Issuing Agent or Attorney.
- C. When the Company shall have reimbursed you pursuant to this letter, it shall be subrogated to all rights and remedies which you would have had against any person or property had you not been so reimbursed. Liability of the Company for such reimbursement shall be reduced to the extent that you have knowingly and voluntarily impaired the value of such right of subrogation.
- D. Any liability of the Company for loss incurred by you in connection with closings of real estate transactions by an Issuing Agent or Attorney shall be limited to the protection provided by this letter. However, this letter shall not affect the protection afforded by a title insurance binder, commitment or policy of the Company.
- E. Claims shall be made promptly to the Company at its principal office at P.O. Box 45023, Jacksonville, Florida 32232-5023. When the failure to give prompt notice shall prejudice the Company, then liability of the Company hereunder shall be reduced to the extent of such prejudice.
- F. Liability under this letter is limited to the amount of insurance committed for and is subject to all of the Exclusions from Coverage and Conditions and Stipulations of the policy or policies committed to be issued by the Company. All liability hereunder shall merge into the policy or policies when issued.

THIS LETTER DOES NOT APPOINT THE ABOVE NAMED ATTORNEY AS AN AGENT OF CHICAGO TITLE INSURANCE COMPANY

The protection under this Closing Service Letter is limited to the closing on the premises described in the caption of this letter.

- Chicago Title Insurance Company  
By:

Randy Kadlec, VP Senior Underwriting Counsel

LETTER ID:2013.4.23.9.52.13799293 Agent: NJ3116  
For further inquiries please contact the number listed above  
THIS LETTER IS ONLY AUTHORIZED FOR USE IN NEW JERSEY

## **EXHIBIT 47 - TITLE COMPANY NOTICE AND DISCLOSURE**

### **IMPORTANT NOTICE AND DISCLOSURE**

1. By law Chicago Title Insurance Company is required to advise you that the Title Insurance Commitment issued by us may contain conditions, exceptions, exclusions, limitations and requirements governing our liability and the coverage you may receive. REAL ESTATE TITLE TRANSACTIONS ARE COMPLEX. THIS COMPANY DOES NOT REPRESENT YOU AND CANNOT GIVE YOU LEGAL ADVICE. YOU ARE ENTITLED TO REVIEW THE TITLE INSURANCE COMMITMENT WITH AN ATTORNEY AT LAW OF YOUR OWN CHOOSING, AT YOUR EXPENSE, PRIOR TO THE TRANSFER OF TITLE. WE STRONGLY SUGGEST YOU DO SO.
2. THE ATTORNEY RETAINED BY YOU, OR BY YOUR LENDER, CLOSING OR SETTLING THIS TITLE IS **NOT** AN AGENT FOR AND DOES NOT ACT ON BEHALF OF \*\* ERROR RETRIEVING DATA \*\*. THIS COMPANY ASSUMES NO LIABILITY FOR ANY LOSS, COST OR EXPENSE INCURRED BY YOU BECAUSE YOUR ATTORNEY OR YOUR LENDER'S ATTORNEY HAS MADE A MISTAKE OR MISAPPLIED YOUR FUNDS. Because the attorney is not our agent, we assume no responsibility for any information, advice or title insurance promises the attorney may give or make. Our only liability to you is under the terms of the Commitment, Policy and closing Service Letter if you choose to obtain one.
3. By law we are also required to advise you that we have been asked to issue a Mortgagee Policy to your lender in the amount shown on Schedule A of the Title Insurance Commitment (issued or to be issued). If you have not already required it, you have the right and opportunity to obtain title insurance in your own favor for an additional premium which we will quote on request.

### **Section 4.3.3 Omitting Exceptions from the Title Commitment**

The title commitment should be reviewed carefully so that the necessary steps can be taken to remove certain exceptions which appear in the title commitment. The process by which any reported exceptions to title are removed is commonly referred to as "clearing title". Once a title commitment has issued, information supporting the removal of title exceptions, or changing or supplementing title information should be supplied to the title company as it becomes available prior to closing. The title company will issue letter amendments or endorsements to the title commitment memorializing its agreement to insure title subject to the terms of those letters. An endorsement amending the title commitment appears as Exhibit 48.

The following is a discussion of some of the exceptions which may appear on a title commitment and the steps required to remove those exceptions.

(a) **Existing Mortgage.** If the seller has given one or more mortgages secured by the property, it will be necessary to obtain a statement from each lender as to the amount required to be paid to the lender in order to payoff the mortgage in full and induce the lender to either endorse the mortgage for cancellation or prepare and sign a discharge of mortgage in recordable form. The purchaser's undertakes this effort, even though it is the seller's financial obligation, since the purchaser's attorney is responsible for clearing the title exceptions.

(1) **Payoff Letter Request.** A statement of the amount due to the lender is commonly referred to as a "payoff letter" or "satisfaction statement". The first step in requesting a payoff letter is to ask the seller or the seller's attorney to make available the loan account number and the name and address of the lender or loan servicer from which the payoff statement should be requested. The source of payoff information is usually set forth in the seller's mortgage payment coupon booklet or on mortgage payment bills. The purchaser's attorney should not automatically write to the name of the lender at the address appearing in the mortgage in the title commitment since the lending institution may have been acquired by another institution, the mortgage may have been assigned to another entity, and/or the loan may be serviced by different entity or at a different address. Obtaining the account number is certain to expedite the preparation and receipt of the payoff letter. A payoff letter request with specific information provided by the seller's attorney to facilitate the timely receipt of the requested payoff information appears as Exhibit 49.

Lenders sometimes impose stringent and, sometimes, inflexible procedures in connection with obtaining payoff letters. By way of example, they may require requests to be made only in writing and require a minimum of two weeks for the issuance of the payoff letter. Accordingly, the possibility of such time-consuming requirements should be taken into consideration in preparing for closing. On the other hand, the estimated closing date should be fairly certain before the payoff letter is requested since some statements are invalid or require update after the passage of a certain time point in time, e.g. the last day of the month in which the statement issued, and fee may be imposed for the issuance of an updated statement. A payoff letter will also include the amount of interest to be added for each day after the date through which the payoff in the letter has been calculated, i.e. the per diem amount, and may report any other amounts which the lender is holding in escrow on account of the seller. A payoff letter issued for the resale of an existing home appears as Exhibit 50.

**EXHIBIT 48 - TITLE COMMITMENT ENDORSEMENT**



**CHICAGO TITLE INSURANCE COMPANY**

NEW JERSEY DIRECT OPERATIONS    [WWW.TITLEINSURANCENJ.COM](http://WWW.TITLEINSURANCENJ.COM)    PHONE: 1-888-TITLENJ

DATE:

Order Number: **2013-00326**

**CUSTOMER REFERENCE:**

22 RED COAT DRIVE,  
EAST BRUNSWICK, NJ 08816  
Middlesex County

**ENDORSEMENT**

ATTACHED TO AND FORMING A PART OF THE ABOVE ORDER NUMBER, WHICH IS HEREBY  
AMENDED AS FOLLOWS:

SCHEDULE A ITEM 2 ALTA LOAN POLICY SHALL READ \$243,837.00

THIS ENDORSEMENT IS MADE PART OF THE COMMITMENT OR POLICY. IT IS SUBJECT TO ALL  
THE TERMS OF THE COMMITMENT OR POLICY AND PRIOR ENDORSEMENTS, EXCEPT AS  
EXPRESSLY STATED ON THIS ENDORSEMENT, THE TERMS, DATE AND AMOUNT OF THE  
COMMITMENT OR POLICY AND PRIOR ENDORSEMENTS ARE NOT CHANGED.

---

AUTHORIZED SIGNATORY  
END. #

**EXHIBIT 49 - PAYOFF LETTER REQUEST**

[Date]

via Telecopy

[Name and Address of Lender]  
Attn: Payoff Department

**Re: [Name of Purchaser] -from- [Name of Seller]  
[Property Address]  
[Loan Account Number]**

Gentlemen:

Please be advised that this firm represents [Name of Purchaser], the purchasers of the above-captioned property.

Kindly provide me with a payoff statement calculated as of \_\_\_\_\_ and include the per diem interest rate in the event closing is delayed beyond that date. Please provide me with the payoff statement by not later than \_\_\_\_\_.

Thank you for your courtesy and cooperation in this matter.

Very truly yours,

## EXHIBIT 50 - PAYOFF LETTER



**HUDSON CITY**  
SAVINGS BANK

W 80 CENTURY RD  
PARAMUS, NJ 07652

STATEMENT OF PAYOFF 12/03/00  
RE: MTG NO 4000887186  
PROPERTY: ~~XXXXXXXXXX~~ CT  
MONTCLAIR TWP NJ 07042  
MORTGAGOR: DAVID ~~XXXXXXXXXX~~  
JACQUELINE ~~XXXXXXXXXX~~

~~XXXXXXXXXX~~  
~~XXXXXXXXXX~~  
~~XXXXXXXXXX~~  
~~XXXXXXXXXX~~, NJ ~~XXXXXX~~

PRINCIPAL BALANCE DUE \$446,505.61

INTEREST HAS BEEN PAID THRU 11/30/09.  
INTEREST TO 12/14/09

\$854.78

ESCROW BALANCE NET OF SCHEDULED DISBURSEMENTS  
Positive amount is deducted from amount due.  
Negative is added to amount due.

\$7,714.08

SCHEDULED DISBURSEMENTS:

- (X) Taxes paid thru 4TH QTR 2009.  
( ) Taxes in process of being paid  
( ) Insurance

Total Scheduled Disbursements: \$0.00

FEES DUE

- ( ) FAX 8.00  
(X) Mailing Cost 9.00  
( ) Update 12.00  
( ) Other

(X) Total Fees \$9.00

Other Charges Due \$0.00

Unpaid late charges due \$0.00

TOTAL DUE BANK AS OF 12/14/00 \$439,655.31

Late charge due after 16th of the month:

Last payment made: 12/02/00

Interest rate: .0537500

Per diem rate of interest: \$65.75 NOT VALID AFTER 12/31/00.

PLEASE CALL FOR NEW FIGURES.

THE MORTGAGE LIEN MUST BE CANCELLED. If the mortgagor elects, the Bank will on request, forward the mortgage for cancellation of record on New Jersey properties only. This charge is \$45.00. Anyone else cancelling the mortgage is not deemed to be the Bank's agent.

ALL OF THE ABOVE IS SUBJECT TO ERRORS, OMISSIONS AND CORRECTIONS.

Very truly yours,

*J. P.*  
TREASURER EXT 1379  
Payoff Department

PHONE (201)967-1900  
FAX (201)265-6512



(2) **Home Equity Loan.** Special attention should be given in the event a mortgage is securing a home equity credit line. The significance of such a loan in the context of preparing for closing is that, while a payoff letter may specify the outstanding amount of the loan as of the date of the preparation of the payoff letter, the seller has the ability to increase the outstanding loan balance by merely writing a check against the credit line. Until a payoff amount is submitted bringing the loan to a zero balance and a statement is received from the seller authorizing the termination of the credit line, additional amounts may be drawn by the seller and, as a result, be due to the lender to satisfy the loan. To best protect the interests of the purchaser, the seller should be required to evidence to the satisfaction of the purchaser's attorney and the title company, prior to or at closing, that the credit line has been paid off and the account terminated.

If the seller intends to use proceeds from the closing to satisfy the account, however, the seller may not have other funds available to satisfy and terminate the account before closing. In such event, the seller should provide evidence that the lender has been instructed to suspend the account so that no further advances can be made. The seller should also be required to surrender all checks with which the seller might draw additional funds. Since there could be no further activity on the account, the purchaser and the title company can rely upon the payoff figure issued by the lender.

Some title companies will require the submission of an indemnification agreement signed by the seller before it will insure the payoff of a home equity credit line based upon the payment of the amount reflected in the payoff letter. A payoff letter, an authorization to close the account, and a form of indemnification agreement for a line of credit appear as Exhibit 51. A title company may require proof that the account has been closed completely prior to closing.

(3) **Payoff Calculation.** By relying upon the written payoff statement, the purchaser's attorney will arrange for each mortgage given by the seller to be paid off by dispatching to the lender the funds stated in the payoff statement. The payoff statement typically will set forth a lump sum principal and interest amount to be submitted as of a particular date plus an additional per diem (per day) amount to be added for each day after the specified date. Interest must be calculated through and including the date of receipt by the lender of a check representing the payoff amount. It is customary for interest to be calculated through the first or second business day after the date of closing depending upon the time of the closing and the ability of the purchaser's attorney to dispatch the payoff check that day. The fee associated with the overnight delivery of the check is the responsibility of the seller.

(4) **Alternate Method of Cancelling Mortgage.** *N.J.S.A. 46:18-11.5 to 45:18-11.7* provides for a means to cancel mortgages as an alternative to that described in Section 6.6.3. The law was adopted in light of difficulties encountered at times in obtaining mortgage satisfactions from lenders.

The law applies only to residential mortgages securing premises which are owner-occupied. If a mortgage has been paid in full and the mortgagee has not timely submitted the mortgage to be canceled of record in accordance with *N.J.S.A. 46:18-11.2*, an attorney licensed to practice law in New Jersey or a person licensed as an insurance producer pursuant to the New Jersey Insurance Producer Licensing Act, *N.J.S.A. 17:22A-1 et seq.* may issue the discharge of mortgage as agent or

attorney-in-fact for the owner or holder of the mortgage so long as he or she has paid the mortgage in full.

Prior to issuing the discharge of mortgage, the attorney or insurance producer must make two written demands for the satisfaction or discharge. The discharge must have, as attachments, a copy of the pay-off letter and photocopy of the front and back of the pay-off check or other proof of payment, such as evidence of the wire transfer of the funds. The discharge of mortgage must include an affidavit in accordance with the statute and must state that it was executed by the attorney or insurance producer in accordance with the statute. The form of the affidavit of payment to discharge mortgage appears as Exhibit 52.

# EXHIBIT 51 - LINE OF CREDIT PAYOFF



December 2, 2000

██████████  
 ██████████  
 ██████████, NJ 08000-0000

Customer Account Number: 411660021862  
 Customer Name: DAVID ██████████  
 Confirmation Number: 283697799230002

Dear ██████████

Re: Line of Credit Account  
 Secured by: ██████████ CT

We appreciate your business at Chase. As requested, the payoff information on your account is outlined below:

Today's Payoff Amount	Date: 12/02/2000	\$299,831.07
Next Payment Due Date	Date: 12/15/2000	
Daily Interest/Per Diem		\$28.63
Principal Balance		\$299,466.10
Interest Due		\$314.97
Deferred Interest		\$0.00
Deferred Fees		\$0.00
Account Closure Fee		\$0.00
Late Charges, NSF, & Other Charges		\$0.00
Chase Payment Assurance Fees Outstanding		\$0.00
Insurance Premium Due		\$0.00
Lien Release Filing		\$20.00
Fax Fee		\$30.00

**NOTICE:** If this is a business purpose or private banking loan, this letter does not include all applicable payoff and lien release information. You must contact your banker to obtain lien release requirements, any applicable additional fees, and the complete payoff amount.

If the payoff is made after the date shown above as "Today's Payoff Amount," please add the daily interest (per diem) per day to the listed payoff amount. Please note the following information when obtaining a payoff for an existing line of credit account:

- The payoff balance may not include advances relating to unposted line of credit checks, credit card transactions, unposted fees and charges, and other such advances as well as charged back payments due to returned checks and ACH debits. We recommend that you call us the day of your line payoff to ensure you have an accurate amount for the entire line balance.

## Exhibit 51 - Line of Credit Payoff - Continued

- If you want to close a Line of Credit, we must receive this request in writing signed by an authorized signer on the line. For your convenience, we have enclosed the Authorization to Close Credit Line. Please sign the attached document and send it along with your payoff if you want to close your line account. If we do not receive this authorization, the line will remain open and the lien will not be released.
- If you have automatic payment (ACH) from a deposit account to apply your monthly payment directly to your line, the payoff must be received at least five days before your scheduled due date.
- If you have multiple accounts with us, we are relying on you to supply us with the correct account number for payoff. Failure to provide the appropriate account number will cause collateral release issues, as we cannot, under normal circumstances, release collateral until payment in full is received. Please contact us if you are unsure of the correct account number.
- If you are paying off the account for our customer, please note that the lien will not be released until we receive a signed request from an authorized signer to close the account.

PLEASE NOTE: Collateral securing your account, if any will be released after all outstanding account obligations have been paid and the Bank is assured of final check or ACH settlement.

"Today's Payoff Amount" referenced above is subject to change as noted above and final verification.

To receive same day credit and avoid accrual of additional interest, payoff funds must be remitted in U.S. dollars by cashier's check, certified check, title company check, or wire transfer and received before 10 a.m. (of the location receiving payment). Payments will only be applied or credited Monday through Friday, except for weekdays that are federal banking holidays.

Please make all checks payable to Chase and remit to:

**Mailing Address:**

Chase  
3415 Vision Drive, OH 43219-6009  
Columbus, OH 43219-6009

**Overnight Address:**

Chase  
3415 Vision Drive, OH 43219-6009  
Columbus, OH 43219-6009

We appreciate your business and are committed to providing you with quality service. It has been a pleasure to serve you, and in the future, we hope that we will be your lender of choice for all your financial and banking needs. For additional information or to obtain another line please call the Bank at 1-800-836-5656.

Sincerely,

Loan Servicing

JPMorgan Chase Bank, N.A. Member FDIC

**Exhibit 51 - Line of Credit Payoff - Continued**

December 2, 2000

DAVID [REDACTED]  
[REDACTED]  
[REDACTED], NJ 02200-0000

Customer Account Number: 411660021862  
Customer Name: [REDACTED]  
Confirmation Number: 283697799230002

**AUTHORIZATION TO CLOSE LINE OF CREDIT**

The undersigned agrees that the above-referenced credit line is to be closed upon the Bank's receipt and processing of this signed authorization and the balance in full. Further, the undersigned understands that the right to obtain advances is terminated and **no further checks, credit card transactions or automatic deductions will be honored or applied to the Credit Line.** This letter does not relieve the undersigned from any liability for any unpaid balance owing on the credit line, including any balances that may result from the reversing of prior payments, the presentment of any preauthorized transactions after the closing has been processed or checks paid prior to closing.

X \_\_\_\_\_  
Customer Signature

X \_\_\_\_\_  
Customer Signature

**Exhibit 51 - Line of Credit Payoff - Continued**

**HOME EQUITY LINE OF CREDIT AGREEMENT**

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, by and between \_\_\_\_\_ and \_\_\_\_\_, residing at \_\_\_\_\_ ("Seller"); \_\_\_\_\_ and \_\_\_\_\_, residing at \_\_\_\_\_ ("Buyer") and \_\_\_\_\_ with an address of \_\_\_\_\_ ("Title Company").

W I T N E S S E T H;

**WHEREAS**, Buyer and Seller entered into an Agreement for the sale of property situated at \_\_\_\_\_ ("Property");

**WHEREAS**, closing of title took place on \_\_\_\_\_;

**WHEREAS**, a credit line with \_\_\_\_\_ of the Seller was secured by a mortgage on the Property ("Credit Line"); and

**WHEREAS**, in order to ensure the payment of all amounts due under the Credit Line and to address the issues raised in the payoff statement dated \_\_\_\_\_ of \_\_\_\_\_ attached as Exhibit A, Title Company and Buyer have requested and the Seller has agreed to hold Title Company and Buyer harmless against any amounts due from the Seller under the Credit Line.

**NOW, THEREFORE**, in consideration of the closing of this transaction, the mutual promises and covenants, and other good and valuable consideration, the parties hereto agree as follows:

1. The Seller represents that the amount reflected on Exhibit A reflects, in full, all amounts drawn against the Credit Line. No other checks have been drawn against the account that have not cleared that would change the payoff figure quoted.

2. Seller hereby guaranties to immediately pay any and all claims upon demand made upon the Seller by either Title Company or the Buyer and agrees to indemnify and save harmless both Title Company and the Buyer from all claims, damages, or loss arising directly or indirectly or in any manner connected with the Credit Line.

**Exhibit 51 - Line of Credit Payoff - Continued**

3. This Agreement is intended to include and bind the successors and assigns of the parties to this Agreement and to inure to the benefit of Title Company's principal, \_\_\_\_\_  
\_\_\_\_\_.

WITNESS:

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Seller

WITNESS:

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Buyer

ATTEST: TITLE COMPANY

\_\_\_\_\_ By: \_\_\_\_\_

**EXHIBIT 52 - AFFIDAVIT TO DISCHARGE MORTGAGE**

**Affidavit of Payment to Discharge  
Mortgage**

PURSUANT TO SECTION 3 OF P.L.1999, c. 40 (C.46:18-11.7)

STATE OF NEW JERSEY  
COUNTY OF

SS:

The undersigned, being duly sworn upon the undersigned's oath, avers as follows:

1. I am: ☐ an attorney-at-law duly admitted to practice before the Courts of this State; or  
☐ duly licensed as an insurance producer in the line of title insurance.
2. On \_\_\_\_\_, I caused to be sent to \_\_\_\_\_, located at \_\_\_\_\_ (the address designated for receipt of payment in the pay-off letter, or if no address is designated, the address given on the letterhead of the pay-off letter), the sum of \$ \_\_\_\_\_, in full payment of a certain mortgage dated \_\_\_\_\_, in the face amount of \$ \_\_\_\_\_ between \_\_\_\_\_ (mortgagor) and \_\_\_\_\_ (mortgagee), which mortgage was recorded on \_\_\_\_\_ in the Office of the County Clerk/Register of Deeds of the County of \_\_\_\_\_ in Mortgage Book \_\_\_\_\_, page \_\_\_\_\_ (and which mortgage was subsequently assigned to \_\_\_\_\_ by assignment of mortgage dated \_\_\_\_\_, in Assignment of Mortgage Book \_\_\_\_\_ of \_\_\_\_\_).
3. Said payment was made by check or electronic wire transfer, in accordance with a pay-off letter received from \_\_\_\_\_ dated \_\_\_\_\_; and I have received advice that:  
☐ the check has been negotiated and canceled on \_\_\_\_\_; or,  
☐ the wire transfer was received and credited to the recipient's account on \_\_\_\_\_.
4. On \_\_\_\_\_, at least 30 days notice having elapsed since the date the payment was received, I caused a notice to be sent to \_\_\_\_\_, located at \_\_\_\_\_ (the address designated for receipt of payment in the pay-off letter, or if no address is designated, the address given on the letterhead of the pay-off letter), by registered or certified mail, return receipt requested, pursuant to section 2 of P.L.1975, c. 137 (C.46:18-11.3).
5. On \_\_\_\_\_, at least 30 days having elapsed since the date the notice as set forth in paragraph 4 of this affidavit was received, I caused a notice to be sent to \_\_\_\_\_ located at \_\_\_\_\_ (the address designated for receipt of payment in the pay-off letter, or if no address is designated, the address given on the letterhead of the pay-off letter), by registered or certified mail, return receipt requested, of my intention to cause the mortgage to be discharged by affidavit pursuant to section 3 of P.L.1999, c. 40 (C.46:18-11.7), if the mortgage remains uncanceled 15 days after the notice is received.
6. At least 15 days have now elapsed since the notice described in paragraph 5 of this affidavit was received. To the best of my knowledge and belief, no letter or other written communication has been received from \_\_\_\_\_, to the effect that it denies or disputes that the mortgage has been paid in full and ought to be discharged of record at this time.
7. Wherefore, the undersigned directs the County Clerk or Register of Deeds of the County of \_\_\_\_\_ to cause to be recorded the discharge or satisfaction-piece accompanying this affidavit, and further directs the County Clerk or Register of Deeds to cause a marginal notation of discharge to be made upon the record of the mortgage described in paragraph 2 of this affidavit.

Sworn and subscribed before me  
This \_\_\_\_\_ day of \_\_\_\_\_

(b) **Judgments.** The title commitment should have attached to it a judgment search performed against the seller's and purchaser's names. Frequently, title insurance companies use services such as Charles Jones, Inc. for obtaining the judgment searches and bankruptcy searches and, as a result, the search may be referred to as the Charles Jones search. If there are judgments against the name(s) of the seller, the seller's attorney should be forwarded a copy of the judgment searches to make sure that the judgments have not been docketed against the seller but against individuals of same or similar name. The purchaser should also examine any judgments which appear to be against the name(s) of the purchaser. It should be noted that when the judgment search is performed, it frequently retrieves judgments against all names of individuals that are the same as or similar to those of the seller and purchaser.

In the event that the judgments are not against the parties to the transaction, the title company will usually accept an affidavit of title with a specific statement that the judgments retrieved are not against the deponent but against individuals of same or similar name. It is good practice to also attach to the affidavit of title copies of the judgments which have been reviewed by the deponent and to ask the deponent to initial each page of the judgment search reflecting judgments against same or similar names.

If a judgment is against the seller or purchaser, the judgment creditor or its attorney will have to be contacted in order to determine the amount required to be paid to the creditor for the judgment creditor to be satisfied. Once payment has been made, a warrant to satisfy judgment given for filing at or before closing. A warrant to satisfy judgment appears as Exhibit 53.

In some instances the judgment secured by a lien of the property may not be satisfied fully. Rather, the creditor may be willing to release the premises from under the judgment for an agreed-upon payment. The creditor will give a release of the property from the lien of the judgment in exchange for the payment. A release of premises from judgment appears as Exhibit 54.

(c) **Real Estate Taxes and Other Municipal Charges.** Any outstanding real estates taxes which are delinquent or currently owing will have to be addressed as part of the closing adjustments. The lien of the municipality for the nonpayment of real estate taxes and services provided by the municipality such as sewer and water will be a lien against the property and therefore the responsibility of the purchaser, even though the costs were incurred while owned by the seller. If delinquent real estate taxes are owed for prior real estate tax quarters, the tax collector's office in the municipality in which the property is located should be contacted to obtain a statement of the amounts of taxes, interest and any other charges due in order to bring the account current. The standard adjustment for real estate taxes will be discussed further in Section 4.6.

EXHIBIT 53 - WARRANT TO SATISFY JUDGMENT

Attorney(s):  
Law Firm:  
Address:

Telephone No.:  
Fax No.:  
E-mail:  
Attorney(s) for:

Plaintiff(s)  v.   Defendant(s)
--

SUPERIOR COURT OF NEW JERSEY  
\_\_\_\_ DIVISION - \_\_\_\_ PART  
\_\_\_\_ COUNTY  
DOCKET NO. \_\_\_\_\_  
JUDGMENT NO. \_\_\_\_\_

**Warrant to Satisfy  
Judgment**

WHEREAS, a judgment was entered in the above-entitled action on \_\_\_\_\_ in favor of \_\_\_\_\_ and against \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ plus interest and costs and said judgment with interest and costs thereon having been fully paid, under Judgment No. \_\_\_\_\_.

THEREFORE, full and complete satisfaction of said judgment is hereby acknowledged, and the Clerk of the Court is hereby authorized and directed to make entry of the full and complete satisfaction on the docket of said judgment satisfaction of judgment.

Date: \_\_\_\_\_

*Attorney for Judgment Creditor*

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: \_\_\_\_\_

*Attorney for Judgment Creditor*

**Note:** The filing fee is \$35.00 and should be made payable by check to "Treasurer, State of New Jersey."

**EXHIBIT 54 - RELEASE OF PREMISES FROM JUDGMENT**

## Release of Premises from Judgment

This **RELEASE** is made on

**BETWEEN** the Releasor(s)

whose address is

**AND** the Releasee(s)

whose address is

referred to as "I,"

referred to as "You."

**WHEREAS**, the Releasor is the holder of a judgment, entered on  
for the sum of \$ and cost, in favor of

against

and recorded in the records of the Clerk of the  
as Docket, which said judgment was subsequently assigned to

by Assignment dated and recorded in the  
office of the Clerk of the

**AND WHEREAS**, the Releasor at the request of the Releasee has agreed to release the lands and premises  
hereinafter described from the lien of the said judgment to the intent that the said lands and premises shall be released,  
discharged and freed from the lien of the said judgment.

**NOW THEREFORE**, the Releasor, for and in consideration of

lawful money of the United States of America, the receipt whereof is hereby acknowledged, does by these presents  
release, discharge and free the following described lands and premises from the lien of the aforementioned judgment.

**ALL**  
tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the  
of in the County of and State of New Jersey,  
more particularly described as follows:

**Exhibit 54 - Release of Premises from Judgment - Continued**

**TO HAVE AND TO HOLD** all and singular, the premises herein described, together with the appurtenances, unto the Releasee and to Releasee's proper use and benefit forever, free from the lien of the said judgment.

In all references herein to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

Wherever in this instrument any party shall be designated or referred to by name or general reference, such designation is intended to and shall have the same effect as if the words "heirs, executors, administrators, personal or legal representatives, successors and assigns" had been inserted after each and every such designation.

**IN WITNESS WHEREOF**, the Releasor has signed and sealed this release, or if a Corporation, has caused this release to be signed by its proper corporate officers and its corporate seal to be affixed, the day and year first above written.

Signed and sworn to before me on \_\_\_\_\_ (Seal)

\_\_\_\_\_ (Seal)

STATE OF NEW JERSEY, COUNTY OF \_\_\_\_\_ SS:  
I CERTIFY that on \_\_\_\_\_

Personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument; and,
- (b) executed this instrument as his or her own act.

\_\_\_\_\_  
*Print Name and Title below signature*

STATE OF NEW JERSEY, COUNTY OF \_\_\_\_\_ SS:  
I CERTIFY that on \_\_\_\_\_

Personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument;
- (b) was authorized to and did execute this instrument as  
of \_\_\_\_\_ the entity named in this instrument; and,
- (c) executed this instrument as the act of the entity named in this instrument.

\_\_\_\_\_  
*Print Name and Title below signature*

(d) **USA Patriot Act.** Under the USA Patriot Act, and Executive Order #13224, as amended by Executive Order #13268, all names involved in a real estate transaction must be checked against certain lists maintained by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC). The Act creates the legal obligation of real estate closing agents to compare names of transaction participants against the names of known terrorists and terrorist organizations on the Specially Designated Nationals and Blocked Persons List (SDN List) and to report matches in names via a "Suspicious Activity Report" (SAR). Executive Order #13224 is applicable to all businesses and any transactions involving any persons and/or organizations on the SDN List. The responsibility for performing the check is that of the party completing the HUD-1 closing statement. That party is usually the lawyer or title insurance company conducting the closing.

In the event that a person and/or organization listed on the SDN List is involved in a transaction and that information becomes known prior to accepting the transaction, the transaction must be rejected. Once a transaction has commenced and the information becomes known, any assets in the transaction must be blocked, i.e. the transaction must not be completed. Once rejected or blocked, a "Report of Rejected Transaction" or a "Report of Blocked Transaction" must be filed with OFAC. Prior to rejecting the transaction or blocking assets, the OFAC Telephone Hotline telephone number 202-622-2490 may be contacted to confirm that the person and/or organization is the one identified on the SDN List.

Most title insurance companies and abstract companies will conduct Patriot Name searches on the names involved in the transaction for which the company is retained to perform title searches and insure. The Patriot Name searches are performed on the names in the same manner that title insurance companies and abstract companies perform judgment searches against the names of individuals involved in the transaction.

#### **Section 4.3.4 Notice of Settlement**

*N.J.S.A. 46:26A-11 et seq.* provides for the filing of notices of settlement in the county recording office which are effective for a period of sixty (60) days from the date of filing. Before a change in the law which went into effect on May 1, 2012, a filed notice was effective for forty-five (45) days. The change in the law increased the period of effectiveness to sixty (60) days, which may be extended for one additional 60 day period by the filing of a second notice before the expiration of the original notice of settlement. During that period, the interest of the party on whose behalf the notice was filed is protected from any adverse interest, claim, or lien acquired or filed after the filing of the notice. Federal tax liens are exempt from the protections granted by the Act since they are allowed under the Supremacy Clause of the United States Constitution as are certain other state and federal liens.

A real estate transaction typically involves two separate transactions; one between the seller and purchaser of the property whose respective rights have been created pursuant to the contract of sale for the property, and the other between the lender and purchaser, as the prospective mortgagor, pursuant to the mortgage commitment issued by the lender. In order to protect the interests of the respective parties to the title and mortgage transactions, two notices of settlement should be filed. The first notice reflects the interests between the seller and purchaser pursuant to the contract of sale and the

second reflects the interests of the purchaser, as mortgagor and the lender, as mortgagee, pursuant to the terms of the mortgage commitment issued by the mortgagee. The notices would be identical in the identification of the property. That property description should be detailed enough to give sufficient notice of its identity. The notice should include the street address, the tax lot and block reference for the property as reflected in the municipal records, and either a metes and bounds description or the description of the property as it appears on a filed map.

The notice of settlement filed relative to the contract of sale appears as Exhibit 55 and the notice of settlement for the mortgage transaction appears as Exhibit 56.

Some county recording offices allow a single notice of settlement to be filed reflecting both the proposed title and mortgage transactions. The single notice would identify the purchaser as the mortgagor, as well, and further identify both the seller and the lender, as mortgagee. The permissibility of a single notice should be confirmed with the appropriate county recording office.

Pursuant to the Act, the notice may be filed by any party or its legal representative "to a settlement which will convey legal title or equitable title to real estate or any interest therein or create any lien thereon by way of a mortgage." The notice of settlement may be signed by "a licensed title insurance producer..." If the notice is executed by anyone other than an attorney at law of New Jersey, the signature of the executing party must be notarized. Once a notice of settlement has been completed and signed, an original and one copy of the notice should be transmitted for filing to the county recording office. The statute also allows for the recording of a discharge of notice of settlement to eliminate an existing notice of settlement while it is still otherwise valid and effective. A discussion of the proper county office to which instruments should be forwarded for recordation appears in Section 4.3.9. The county recording office should be instructed to file the original notice of settlement and to stamp the additional copy enclosed "filed" with the date of filing and to return it to the party submitting the document for filing.

**EXHIBIT 55 - NOTICE OF SETTLEMENT (SALE)**

**NOTICE OF SETTLEMENT**

(Seller-Purchaser for Contract Transaction)

Name(s) and address(es)  
Steven and Sally Seller  
123 Main Street  
Sellerstown, New Jersey 01234

**Seller(s) or Mortgagor(s)**

-and-

Names(s) and address(es)

Peter and Patricia Purchaser  
321 Smith Lane  
Purchaserstown, New Jersey 04321

**Purchaser(s) or Mortgagee(s)**

NOTICE is hereby given of a **contract** (contract, agreement or mortgage commitment) between the parties hereto.

The lands to be affected are described as follows:

All that (those) certain tract(s) or parcel(s) of land and premises situate lying and being in the Town of Buyersville, County of Middlesex and State of New Jersey, commonly known as (street address) 32 Linden Avenue, Buyersville, New Jersey, and more particularly described as follows:

ALL that certain lot, tract or parcel of land and premises situate, lying and being in the Town of Buyersville, County of Union and State of New Jersey, more particularly described as follows:

BEGINNING at a point on the southwesterly sideline of Linden Avenue, said point being 200.00 feet southeasterly along the said sideline of Linden Avenue from its intersection with the southeasterly sideline of Oak Avenue (formerly Dudley Avenue); thence

- 1.South 44 degrees 11 minutes 42 seconds East, 75.00 feet to a point; thence
- 2.South 47 degrees 41 minutes 04 seconds West, 150.00 feet to a point; thence
- 3.North 44 degrees 11 minutes 42 seconds West, 75.00 feet to a point; thence
- 4.North 47 degrees 41 minutes 04 seconds East, 150.00 feet to the point and place of BEGINNING.

ALSO known as Lot 3, Block 2208 on the Official Tax Map of the Town of Buyersville.

---

Linda Lawyer  
An Attorney at Law of New Jersey  
Address: 456 Lawyers Street  
Lawyerstown, New Jersey 07654  
Attorney(s) for Purchasers

**EXHIBIT 56 - NOTICE OF SETTLEMENT (MORTGAGE)**

**NOTICE OF SETTLEMENT**  
(Mortgagor-Mortgagee for Mortgage Transaction)

Name(s) and address(es)  
Peter and Patricia Purchaser  
321 Smith Lane  
Purchaserstown, New Jersey 04321

Seller(s) or **Mortgagor(s)**

-and-

Names(s) and address(es)

BEST BANK  
987 Lenders Way  
Lenderstown, New Jersey 09876

Purchaser(s) or **Mortgagee(s)**

NOTICE is hereby given of a **mortgage commitment** (contract, agreement or mortgage commitment) between the parties hereto.

The lands to be affected are described as follows:

All that (those) certain tract(s) or parcel(s) of land and premises situate lying and being in the Town of Buyersville, County of Middlesex and State of New Jersey, commonly known as (street address) 32 Linden Avenue, Buyersville, New Jersey, and more particularly described as follows:

ALL that certain lot, tract or parcel of land and premises situate, lying and being in the Town of Buyersville, County of Union and State of New Jersey, more particularly described as follows:

BEGINNING at a point on the southwesterly sideline of Linden Avenue, said point being 200.00 feet southeasterly along the said sideline of Linden Avenue from its intersection with the southeasterly sideline of Oak Avenue (formerly Dudley Avenue); thence

- 1.South 44 degrees 11 minutes 42 seconds East, 75.00 feet to a point; thence
- 2.South 47 degrees 41 minutes 04 seconds West, 150.00 feet to a point; thence
- 3.North 44 degrees 11 minutes 42 seconds West, 75.00 feet to a point; thence
- 4.North 47 degrees 41 minutes 04 seconds East, 150.00 feet to the point and place of BEGINNING.

ALSO known as Lot 3, Block 2208 on the Official Tax Map of the Town of Buyersville.

---

Linda Lawyer  
An Attorney at Law of New Jersey  
Address: 456 Lawyers Street  
Lawyerstown, New Jersey 07654  
Attorney(s) for Mortgagors

As previously stated, the notice is effective only for a forty-five (45) day period from the date of its filing. If the possibility exists that the recording of the closing documents will not occur within the forty-five (45) day period, a new notice of settlement should be filed. The notice of settlement is intended to protect the interest of the party named in the notice of settlement during the "gap" between the title rundown and the recording of the documents and the title company is likely to reflect as a condition of closing on its title commitment that the notices of settlement be filed and a rundown be performed, as discussed in the next section.

#### **Section 4.3.5 Title Continuation**

A title commitment will expressly state that it is subject to the performance of an update through the date of closing. This means that approximately forty-eight (48) hours before the closing, the purchaser's attorney should inform the title company of the scheduled date and time of the closing and the title company will further search title to determine if there have been any changes to the title commitment since the date that the commitment issued. The bringing current of the title search is sometimes referred to as a "continuation", "rundown", or "bring down" of the title commitment. The title company should be advised of the telephone number to which the rundown should be called, especially if the closing has been scheduled outside of the office of the purchaser's attorney. The reporting and results of the rundown at the closing are discussed in Section 6.2.

#### **Section 4.3.6 Marked-Up Title Commitment**

A requirement of the lender, as discussed in Section 6.3, may be that the attorney submit, post-closing, a "marked-up" title commitment to the lender. Even if the lender does not require this submission to be made, the marking-up of the title commitment at the closing serves as confirmation to the purchaser's attorney that all items which should be omitted from the title commitment, in fact, have been disposed of to the satisfaction of both the purchaser's attorney and the title company. A detailed discussion of marking-up the title commitment appears in Section 6.2.1.

#### **Section 4.3.7 Title Policies and the Protections of Title Insurance**

Approximately thirty (30) to sixty (60) days after the closing, the title company will perform what is commonly referred to as a "cover search". The title company will search the records of the county recording office to confirm that all documents that should have been recorded such as the deed and mortgage have been recorded and that any mortgages which had encumbered the property and had been reflected as an exception in the title commitment have been properly discharged or cancelled of record.

Where a purchaser is obtaining mortgage loan financing and that lender is requiring a title insurance policy, two separate policies of title insurance will issue; one will be the owner's policy of title insurance and the other will be the mortgagee's (lender's) policy of title insurance. It is important to note that the purchaser, who is also the borrower or mortgagor in the loan transaction, purchases the title insurance for the benefit of the lender to protect the lender's interest in the property and is required to do so as a condition of the lender making its loan. The title insurance premium will be based upon

the amount of the owner's policy, which will exceed the amount of the mortgagee's policy of title insurance. The mortgagee's policy of title insurance will be only in the amount of the mortgage.

A title insurance policy has been defined as "a contract of indemnity under which the insurer for a valuable consideration agrees to indemnify the insured in a specific amount against loss through defects of title to, or liens or encumbrances upon realty in which the insured has an interest." *Sandler v. N.J. Realty Title Ins. Co.*, 36 N.J. 471, 479 (1962). As such, "the insured is entitled to be reimbursed for all losses actually sustained, not to exceed the amount of his insurance, by reason of the defects of title or liens or encumbrances insured against..." *Booth v. N.J. Highway Authority*, 60 N.J. Super. 534, 536 (Law Div. 1960) (quoting 45 C.J.S. Insurance §966, p.1161). Moreover, the insurers' liability is "governed by the reasonable expectation of an average lay purchaser of insurance...[and] all genuine ambiguities are resolved against the insurer." *Enright v. Lubow*, 202 N.J. Super. 58, 69 (App. Div. 1985) (citations omitted).

Title insurance protects a purchaser or mortgagee only against such defects existing at the time coverage is obtained and pursuant to N.J.S.A. 17:46B-9. This may occur only after a thorough title search and examination determining the insurability of the title. *Pioneer Nat'l. Title Ins. Co. v. Lucas*, 155 N.J. Super. 332 (App. Div. 1978), *aff'd.*, 78 N.J. 320 (1978). Pursuant to the Title Insurance Act of 1974, all title insurance companies operate under the supervision of the State Commission of Insurance (N.J.S.A. 17:B-1 *et seq.*) and all fees and charges must be within the guidelines set by the New Jersey Land Title Insurance Rating Bureau. In New Jersey, the standard title insurance forms are produced by the American Land Title Association (ALTA).

Title insurance policies typically contain the name of the insured, the amount of the policy, a description of the real estate, and the interest or estate insured. Further, they contain an insuring clause showing the extent of the risks insured as well as a "Schedule B" setting forth the exceptions (specific defects or encumbrances) which the company will not insure. These exceptions typically include such things as any liens, easements, restrictive covenants, and other encumbrances discovered by the title search.

Marketable title has been defined as such title which is "relatively free from doubt, such that in a suit for specific performance a court would compel the prospective purchaser to accept the title" or one which is "free from reasonable doubt, that which a reasonable buyer would be willing to accept, or which is "salable." *Keown v. West Jersey Title and Guaranty Co.*, 161 N.J. Super. 19, 23 (App. Div. 1978) (citations omitted)." Some contracts for sale provide that title must be marketable and clear of all encumbrances. Courts have held such provisions to require the grantor "to deliver to the grantee a title of which no reasonable doubt exists. A reasonable doubt is such that would interfere with its sale to a reasonable purchaser and thus render the title unmarketable." *Gravino v. Galia*, 18 N.J. Super. 241, 245 (1952).

To constitute unmarketable title, the doubt affecting the title "must be reasonable and the feared contingency must be fairly probable. It must appear that an anticipated attack on the title will have some reasonable chance of success." *Gravino*, 18 N.J. Super. at 245 (citations omitted). In *Keown*, the Court noted that "all of the cases...in which unmarketability of title resulted involved a defect which would give rise to some kind of adverse claim on the part of third parties. *Id.* at 24. The Court cited

several examples including *Bier v. Walbaum*, 102 N.J.L. 369 (E.& A. 1926) (encroachments amounting to nuisances) and *United States v. Roebling*, 244 F. Supp. 736, 744 (D.N.J. 1965) (unclear deed with possible reversionary interests).

Contracts frequently define the quality of title which the Seller is required to deliver as that state of title that a reputable title insurance company licensed to do business in New Jersey is willing to ensure at regular rates. When necessary, additional coverage may be negotiated for a purchaser in order to mitigate the adverse affects of either known or latent defects and encumbrances. For an added premium, the basic policy may be varied by endorsement, available in standard forms by ALTA or designed to address a particular situation.

An endorsement gives specific affirmative insurance against loss or damage arising by reason of an incident occurring or perhaps, in some circumstances, an incident not occurring. The endorsement adds coverage to the policy, or in some limited circumstances, the endorsement does not actually add coverage as much as it affirms the existence of coverage....

Beasley, Standard Endorsements for Extra Coverage, in *Practicing Law Institutes, Real Estate Law and Practice Course Handbook Series No. 251*, 135 (1984).

Endorsements are commonly used to waive one or more of the standard exceptions contained in Schedule B of the policy. Most endorsements must be requested by the purchaser's attorney and will be issued only if approved by the title company's underwriting officers. Standard forms of endorsements commonly applicable to residential real estate transactions appear as part of Exhibit 57.

## EXHIBIT 57A – ALTA ENDORSEMENT FORM 4.1-06 CONDOMINIUM

### ALTA ENDORSEMENT - FORM 4.1-06 - CONDOMINIUM

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.:  
2013-00326

The Company insures against loss or damage sustained by the Insured by reason of:

1. The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the jurisdiction in which the unit and its common elements are located.
2. The failure of the documents required by the condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements.
3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in this paragraph 3, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.
4. Any charges or assessments provided for in the condominium statutes and condominium documents due and unpaid at Date of Policy.
5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.
6. Any obligation to remove any improvements that exist at Date of Policy because of any present encroachments or because of any future unintentional encroachment of the common elements upon any unit or of any unit upon the common elements or another unit.
7. The failure of the Title by reason of a right of first refusal to purchase the unit and its common elements which was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By: \_\_\_\_\_

Authorized Officer or Agent

End. - ALTA 4.1-06-Condominium  
Revised 5/15/09

NJRB 5-89  
Effective 2/15/07  
NJ-01080.404970-RAM-72999-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**EXHIBIT 57A – ALTA Endorsement Form 4.1-06 Condominium - Continued**

provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**EXHIBIT 57B – ALTA ENDORSEMENT FORM 5.1-06 PLANNED UNIT DEVELOPMENT**

**ALTA ENDORSEMENT - FORM 5.1-06 - PLANNED UNIT DEVELOPMENT**

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.: 2013-00326

The Company insures against loss or damage sustained by the Insured by reason of:

1. Present violations of any restrictive covenants referred to in Schedule B that restrict the use of the Land or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in this paragraph 1, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.
2. Any charges or assessments in favor of any association of homeowners, that are provided for in any document referred to in Schedule B, due and unpaid at Date of Policy.
3. The enforced removal of any existing structure on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.
4. The failure of the Title by reason of a right of first refusal to purchase the Land that was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By: \_\_\_\_\_

Authorized Officer or Agent

End. - ALTA Form 5.1-06 - Planned Unit Development  
Revised: 5/15/09

NJRB 5-90  
Effective 2/15/07  
NJ-01080.404970-RAM-72999-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



## EXHIBIT 57C – ALTA ENDORSEMENT FORM 6-06 VARIABLE RATE MORTGAGE

### ALTA ENDORSEMENT - FORM 6-06 – VARIABLE RATE MORTGAGE

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.: 2013-00326

The Company insures against loss or damage sustained by the Insured by reason of:

1. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from its provisions that provide for changes in the rate of interest.
2. Loss of priority of the lien of the Insured Mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the Insured Mortgage, which loss of priority is caused by the changes in the rate of interest.

"Changes in the rate of interest", as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the loan documents secured by the Insured Mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon:

1. usury, or
2. any consumer credit protection or truth in lending law.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By: \_\_\_\_\_

Authorized Officer or Agent

End. – ALTA Form 6-06 – Variable Rate Mortgage  
Revised: 5/15/09

NJRB-5-91  
Effective 2/15/07  
NJ-01080.404970-RAM-72999-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**EXHIBIT 57D – ALTA ENDORSEMENT FORM 6.1  
VARIABLE RATE MORTGAGE - REGULATIONS**

**ALTA ENDORSEMENT - FORM 6.1- VARIABLE RATE MORTGAGE - REGULATIONS**

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.: 2013-00326

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for changes in the rate of interest.
2. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by the changes in the rate of interest.

"Changes in the rate of interest", as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the insured mortgage at Date of Policy.

This endorsement does not insure against loss or damage by reason of the failure of the insured to comply with the following statutes or regulations concerning variable rate mortgages:

This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By: \_\_\_\_\_

Authorized Officer or Agent

End. – ALTA Form 6.1  
Variable Rate Mortgage - Regulations

NJRB-5-11  
Revised 5/3/05  
NJ-01080.404970-RAM-72999-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**EXHIBIT 57E – ALTA ENDORSEMENT FORM 6.2-06**  
**VARIABLE RATE MORTGAGE ENDORSEMENT – NEGATIVE AMORTIZATION**

**ALTA ENDORSEMENT - FORM 6.2-06**  
**VARIABLE RATE MORTGAGE ENDORSEMENT – NEGATIVE AMORTIZATION**

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.: 2013-00326

The Company insures against loss or damage sustained by the Insured by reason of:

1. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from its provisions that provide for (a) interest on interest, (b) changes in the rate of interest, or (c) the addition of unpaid interest to the principal balance of the loan.
2. Loss of priority of the lien of the Insured Mortgage as security for the principal balance of the loan, including any unpaid interest which was added to principal in accordance with the provisions of the Insured Mortgage, interest on interest, or interest as changed in accordance with the provisions of the Insured Mortgage, which loss of priority is caused by (a) changes in the rate of interest, (b) interest on interest, or (c) increases in the unpaid principal balance of the loan resulting from the addition of unpaid interest.

"Changes in the rate of interest", as used in this endorsement shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the loan documents secured by the Insured Mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon:

1. usury, or
2. any consumer credit protection or truth in lending law.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By: \_\_\_\_\_

Authorized Officer or Agent

End. – ALTA Form 6.2-06 – Variable Rate Mortgage – Negative Amortization

NJRB 5-92  
Effective 2/15/07  
Revised 5/15/09

NJ-01080.404970-RAM-72999-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**EXHIBIT 57F – ALTA ENDORSEMENT FORM 7-06  
MANUFACTURED HOUSING UNIT**

**ALTA ENDORSEMENT - FORM 7-06 – MANUFACTURED HOUSING UNIT**

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.: 2013-00326

The term "Land" includes the manufactured housing unit located on the land described in Schedule A at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements (iii) extend the Date of the policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of the endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By:

\_\_\_\_\_  
Authorized Officer or Agent

End. – ALTA Form 7-06 – Manufactured Housing Unit (6/17/06)

NJRB 5-93  
Effective: 2/15/07  
Revised 9/10/07

NJ-01080.404970-RAM-72999-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**EXHIBIT 57G – ALTA ENDORSEMENT FORM 8.1-06  
ENVIRONMENTAL PROTECTION LIEN**

**ALTA ENDORSEMENT - FORM 8.1-06 – ENVIRONMENTAL PROTECTION LIEN**

New Jersey Variation

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.: 2013-00326

The insurance afforded by this endorsement is only effective if the Land is used or is to be used primarily for residential purposes.

The Company insures against loss or damage sustained by the Insured by reason of lack of priority of the lien of the Insured Mortgage over

- (a) any environmental protection lien that, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge, or is filed in the records of the clerk of the United States district court for the district in which the Land is located, except as set forth in Schedule B; or
- (b) any environmental protection lien provided by any state statute in effect at Date of Policy, except environmental protection liens provided by the following state statutes: N.J.S.A. 58:10-23.11 et seq.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By: \_\_\_\_\_

Authorized Officer or Agent

End. – ALTA Form 8.1-06 – Environmental Protection Lien (6/17/06)  
New Jersey Variation

NJRB 5-94 (2/15/07)  
Last Revised 01/01/2010  
NJ-01080.404970-RAM-72999-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**Exhibit 57G - Future Advance - Reverse Mortgage Endorsement - Continued**

**TRANSNATION TITLE INSURANCE COMPANY**

File No. TA-

**ALTA ENDORSEMENT – FORM 14.3-06**  
**Continued**

**Attached to and made part of Policy No.**

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) resulting from:
- a. Advances made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed or on behalf of the mortgagor.
  - b. The loss of priority of the lien of the Insured Mortgage, as security for Advances, to the lien of real estate taxes or assessments on the Title imposed by governmental authority arising after Date of Policy.
  - c. the loss of priority of the lien of the Insured Mortgage as security for any Advance, to a federal tax lien, which Advance is made after the earlier of (i) actual knowledge of the Insured that a federal tax lien was filed against the mortgagor, or (ii) the expiration of more than forty-five days after notice of a federal tax lien filed against the mortgagor.
  - d. The loss of priority of the lien of the Insured Mortgage as security for Advances to any federal or state environmental protection lien.
  - e. Usury, or any consumer credit protection or truth-in-lending law.
  - f. The loss of priority of the lien of the Insured Mortgage as security for any Advance to a mechanic's or materialmen's lien.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**TRANSNATION TITLE INSURANCE COMPANY**

**Dated:**

**Countersigned:**

**By:** \_\_\_\_\_  
Authorized Signatory

**EXHIBIT 57H – ALTA ENDORSEMENT FORM 9-06  
RESTRICTIONS, ENCROACHMENTS, MINERAL-LOAN**

**ALTA ENDORSEMENT - FORM 9-06  
RESTRICTIONS, ENCROACHMENTS, MINERALS - LOAN**

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.: 2013-00326

1. The insurance provided by this endorsement is subject to the exclusions in Section 5 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only:
  - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
  - b. "Improvement" means an improvement, including any lawn, shrubbery, or trees, affixed to either the Land or adjoining land at Date of Policy that by law constitutes real property.
3. The Company insures against loss or damage sustained by the Insured by reason of:
  - a. A violation of a Covenant that:
    - i. divests, subordinates, or extinguishes the lien of the Insured Mortgage,
    - ii. results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or
    - iii. causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness;
  - b. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;
  - c. Enforced removal of an Improvement located on the Land as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or
  - d. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. The Company insures against loss or damage sustained by reason of:
  - a. An encroachment of:
    - i. an Improvement located on the Land, at Date of Policy, onto adjoining land or onto that portion of the Land subject to an easement; or
    - ii. an Improvement located on adjoining land onto the Land at Date of Policy  
unless an exception in Schedule B of the policy identifies the encroachment otherwise insured against in Sections 4.a.i. or 4.a.ii.;
  - b. A final court order or judgment requiring the removal from any land adjoining the Land of an encroachment identified in Schedule B; or

End. - ALTA 9-06 Restrictions, Encroachments, Minerals (Revised 4-2-12)  
New Jersey Variation

NJRB 5-95  
Last Revised 04/01/2013  
NJ-01080.404970-RAM-72999-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**EXHIBIT 57H – ALTA Endorsement Form 9-06**  
**Restrictions, Encroachments, Mineral-Loan - Continued**

**ALTA ENDORSEMENT - FORM 9-06 - RESTRICTIONS, ENCROACHMENTS, MINERALS - LOAN**

File No.: 2013-00326

- c. Damage to an Improvement located on the Land, at Date of Policy:
- i. that is located on or encroaches onto that portion of the Land subject to an easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved; or
  - ii. resulting from the future exercise of a right to use the surface of the Land for the extraction or development of minerals or any other subsurface substances excepted from the description of the Land or excepted in Schedule B.
5. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
- a. any Covenant contained in an instrument creating a lease;
  - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land;
  - c. except as provided in Section 3.d, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances;
  - d. contamination, explosion, fire, fracturing, vibration, earthquake or subsidence; or
  - e. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances.

As used in this endorsement, the words "covenant, condition, limitation or restriction" do not include any recorded covenants, conditions or restrictions excepted in Schedule B for rules, or regulations or covenants, conditions or restrictions promulgated by the Department of Community Affairs ("DCA") or Council on Affordable Housing ("COAH") or any other federal, state or local governmental body or agency or any federal or state laws with regard to affordable housing or matters related thereto.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By:

\_\_\_\_\_  
Authorized Officer or Agent

End. - ALTA 9-06 Restrictions, Encroachments, Minerals (Revised 4-2-12)  
New Jersey Variation

NJRB 5-95  
Last Revised 04/01/2013  
insertdoc insEPNPolicyNo-Mtg.rtf

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**EXHIBIT 57I – ALTA ENDORSEMENT FORM 9.3-06  
COVENANTS, CONDITIONS AND RESTRICTIONS**

**ALTA ENDORSEMENT - FORM 9.3-06 - Covenants, Conditions and Restrictions -  
Loan Policy**

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.: 2013-00326

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only:
  - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
  - b. "Improvement" means an improvement, including any lawn, shrubbery, or trees, affixed to the Land at Date of Policy that by law constitutes real property.
3. The Company insures against loss or damage sustained by the Insured by reason of:
  - a. A violation of a Covenant that:
    - i. divests, subordinates, or extinguishes the lien of the Insured Mortgage,
    - ii. results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or
    - iii. causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness;
  - b. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;
  - c. Enforced removal of an Improvement as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or
  - d. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
  - a. any Covenant contained in an instrument creating a lease;
  - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
  - c. except as provided in Section 3.d, any Covenant pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

End. - ALTA 9.3-06 Covenants, Conditions and Restrictions - Loan Policy (Revised 4-2-12)  
New Jersey Variation

NJRB 5-98  
Last Revised 11/16/2012  
NJ-01080.404970-RAM-72999-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**EXHIBIT 57I – ALTA Endorsement Form 9.3-06**  
**Covenants, Conditions And Restrictions - Continued**

**ALTA ENDORSEMENT - FORM 9.3-06 - Covenants, Conditions and Restrictions - Loan Policy**

File No.: 2013-00326

As used in this endorsement, the words "covenant, condition, limitation or restriction" do not include any recorded covenants, conditions or restrictions excepted in Schedule B for rules, or regulations or covenants, conditions or restrictions promulgated by the Department of Community Affairs ("DCA") or Council on Affordable Housing ("COAH") or any other federal, state or local governmental body or agency or any federal or state laws with regard to affordable housing or matters related thereto.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By: \_\_\_\_\_

Authorized Officer or Agent



## EXHIBIT 57J – ALTA ENDORSEMENT FORM 10-06 ASSIGNMENT

### ALTA ENDORSEMENT - FORM 10-06 - ASSIGNMENT

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.: 2013-00326

1. The name of the Insured at Date of Endorsement and referred to in this endorsement as the "Assignee" is amended to read:
2. The Company insures against loss or damage sustained by the Assignee by reason of:
  - a. The failure of the following assignment to vest title to the Insured Mortgage in the Assignee:
  - b. Any modification, partial or full reconveyance, release, or discharge of the lien of the Insured Mortgage recorded on or prior to Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except:

This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the assignment by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on:

1. the assignment being deemed a fraudulent conveyance or fraudulent transfer; or
2. the assignment being deemed a preferential transfer.

This endorsement shall be effective provided that, at Date of Endorsement, (1) the note or notes secured by the lien of the Insured Mortgage have been properly endorsed and delivered to the Assignee, or (2) if the note or notes are transferable records, the Assignee has "control" of the single authoritative copy of each "transferable record" as these terms are defined by applicable electronic transactions laws.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

ALTA Endorsement Form 10-06 (Assignment) (02/03/10)  
Effective: 2/15/07

NJRB 5-101  
Last Revised: 06/30/2011  
NJ-01080.404870-RAM-72999-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**EXHIBIT 57K – ALTA ENDORSEMENT FORM 10.1-06  
ASSIGNMENT AND DATE DOWN**

**ALTA ENDORSEMENT – FORM 10.1-06 – ASSIGNMENT AND DATE DOWN**

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.: 2013-00326

1. The name of the Insured at Date of Endorsement and referred to in this endorsement as the "Assignee" is amended to read:
2. The Company insures against loss or damage sustained by the Assignee by reason of:
  - a. The failure of the following assignment to vest title to the Insured Mortgage in the Assignee:
  - b. Any liens for taxes or assessments that are due and payable on Date of Endorsement, except:
  - c. Lack of priority of the lien of the Insured Mortgage over defects, liens, or encumbrances other than those shown in the policy or a prior endorsement, except:
  - d. Notices of federal tax liens or notices of pending bankruptcy proceedings affecting the Title and recorded subsequent to Date of Policy in the Public Records and on or prior to Date of Endorsement, except:
  - e. Any modification, partial or full reconveyance, release or discharge of the lien of the Insured Mortgage recorded on or prior to Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except:

This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the assignment by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on:

1. the assignment being deemed a fraudulent conveyance or fraudulent transfer; or
2. the assignment being deemed a preferential transfer.

This endorsement shall be effective provided that, at Date of Endorsement, (1) the note or notes secured by the lien of the Insured Mortgage have been properly endorsed and delivered to the Assignee, or (2) if the note or notes are transferable records, the Assignee has "control" of the single authoritative copy of each "transferable record" as these terms are defined by applicable electronic transaction laws.

ALTA Endorsement Form 10.1 - 06 -- (Assignment and Date Down) (02/03/10)  
Effective: 2/15/07

NJRB 5-102  
Last Revised: 06/30/2011  
NJ-01080.404970-RAM-72999-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**EXHIBIT 57K – ALTA Endorsement Form 10.1-06**  
**Assignment and Date Down - Continued**

ALTA Endorsement Form 10.1-06  
Policy No.: 2013-00326  
Page 2

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By: \_\_\_\_\_  
Authorized Officer or Agent



**EXHIBIT 57L – ALTA ENDORSEMENT FORM 14.1-06  
FUTURE ADVANCE - KNOWLEDGE**

**ALTA ENDORSEMENT - FORM 14.1-06 – FUTURE ADVANCE – KNOWLEDGE**  
(Revised 2-3-11)

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.: 2013-00326

1. The insurance for Advances added by Sections 2 and 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, except Exclusion 3(d), the provisions of the Conditions, and the exceptions contained in Schedule B.
  - a. "Agreement," as used in this endorsement, shall mean the note or loan agreement, the repayment of Advances under which is secured by the Insured Mortgage.
  - b. "Advance," as used in this endorsement, shall mean only an advance of principal made after the Date of Policy as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the Insured Mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the Insured Mortgage before the time of acquisition of the Title, and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.
  - c. "Changes in the rate of interest," as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to a formula provided in the Insured Mortgage or the Agreement at Date of Policy.
2. The Company insures against loss or damage sustained by the Insured by reason of:
  - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Advance.
  - b. The lack of priority of the lien of the Insured Mortgage as security for each Advance over any lien or encumbrance on the Title.
  - c. The invalidity or unenforceability or lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, Advances and unpaid interest resulting from (i) re-Advances and repayments of Indebtedness, (ii) earlier periods of no indebtedness owing during the term of the Insured Mortgage, or (iii) the Insured Mortgage not complying with the requirements of state law of the state in which the Land is located to secure Advances.
3. The Company also insures against loss or damage sustained by the Insured by reason of:
  - a. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from any provisions of the Agreement that provide for (i) interest on interest, (ii) changes in the rate of interest, or (iii) the addition of unpaid interest to the Indebtedness.
  - b. Lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, including any unpaid interest that was added to principal in accordance with any provisions of the Agreement, interest on interest, or interest as changed in accordance with the provisions of the Insured Mortgage, which lack of priority is caused by (i) changes in the rate of interest, (ii) interest on interest, or (iii) increases in the Indebtedness resulting from the addition of unpaid interest.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

End. – ALTA Form 14.1-06 – Future Advance - Knowledge

NJRB 5-108  
Effective: 2/15/07  
Last Revised: 03/02/2012  
NJ-Q1080.404970-RAM-72999-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**EXHIBIT 57L – ALTA Endorsement Form 14.1-06**  
**Future Advance – Knowledge - Continued**

ALTA ENDORSEMENT - FORM 14.1-06  
FUTURE ADVANCE – KNOWLEDGE  
Page 2

File No. 2013-00326  
Policy No. 2013-00326

- a. The invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as security for any Advance made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor;
  - b. The lien of real estate taxes or assessments on the Title imposed by governmental authority arising after Date of Policy;
  - c. The lack of priority of the lien of the Insured Mortgage as security for any Advance to a federal tax lien, which Advance is made after the earlier of (i) actual knowledge of the Insured that a federal tax lien was filed against the mortgagor, or (ii) the expiration, after notice of a federal tax lien filed against the mortgagor, of any grace period for making disbursements with priority over the federal tax lien provided in the Internal Revenue Code (26 U.S.C.);
  - d. Any federal or state environmental protection lien;
  - e. The lack of priority of any Advance made after the Insured has Knowledge of the existence of liens, encumbrances or other matters affecting the Land intervening between Date of Policy and the Advance, as to the intervening lien, encumbrance or other matter;
  - f. Usury, or any consumer credit protection or truth-in-lending law; or
  - g. Any mechanic's or materialmen's lien.
5. The Indebtedness includes Advances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By: \_\_\_\_\_

Authorized Officer or Agent

**EXHIBIT 57M – ALTA ENDORSEMENT FORM 14.3-06  
FUTURE ADVANCE – REVERSE MORTGAGE**

**ALTA ENDORSEMENT - FORM 14.3-06  
FUTURE ADVANCE – REVERSE MORTGAGE**

(Revised 2-3-11)

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.: 2013-00326

1. The insurance for Advances added by Sections 2 and 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions in the Policy, except Exclusion 3(d), the provisions of the Conditions and the exceptions contained in Schedule B.
  - a. "Agreement," as used in this endorsement, shall mean the note or loan agreement, repayment of Advances under which is secured by the Insured Mortgage.
  - b. "Advance," as used in this endorsement, shall mean only an advance of principal made after the Date of Policy as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the Insured Mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the Insured Mortgage before the time of acquisition of the Title, and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.
  - c. "Changes in the rate of interest," as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to a formula provided in the Insured Mortgage or the Agreement at Date of Policy.
2. The Company insures against loss or damage sustained by the Insured by reason of:
  - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Advance.
  - b. The lack of priority of the lien of the Insured Mortgage as security for each Advance over any lien or encumbrance on the Title.
  - c. The invalidity or unenforceability or lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, Advances and unpaid interest resulting from (i) re-Advances and repayments of Indebtedness, (ii) earlier periods of no indebtedness owing during the term of the Insured Mortgage, or (iii) the Insured Mortgage not complying with the requirements of state law of the state in which the Land is located to secure Advances, (iv) failure of the Insured Mortgage to state the term for Advances, or (v) failure of the Insured Mortgage to state the maximum amount secured by the Insured Mortgage.
  - d. The invalidity or unenforceability of the lien of the Insured Mortgage because of the failure of the mortgagors to be at least 62 years of age at Date of Policy.
3. The Company also insures against loss or damage sustained by the Insured by reason of:
  - a. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from any provisions of the Agreement that provide for (i) interest on interest, (ii) changes in the rate of interest, or (iii) the addition of unpaid interest to the principal portion of the Indebtedness.

End. – ALTA Form 14.3-06 – Future Advance – Reverse Mortgage (rev.10/22/09)

NJRB 5-110  
Last Revised: 04/01/2013  
NJ-01080.404970-RAM-72999-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**EXHIBIT 57M – ALTA Endorsement Form 14.3-06  
Future Advance – Reverse Mortgage - Continued**

**ALTA ENDORSEMENT - FORM 14.3-06  
FUTURE ADVANCE – REVERSE MORTGAGE  
Page 2**

File No.: 2013-00326  
Policy No.: 2013-00326

- b. Lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, including any unpaid interest that was added to principal in accordance with any provisions of the Agreement, interest on interest, or interest as changed in accordance with the provisions of the Insured Mortgage, which lack of priority is caused by (i) changes in the rate of interest, (ii) interest on interest, or (iii) increases in the Indebtedness resulting from the addition of unpaid interest.

"Interest," as used in this paragraph 3, shall include lawful interest based on appreciated value.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
- a. The invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as security for any Advance made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor;
  - b. The lien of real estate taxes or assessments on the Title imposed by governmental authority arising after Date of Policy;
  - c. The lack of priority of the lien of the Insured Mortgage as security for any Advance to a federal tax lien, which Advance is made after the earlier of (i) actual knowledge of the Insured that a federal tax lien was filed against the mortgagor, or (ii) the expiration, after notice of a federal tax lien filed against the mortgagor, of any grace period for making disbursements with priority over the federal tax lien provided in the Internal Revenue Code (26 U.S.C.);
  - d. Any federal or state environmental protection lien;
  - e. Usury, or any consumer credit protection or truth-in-lending law; or
  - f. Any mechanic's or materialmen's lien.

5. The Indebtedness includes Advances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By: \_\_\_\_\_

Authorized Officer or Agent



**EXHIBIT 57N - ALTA ENDORSEMENT FORM 22-06  
LOCATION (NEW JERSEY VARIATION)**

**ALTA ENDORSEMENT - FORM 22-06 – LOCATION (New Jersey Variation)**

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

Attached to and made a part of Policy No.: 2013-00326

The Company insures against loss or damage sustained by the Insured by reason of any inaccuracy in the statement that, according to the survey referred to in the Survey Endorsement, there is located on the Land at date of survey

- A. 10 FOOT WIDE DRAINAGE EASEMENT THROUGH PREMISES;
- B. OVERHEAD WIRES CROSSING PREMISES;
- C. POSSIBLE MISLOCATION OF FENCES
- D. SETBACK LINE HAS BEEN VIOLATED; MORTGAGE POLICY INSURES THAT SAID VIOLATION WILL NOT RESULT IN A FORFEITURE OR REVERSION OF TITLE.

known as 22 RED COAT DRIVE, EAST BRUNSWICK NJ 08816.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**THIS ENDORSEMENT IS VOID IF ATTACHED TO AN OWNERS' POLICY**

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By: \_\_\_\_\_

Authorized Officer or Agent

End. – ALTA Form 22-06 – Location (5/17/06)  
New Jersey Variation  
Effective 2/15/07  
Revised 5/15/09

NJRB 5/123  
Last Revised 01/01/2010  
NJ-01080.404970-RAM-72999-1-13-2013-00326



**EXHIBIT 570 – ALTA ENDORSEMENT FORM 25-06  
SAME AS SURVEY (NEW JERSEY VARIATION)**

**ALTA ENDORSEMENT – FORM 25-06 - SAME AS SURVEY (New Jersey Variation)**

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No. 2013-00326

Attached to and made a part of Policy No.: 2013-00326

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the survey made by PROFESSIONAL LAND SURVEYORS dated May 16, 2013 and designated Job No. \_\_\_\_\_ and described in the Survey Endorsement attached to this Policy.

This Endorsement does not insure against errors or inaccuracies which may be contained in the survey which do not affect title.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**THIS ENDORSEMENT IS VOID IF ATTACHED TO AN OWNER'S POLICY**

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By: \_\_\_\_\_

Authorized Officer or Agent

End. – ALTA Form 25-06 – Same as Survey (New Jersey Variation)

NJRB 5-125  
Last Revised 01/01/2013  
NJ-01080.404970-RAM-72999-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**EXHIBIT 57P – ALTA ENDORSEMENT FORM 30-06  
SHARED APPRECIATION MORTGAGE**

**ALTA ENDORSEMENT – FORM 30-06 – SHARED APPRECIATION MORTGAGE**

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No. 2013-00326

Attached to and made a part of Policy No.: 2013-00326

The insurance afforded by this endorsement is only effective if the Land is a one to four family residence.

For the purposes of this endorsement, "Shared Appreciation" shall mean increases in the Indebtedness secured by the Insured Mortgage by reason of shared equity or appreciation in the value of the Land.

The Company insures against loss or damage sustained by the Insured by reason of:

- (a) The invalidity or unenforceability of the lien of the Insured Mortgage as security for the Indebtedness caused by the provisions for Shared Appreciation; or
- (b) Loss of priority of the lien of the Insured Mortgage as security for the Indebtedness caused by the provisions for Shared Appreciation.

Nothing contained in this endorsement shall be construed as insuring against loss or damage sustained or incurred by reason of:

- (a) usury;
- (b) any consumer credit protection or truth-in-lending law;
- (c) costs, expenses or attorneys' fees required to obtain a determination, by judicial proceedings or otherwise, of the amount of the Shared Appreciation;
- (d) failure to comply with applicable laws and regulations regarding Shared Appreciation;
- (e) the stay, rejection or avoidance of the lien of the Insured Mortgage as security for the Shared Appreciation, or a court order providing some other remedy, by the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws; or
- (f) the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as security for the Indebtedness because all applicable mortgage recording or similar intangible taxes were not paid.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By: \_\_\_\_\_

Authorized Officer or Agent

ALTA 30-06 – Shared Appreciation Mortgage (07-26-2010)

NJRB 5-131  
Last Revised 06-30-2011  
NJ-01080.404970-RAM-72989-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**EXHIBIT 57Q – ALTA ENDORSEMENT  
MORTGAGE ASSIGNMENT ENDORSEMENT – POLICY UPDATE**

**MORTGAGE ASSIGNMENT ENDORSEMENT-POLICY UPDATE**

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.: 2013-00326

1. The effective date of the captioned policy is changed to: \_\_\_\_\_
2. The name of the Insured at the date set forth in Paragraph 1 above and referred to in this endorsement as the "Assignee" is amended to read: \_\_\_\_\_, its successors and/or assigns as their interests may appear.
3. Schedule A, No. 4 of the captioned policy is amended to add:  
  
Which said mortgage was assigned to \_\_\_\_\_ by Assignment of Mortgage dated \_\_\_\_\_ recorded \_\_\_\_\_ in the Clerk's/Register's Office of Middlesex County in Book \_\_\_\_\_ page \_\_\_\_\_ &c.
4. The following exceptions are added to Schedule B of the captioned policy:

This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the assignment by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on:

1. the assignment being deemed a fraudulent conveyance or fraudulent transfer; or
2. the assignment being deemed a preferential transfer.

This endorsement shall be effective provided that, at Date of Endorsement, (1) the note or notes secured by the lien of the insured Mortgage have been properly endorsed and delivered to the Assignee, or (2) if the note or notes are transferable records, the Assignee has "control" of the single authoritative copy of each "transferable record" as these terms are defined by applicable electronic transactions laws.

This Endorsement is made a part of the commitment or policy. It is subject to all the terms of the commitment and policy and prior endorsements. Except as expressly stated on this endorsement, the terms, dates, and amount of the commitment or policy and prior endorsements are not changed.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By: \_\_\_\_\_

Authorized Officer or Agent

**EXHIBIT 57R – ALTA ENDORSEMENT  
LENDER'S SURVEY ENDORSEMENT (WITHOUT SURVEY)**

**LENDER'S SURVEY ENDORSEMENT (WITHOUT SURVEY)**

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.: 2013-00326

Exception No. \_\_\_\_\_ is removed. Notwithstanding any provision in the policy to the contrary, unless an exception is taken in Schedule B, the policy insures against loss or damage which the insured shall sustain by reason of any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.

If this endorsement is attached to an Owner's Policy, this endorsement is void.

This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned: \_\_\_\_\_

By: \_\_\_\_\_

Authorized Officer or Agent

End. – Lenders Survey (Without Survey)

NJRB 5-37  
Revised: 2/15/07  
Revised: 9/10/07

**EXHIBIT 57S – ALTA ENDORSEMENT  
REVERSE ANNUITY MORTGAGE ENDORSEMENT**

**REVERSE ANNUITY MORTGAGE ENDORSEMENT**

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.: 2013-00326

The Company insures the Insured against loss or damage sustained by reason of:

The invalidity, unenforceability or loss of priority of the lien of the insured mortgage as security for the payment of the advances made for Principal, or amounts payable as Contingent or Noncontingent Interest as set forth and defined in the Mortgage, Loan Agreement or Note; provided, however, that such invalidity, unenforceability or loss of priority is caused or created by the provisions of the Loan Documents.

1. This endorsement does not insure loss or damage based upon (a) usury, or (b) any consumer credit protection or truth-in-lending law.
2. This endorsement does not insure that advances made after Date of Policy pursuant to the Mortgage, Loan Agreement or Note have priority over the following matters, arising after Date of Policy:
  - A. Real Estate Taxes, Special Assessments, or Municipal Liens.
  - B. Federal Tax Liens.
  - C. Bankruptcies affecting the estate of interest of the owner of the land.
  - D. Environmental Protection Liens.
3. This endorsement does not insure that advances made after Date of Policy pursuant to the Mortgage, Loan Agreement or Note have priority over Liens, encumbrances or other matters if an event, entitling the insured to declare the loan to be in default under the terms of the Loan Documents, the existence of which event of default is actually known to the Insured, occurs before the date of any such advance.

The total liability of the Company under the Policy and any endorsements thereto shall not exceed, in the aggregate, the face amount of the policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of the policy and is subject to the schedules, exclusions, conditions, and stipulations therein except as modified by the provisions hereof.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By: \_\_\_\_\_

Authorized Officer or Agent

End. – Reverse Annuity Mortgage (2/1/94)

NJRB 5-33

**EXHIBIT 57T – ALTA ENDORSEMENT  
SECONDARY MORTGAGE MARKET ENDORSEMENT**

**SECONDARY MORTGAGE MARKET ENDORSEMENT**

---

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.: 2013-00326

The insurance afforded by this endorsement is only effective if the Land is a one to four family residence.

This policy insures against loss occasioned by any inaccuracies in the following statements:

1. Easements set forth in Schedule B, Part I, if any, do not substantially affect the use and enjoyment of the land, as currently improved, for residential purposes.
2. Restrictions, covenants and conditions set forth in Schedule B, Part I, if any, have not been violated, and a violation thereof will not cause a forfeiture or reversion of title.
3. Real estate taxes, assessments, and water and sewer rents set forth in Schedule B, Part I, if any, are not yet due and payable.

The total liability of the Company under said policy or certificate and under this and any prior endorsements thereto shall not exceed, in the aggregate, the amount of liability stated on the face of said policy or certificate, as the same may be specifically amended in dollar amount by this or any prior endorsements, and the costs which the Company is obligated to pay under the Conditions and Stipulations of the policy.

This endorsement is made a part of said policy or certificate and is subject to the Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

Nothing herein contained shall be construed as extending or changing the effective date of the aforesaid policy or certificate unless otherwise expressly stated.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By: \_\_\_\_\_

Authorized Officer or Agent

End. – Secondary Mortgage Market

NJRB 5-32  
Last Revised 04/01/2013  
NJ-01080.404970-RAM-72999-1-13-2013-00326

## EXHIBIT 57U – SURVEY ENDORSEMENT

### Survey Endorsement

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.: 2013-00326

Exception No. \_\_\_\_ is removed. Notwithstanding any provision in the policy to the contrary, unless an exception is taken in Schedule B, the policy insures against loss arising from any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title. The following matters shown on a survey made by PROFESSIONAL LAND SURVEYORS, dated May 16, 2013, are added to Schedule B.

A. 10 FOOT WIDE DRAINAGE EASEMENT THROUGH PREMISES;

B. OVERHEAD WIRES CROSSING PREMISES;

C. POSSIBLE MISLOCATION OF FENCES

D. SETBACK LINE HAS BEEN VIOLATED; MORTGAGE POLICY INSURES THAT SAID VIOLATION WILL NOT RESULT IN A FORFEITURE OR REVERSION OF TITLE.

This policy does not insure against errors or inaccuracies in the survey with respect to matters which do not affect title.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By: \_\_\_\_\_

Authorized Officer or Agent

End – Survey

NJRB 5-01  
Revised: 9/10/07

**EXHIBIT 57V – WAIVER OF ARBITRATION ENDORSEMENT  
(OWNER'S OR LOAN POLICY)**

**Waiver of Arbitration Endorsement (Owner's or Loan Policy)**

Issued by **Chicago Title Insurance Company**



CHICAGO TITLE INSURANCE COMPANY

File No.: 2013-00326

Attached to and made a part of Policy No.: 2013-00326

The policy is amended by deleting therefrom:

- (a) Condition 13 (if this endorsement is attached to an ALTA Loan Policy or ALTA Expanded Coverage Residential Loan Policy);
- (b) Condition 14 (if this endorsement is attached to an ALTA Owner's Policy);
- (c) Condition 11 (if this endorsement is attached to an ALTA Homeowner's Policy).

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsement thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the fact amount thereof.

Chicago Title Insurance Company

Dated: August 8, 2013

Countersigned:

By: \_\_\_\_\_

Authorized Officer or Agent

End – Waiver of Arbitration

NJRB 5-128  
Effective: 01/01/2013

### **Section 4.3.8 Recording Act**

The Recording Act, *N.J.S.A. 46:26A-1, et seq.* became effective on May 1, 2012 and sets forth the prerequisites to the recordation of any instrument affecting title to an interest in real estate. Pursuant to *N.J.S.A. 46:26A-3.a.*, in order for such instruments to be recorded, (1) they must be in English or be accompanied by a translation into English; (2) they must bear a signature; (3) they must be acknowledged, with correct documents submitted for re-recording also requiring acknowledgement; (4) the names must appear printed beneath the signatures of any parties to the instrument and of the acknowledging or proving officer; and (5) if the document is a deed conveying title to real property, it must (a) comply with the requirements of *N.J.S.A. 46:15-6*; (b) include "a reference to the lot and block number of the property conveyed as designated on the tax map of the municipality at the time of the conveyance or the account number of the property"; (c) include the name of the person who prepared the deed; and (d) include the mailing address of the grantee. If the document is an assignment, release or satisfaction of a mortgage or an agreement respecting a mortgage, it is to state the book and page number or the document identifying number of the mortgage to which it relates if the mortgage has been given such a number. *N.J.S.A. 46:26A-3.a(6)*.

In addition to these prerequisites, *N.J.S.A. 46:15-2* provides that if a transfer is subject to the additional fee pursuant to *N.J.S.A. 46:15-7*, either the deed, acknowledgment, proof, or an attached affidavit must contain a statement of the true consideration for the transfer. Moreover, *N.J.S.A. 46:15-9* states that "[a]ny person who knowingly falsifies the consideration...is guilty of a crime of the fourth degree."

The Recording Act at *N.J.S.A. 46:26A-5* provides for a document or its image accepted for recording to be accompanied by a cover sheet or an electronic synopsis. *N.J.S.A. 46:26A-6.b.* requires that documents are to be recorded and indexed not later than two business days after its receipt.

### **Section 4.3.9 County Recording Office**

The instruments which are to be recorded, such as the deed and mortgage, or which are to be filed, such as the notice of settlement, are recorded or filed in the county recording office of the county in which the property is located. The office of the county register is the recording office in the counties of Essex and Hudson. The office of the county clerk is the recording office in all other counties in New Jersey.

For purposes of this discussion, the county office for the recordation of documents, regardless of whether it is the county clerk's office or the county register's office, will be referred to as the county recording office.

*N.J.S.A. 46:26C-1 et seq.* provides a basis upon which electronic recording of documents may be effectuated in the future. It provides for the adoption by the Division of Archives and Records Management in the Department of State, in consultation with the County Clerks and Registers of Deeds and Mortgages, to adopt regulations to establish a format and technical requirements for recorded documents.

## **Section 4.4     Survey**

The quality of title which the seller is required to deliver at closing will be determined, in part, by the survey of the property obtained by the purchaser. The terms of the contract provision will determine the standards which the survey is required to meet. See Section 3.3.11 discussing contract terms regarding the survey. See also Section 5.5.6 regarding the use of an existing survey and a survey affidavit from the seller.

If not ordered earlier, the survey should be ordered from a surveyor simultaneously with the ordering of the title work from the title company. At a minimum, the surveyor would require the identification of the property by its street address. However, to assist the surveyor in its efforts, it is often helpful to provide the surveyor with a copy of an existing survey of the property and any available title work, such as a copy of the deed by which the seller took title to the property. If a mortgage loan commitment has been issued which sets forth the requirements of the lender relative to the survey, a copy of the pertinent portion of the commitment or the lender's instructions should be forwarded to the surveyor. Where there exists a survey of the property, it is often to the purchaser's advantage to request the survey to be updated by the surveyor who last performed the survey of the property.

The surveyor will ask if the purchaser wants stakes inserted at the corners of the property and advise of the fee associated with that service. Stakes are also sometimes called corner markers. If the purchaser has an interest in being able to visually locate the corners of the property, e.g. for the purpose of erecting a fence, the purchaser may want the property to be staked. An additional charge is imposed for each stake that is installed. The purchaser or purchaser's attorney will be required to confirm in writing to the surveyor if the purchaser does not want the property to be staked.

Prior to proceeding, the surveyor should be asked the fee for the survey and for the preparation of the legal (metes and bounds) description of the property. The fee for a typical single family home survey may range from \$300 to \$750 or more depending upon the size of the property and complexity of the survey. Once that fee has been approved by the purchaser, the discussions of the purchaser's attorney with the surveyor regarding the cost of the survey, the time by which it will be completed, and the number of original signed and sealed surveys to be delivered by the surveyor, should be confirmed in writing. The surveyor will also require the identity of the parties to which the survey is to be certified. At a minimum, the certification should reflect the purchaser, lender, title company and attorney for the purchaser.

The legal description is used by the seller's attorney or the lender in preparing the deed and by the purchaser's attorney in preparing such documents as the mortgage and the notices of settlement. The legal description is usually prepared by the surveyor which prepares the survey of the property or title company. However, it is extremely important that the attorney be able to "read" a legal description against a survey to confirm its accuracy and to be able to discuss the survey and the depicted improvements.

In order to read the survey properly, there are certain basic concepts.

(a) The lines depicting all of the land forming the subject property are usually depicted by solid lines. Fences are usually depicted by dotted or broken lines. Improvements such as driveways, patios and exterior stairs are typically labeled as such. The residential dwelling itself and other enclosed structures, such as garages, are customarily designated by solid lines, often accompanied by intermittent marks along the outer most walls of the structures.

(b) The survey will show a compass reflecting a directional arrow pointing North. All directions in reading the survey will be against this directional arrow.

(c) The direction of any line is usually expressed in degrees, minutes and seconds. Frequently, symbols are used instead of the words degrees, minutes and seconds.

(d) The course of a line is its direction from the North or South. Angles are always plotted from North towards East, North towards West, South towards East, and South towards West.

(e) The distance of a course is designated by feet and tenths of feet. The survey consists of points (locations), lines (distances between two points) and angles. The beginning point is typically identified as a location on a street, an intersection of two streets, a distance and direction from an intersection or a monument.

(f) A description may properly run clockwise or counterclockwise from the beginning point. Depending on whether the course is being read clockwise or counterclockwise, the course may be read in two ways. This means that a course running North 50 degrees, 25 minutes, 10 seconds East can properly be read South 50 degrees, 25 minutes, 10 seconds West.

#### **Section 4.4.1 Reading of Survey**

It is important for the attorney to be able to read a survey in order to compare a survey against a legal description prepared from that survey. While the legal description is likely to have been prepared by either the surveyor or the title company, a comparison of the legal description with the survey prior to the use of the legal description in documents such as the deed, mortgage and notice of settlement is important and could prevent problems from arising in the future which may require substantial efforts to resolve. The survey which is the subject to this discussion appears as Exhibit 58.

At the outset, note the compass arrow which appears at the top right hand corner of the survey. The point of this arrow points north (toward the top of the page) and establishes the directions when looking at the survey. At the opposite end of the point is south. To the right of the arrow is east and to the left of the arrow is west.

The improvements consist of a split level frame dwelling, with a one-story garage, wood deck, blacktop driveway and frame shed, all on a rectangular parcel of land. The property is on Hampton Drive and the street address is No. 36. The property is identified on the Tax Map as Lot 13 in Block 3204 in the Township of Berkeley Heights. The property is also identified as Lot 8-79 in Block 274 on the map filed on January 9, 1957, identified as Map #456-D, to subdivide the property. The filed map information appears at the bottom of the survey.

# EXHIBIT 58 - SURVEY

NOTE: THIS CERTIFICATION IS MADE ONLY TO HEREON NAMED PARTIES FOR PURCHASE AND/OR MORTGAGE OF HEREIN DELINEATED PROPERTY BY THE NAME PURCHASER. NO RESPONSIBILITY OR LIABILITY IS ASSUMED BY SURVEYOR FOR USE OF SURVEY FOR ANY OTHER PURPOSE INCLUDING BUT NOT LIMITED TO USE OF SURVEY FOR SURVEY AFFIDAVIT, RESALE OF PROPERTY, OR TO ANY OTHER PERSON NOT LISTED IN CERTIFICATION EITHER DIRECTLY OR INDIRECTLY.

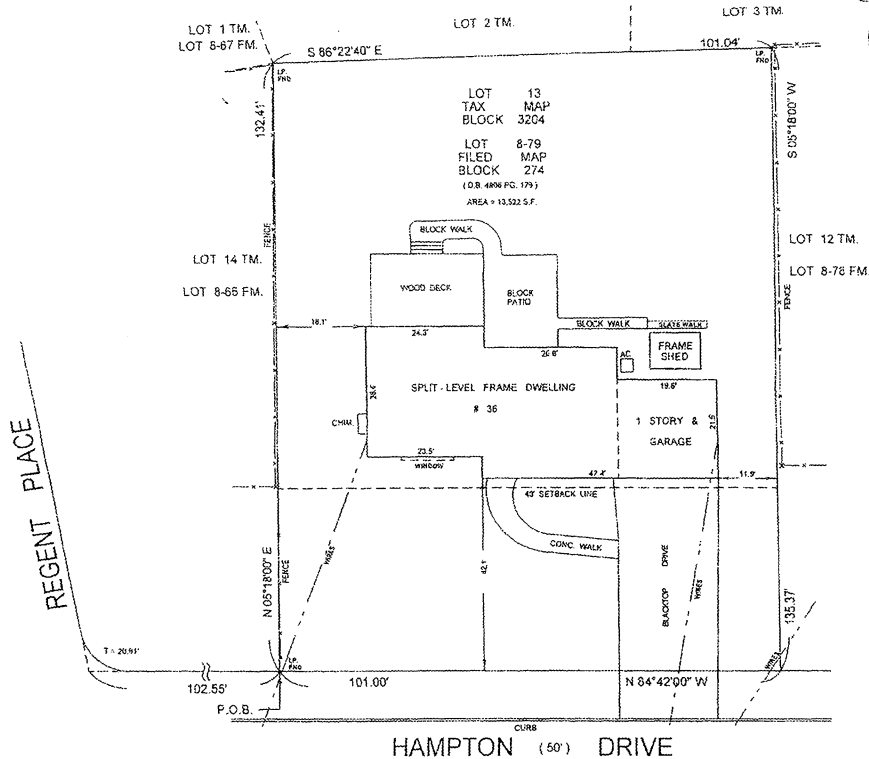
NOTE: UNDERGROUND UTILITIES, IF ANY, HAVE NOT BEEN LOCATED.

THIS SURVEY DOES NOT DETERMINE THE EXISTENCE, NONEXISTENCE OR LOCATION OF FRESHWATER WETLANDS OR OTHER ENVIRONMENTAL CONDITIONS.

NOTE: SURVEY SUBJECT TO EASEMENTS, COVENANTS AND RESTRICTIONS OF RECORD.

NOTE: THIS SURVEY HAS BEEN PREPARED WITHOUT THE BENEFIT OF ANY TITLE REPORT AND/OR SEARCH. THE PROPERTY SHOWN HEREON, MAY BE SUBJECT TO VARIOUS EASEMENTS AND/OR "RIGHTS OF OTHERS" THIS SURVEY IS SUBJECT TO REVISIONS AS SUCH A REPORT AND/OR SEARCH MAY REVEAL.

"A WRITTEN 'WAIVER AND DIRECTION NOT TO SET CORNER MARKERS' HAS BEEN OBTAINED FROM THE ULTIMATE USER PURSUANT TO P.L. 2003, c. 14 (C45:3-36.3) and N.J.A.C. 13:40-5.1 (d).



PROPERTY ALSO KNOWN AS LOT 8-79 IN BLOCK 274 AS SHOWN ON FINAL MAP, SECTION NO. 1, EMERSON HILLS, TOWNSHIP OF BERKELEY HEIGHTS, UNION COUNTY, N.J., FILED : JAN. 9, 1957, MAP # 456 - D

SURVEY OF PROPERTY FOR: LISA [REDACTED] and PAUL [REDACTED]  
SITUATED IN: BERKELEY HEIGHTS TOWNSHIP, UNION COUNTY, N.J.  
PREPARED BY: THOMAS M. ERNST & ASSOCIATES, PROFESSIONAL LAND SURVEYORS, INC.  
457 SPOTSWOOD-ENGLESTOWN ROAD P.O. BOX 221 JAMESBURG, N.J. 08831  
CERTIFICATE NUMBER 24GA27967060  
DATE: JUNE 25, 2009 SCALE: 1" = 20'

CERTIFIED TO: LISA [REDACTED] and PAUL [REDACTED]  
WELLS FARGO BANK, N.A., its successors and/or assigns;  
COASTAL TITLE AGENCY, INC.;  
FIRST AMERICAN TITLE INSURANCE COMPANY;  
GREENBAUM, ROWE, SMITH & DAVIS, LLP;  
and [REDACTED] ESQUIRE

*Michael S. Lynch*  
MICHAEL S. LYNCH  
PROFESSIONAL LAND SURVEYOR  
NEW JERSEY LIC. # 35382

CT-55938

The land consists of a total area of 13,522 square feet. The nearest intersecting street is Regent Place. Commonly, the beginning point in reading a survey is that point nearest an intersecting street corner. On the survey, the point of beginning (P.O.B.) can be determined as a distance from the intersection of Regent Place and Hampton Drive. That intersection is at the lower left hand corner of the survey. To describe the point of beginning, based upon the due north arrow, determine that Hampton Drive generally runs east and west, while Regent Place generally runs north and south. Hampton Drive has a southerly sideline (opposite the subject property) and a northerly sideline (adjacent to the subject property) while Regent Place has easterly and westerly curb sides.

The property is on the northerly sideline of Hampton Drive and beginning with the intersection of Hampton Drive and Regent Place, the point of beginning is 102.55 feet in an easterly direction from the intersection of Hampton Drive with the easterly side of Regent Place. Once the beginning point has been located, the legal description for the survey might read as follows:

ALL that certain lot, tract or parcel of land and premises situate, lying and being in the Township of Berkeley Heights, County of Union and State of New Jersey, more particularly described as follows:

Beginning at an iron pipe in the northerly line of Hampton Drive distant easterly 102.55 degrees from the intersection of the northerly line of Hampton Drive extended with the easterly line of Regent Place extended and running thence;

- 1) North 05 degrees 18 minutes East, 132.41 feet to an iron pipe, thence;
- 2) South 86 degrees 22 minutes 40 seconds East, 101.04 feet to an iron pipe, thence;
- 3) South 05 degrees 18 minutes West, 135.37 feet to a point in the northerly line of Hampton Drive, thence;
- 4) Along the northerly line of Hampton Drive  
North 84 degrees 42 minutes West, 101.00 feet to the point and place of beginning.

PROPERTY ALSO KNOWN AS LOT 8-79 IN BLOCK 274 AS SHOWN ON FINAL MAP, SECTION NO. 1, EMERSON HILLS, TOWNSHIP OF BERKELEY HEIGHTS, UNION COUNTY, N.J., FILED: JAN. 9, 1957, MAP #456-D

SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD

The above description is drawn in accordance with a survey prepared by Thomas M. Ernst & Associates, Professional Land Surveyors, Inc., Date: June 25, 2009. CT 55938

## **Section 4.5     The Mortgage Closing**

### **Section 4.5.1   Document Preparation**

The loan documents are usually prepared by the lender (or the lender's attorney). The purchaser's attorney should obtain from the lender the preliminary closing instructions in order to ascertain the requirements of the lender relative to the preparation of the loan documents, and the information and documentation the attorney for the purchase must provide before the loan documents will be prepared.

(a)     **Document Preparation by the Lender.** If the mortgage lender (or its attorney) is preparing the loan documents, the lender will specify, in writing, the items required to be submitted to the mortgage lender in order for the documents to be prepared and the closing to be scheduled. The lender's instructions to the purchaser's attorney will be in the form of pre-closing or preliminary instructions. The purchaser's attorney should also review the mortgage loan commitment letter again to be certain to satisfy any requirements that might appear in the commitment. Pre-closing instructions appear as Exhibit 59. A mortgage loan commitment letter appears as Exhibit 40.

The pre-closing instructions will specify the minimum amount of time which the lender must be allowed in order to prepare the closing package upon its receipt of all of the submissions before the closing package will be prepared and the closing may be scheduled. Usually, this period ranges from five (5) business days to ten (10) business days. In submitting the items to the lender which will include the title commitment and the survey for the property, the purchaser's attorney should make every effort to submit a complete package. The submission of an incomplete package is likely to result in delays in the preparation of the closing documents and the scheduling of closing. A letter submitting to the lender the materials and information required by the lender under its mortgage commitment and its pre-closing instructions appears as Exhibit 60.

(b)     **Document Preparation by the Purchaser's Attorney.** In the event that the practice of the mortgage lender is for the documents to be prepared by the purchaser's attorney, the preliminary closing instructions will be accompanied by the forms of documents which the mortgage lender is requiring the purchaser's attorney to complete in accordance with the instructions given by the lender and submit either to the lender for review. The attorney will also be required to make a submission of additional closing documentation as in those instances where the documents are being prepared by the lender. The lender will then advise the purchaser's attorney of any changes which have to be made to the closing documents and confirm a closing date with the closing attorney.

## EXHIBIT 59 - LENDER'S PRE-CLOSING INSTRUCTIONS



### PINNACLE MORTGAGE, INC.

PINNACLE MORTGAGE, INC. - PRE- CLOSING INSTRUCTIONS (973) 887-6100

The proposed borrowers have advised that you will represent them for settlement. In order for us to authorize this loan, we must have the following items seven (7) working days prior to scheduling a closing date:

1. Submit original title binder with all attachments and one complete copy of same.
  - (a) Mortgagee to appear as follows:
  - (b) PINNACLE MORTGAGE, INC., ITS SUCCESSORS AND/OR ASSIGNS AS THEIR INTEREST MAY APPEAR 383 Ridgedale Avenue, East Hanover, NJ 07936
  - (c) Copies of all Easements and Restrictions must be attached to the binder. Easements must be insured accordingly and Restrictions must state whether violated/not violated and same will not cause a forfeiture or reversion of title.
  - (d) Title Binder must state whether setback is violated/not violated and to be insured accordingly.
  - (e) Encroachments/Misallocations must insure against loss and damage resulting from the forced removal of any survey exceptions.
  - (f) Title Binder must include a Metes and Bound description in accordance with a New Survey which has an established beginning point from a street corner. Filed maps included in a description must appear fully on the new survey.
  - (g) Judgment Searches on Borrowers and Sellers are required, including any other name(s) in the past 20 years. Including maiden names.
  - (h) Copy of Notice of Settlement and proposed Mortgagors/Sellers Affidavit of Title.
  - (i) Current Tax and Assessment Searches on property.
  - (j) Schedule B, Section II, all exceptions must be omitted or insured.
  - (k) Submit Two New Original Surveys (a) survey to be certified to the Title Company, Lender and Purchaser along with the Closing Attorney. Survey must be incorporated in binder and all encroachments onto others insured as stated in 1-D. Survey Certifications are required where property is a condominium and to be no older than one (1) year. Note: survey must be less than one (1) year old as of the date of settlement. Exceptions will be made on refinances.
  - (l) Furnish Original Title company indemnification letter. Signed by Title Company Officer, and specifically naming the attorney closing the loan.
  - (m) This Mortgage will be \_\_\_\_\_
  - (n) ( ) A condominium endorsement must be provided by the title company (Alta form #4)
  - (o) ( ) A planned unit development endorsement must be provided by the title company (Alta form #5)
  - (p) ( ) A variable rate endorsement must be provided by the title company (Alta form #6.01 or 6.2 for negative amortization)
  - (q) ( ) An environmental lien endorsement must be provided by the title company (8 or 8.1)
  - (r) ORIGINAL FIRE INSURANCE POLICY WITH PAID RECEIPT FOR THE FIRST YEAR'S PREMIUM IS REQUIRED. BINDERS WILL NOT BE ACCEPTABLE. THE POLICY MUST INSURE THE MINIMUM OF THE MORTGAGE AMOUNT OR FULL REPLACEMENT COST. POLICY MUST STATE FULL REPLACEMENT COST. PINNACLE MORTGAGE, INC., ITS SUCCESSORS AND/OR IT'S ASSIGNS AS THEIR INTEREST MAY APPEAR - 383 RIDGEDALE AVENUE, EAST HANOVER, NEW JERSEY 07936
  - (s) FIRE INSURANCE AMOUNT MUST BE NO LESS THAN LOAN AMOUNT OR FULL REPLACEMENT COST.

**Exhibit 59 - Lender's Pre-Closing Instructions – Continued**

- (t) THE COMPANY WRITING THIS INSURANCE MUST HAVE A BEST RATING OF CLASS A-VI OR BETTER. Original Fire Insurance Policies must be received at least five (5) Days prior to closing.
- (u) If the property is a condominium the following is required for evidence of insurance: Original certificate of Insurance naming Unit and Borrower (s) full name(s). Mortgagee to read: Pinnacle Mortgage, Inc., It's Successors and /or its assigns as their interest may appear, 383 Ridgedale Avenue, East Hanover, NJ 07936.
- (v) Flood Insurance If property is in a flood zone, the current requirements of the National Flood Insurance Act must be met. For your guidance, one of the following satisfies the requirement.
- (w) Mortgagee copy of application on a National Flood Insurance Program (NFIP) form, naming Pinnacle Mortgage, Inc., as the Mortgagee (as above) and in the amount of the mortgage or the maximum amount available along with the paid receipt.
- (x) Original Flood Insurance Policy, naming Pinnacle Mortgage, Inc., as the Mortgagee (as above) and in the amount of the mortgage or maximum amount available and a paid receipt for the first year's premium.
- (y) ALL CERTIFICATIONS SUBMITTED TO PINNACLE MORTGAGE, INC., FOR REVIEW ARE VALID FOR SIX (6) MONTHS FROM THE DATE OF THE CERTIFICATION.
- (z) YOU MUST DELIVER TO US ALL TITLE POLICY NO LATER THAN 30 DAYS AFTER CLOSING.
- (aa) YOUR CLOSING DOCUMENTS WILL BE REVIEWED BY PINNACLE MORTGAGE, INC., AND WE WILL PREPARE THE NOTE AND MORTGAGE.
- (bb) REFINANCE DISBURSEMENT OF FUNDS WILL OCCUR SEVENTY-TWO (72) HOURS AFTER CLOSING OF THE LOAN.

\*\*\*\*\* **Proposed Deed must accompany title work**\*\*\*\*\*

We recommend that you send a copy of this letter to your title insurance company to avoid any lost time and unnecessary phone calls.

Once we are in receipt of the above-mentioned items and all conditions of this file have reviewed and approved by Pinnacle Mortgage, Inc., we will call your office to discuss a closing date. When a firm date is set, the closing package which we have prepared, can be picked up or delivered, at borrower's expense, at an agreed upon time at our office.

**(cc)**

**TITLEWORK MUST BE FORWARDED TO: PINNACLE MORTGAGE, INC., 383 RIDGEDALE AVENUE, EAST HANOVER, NJ 07936. ATTN: DILCA L. VEGA, OFFICE MANAGER. (Ext. 15)**

**\*\*WIRING INSTRUCTIONS MUST BE PROVIDED WITH SUBMISSION OF TITLE WORK....\*\***

\*\*\*\*\*

**CLOSING PACKAGE MUST BE RETURNED WITHIN 24 HOURS BY OVERNIGHT MAIL OR THE ATTORNEY/TITLE COMPANY WILL INCUR A FEE OF \$200 PER DAY LATE!! OR ANY PENALTY FROM THE INVESTOR**

**EXHIBIT 60 - LENDER'S PRE-CLOSING TRANSMITTAL LETTER**

[Date]

**VIA EXPRESS**

Purchaser's Mortgage Company  
1 Mortgage Way  
Municipality, NJ 12345

Attn: Closing Department

**Re: Name of Purchaser - Loan #11-111111**

Dear Madam or Sir:

Pursuant to your closing instructions, we enclose herewith the following for your review relative to the above-captioned matter:

(1) Original and copy of title report issued by Trident Abstract Company, together with endorsement letters thereto;

(2) Original and copy of Closing Services Letter;

(3) Two (2) original versions of the survey;

(4) Copy of Affidavit of Title;

(5) Copy of filed Notice of Settlement; and

(6) Original fire insurance policy and paid receipt.

(7) Copy of smoke detector certificate. Please be advised that the municipality does not require Certificates of Occupancy and a representative will verbally confirm that fact with you. You may contact Kim Clerk at (908) 555-1212.

With regard to the termite report, same was forwarded directly to you by the borrower and should be in your file. Kindly contact me if you are not in receipt of same.

Finally, closing in this matter tentatively has been scheduled to take place on \_\_\_\_\_ and we would greatly appreciate your cooperation in that regard.

Kindly contact me upon completion of your review to advise if any additional documentation is required and to confirm the closing date. Thank you for your courtesy and cooperation.

Very truly yours,

Attorney for Purchaser

### **Section 4.5.2 Lender's Closing Package and Instructions**

Once the lender's requirements have been satisfied, the purchaser's attorney will schedule a closing date with the lender which is acceptable as well to the seller and the seller's attorney. Most mortgage lenders will instruct the closing attorney to contact the closing department of the lender the day before closing to obtain the "closing figures" from the lender. These figures pertain only to those amounts which will be paid at closing relative to the mortgage loan financing, and will not include those amounts owed to third parties, amounts related to the adjustments between purchaser and seller, or additional funds required to deliver at closing by the purchaser. The lender's figures will include confirmation of the amounts already paid by the purchaser for the mortgage loan at the time of application and at the time of the acceptance of the mortgage commitment, and the additional amounts to be paid at closing. These costs may include interest from the date of closing through the last date in the month; additional origination fees; loan discount fees; the lender's attorney review fee; escrows to be placed for real estate taxes, homeowners insurance and private mortgage insurance; amounts that the lender is requiring to be paid at the closing such as the next quarter's real estate tax amount; and any open water and sewerage charges that may result in the municipal lien against the property.

The amounts due to the lender are deducted by the lender from the mortgage check resulting in a net check. The types of payments which may be required by the lender are discussed in greater detail in Section 4.6.

The closing package and the mortgage proceeds check are usually delivered to the purchaser's attorney by overnight delivery or available for pick-up on the morning of the closing. The closing attorney should confirm with the lender if the package will be delivered by the lender's courier or is to be picked up by the purchaser's attorney's courier, or dispatched by overnight delivery. It should be noted that, at times, the closing package and the mortgage proceeds check will be dispatched from different locations and therefore not arrive in the same package.

Once the closing package has been received, the purchaser's attorney should review it to ensure that the documents accurately reflect the terms of the mortgage commitment and to comply with any final closing instructions given to the purchaser's attorney. The lender is likely to specify in the final closing instructions which exceptions reflected in the title commitment may remain and which must be omitted by the closing attorney prior to closing the mortgage and disbursing the mortgage proceeds. The purchaser's attorney should anticipate the need for a fair amount of time for reviewing, organizing and finalizing the closing package and discussing with the title company those requirements of the lender which require the attention of the title company before the commencement of the mortgage closing with the purchaser. The scheduling of the mortgage closing should take that time for preparation into consideration.

### Section 4.5.3 Mortgage Loan Documentation

Regardless of who prepares a particular mortgage document, it is important to understand the purpose and the terms of each document either to be able to properly complete the document, effectively review the document to ensure that it conforms with the terms of the mortgage commitment, or explain the document to the purchaser. The form of the documents and the precise documents which will be required depend upon the requirements of the particular lender providing the financing. Mortgage documentation may refer to the borrower as the mortgagor and the lender as the mortgagee. For purposes of this discussion, the terms lender and borrower will be used.

(a) **Note.** The note is the instrument which sets forth the indebtedness of the borrower to the lender and the terms governing the repayment of that obligation. The lender may require that a standard form of note such as the form approved by the Federal National Mortgage Association (FNMA) be used. A form of that note appears as Exhibit 61. Where an institutional lender may not be involved in the loan transaction (such as where a seller is taking back a purchase money mortgage) a preprinted form of note such as that of All-State Legal Form 2004 may be used, which appears as Exhibit 17.

In either reviewing or preparing the note, the following salient provisions are of practical importance and should be discussed with the borrower: (i) date of the note, which should be the date on which the loan is made; (ii) names of the individual borrowers; (iii) face principal amount of the loan; (iv) the interest rate of the loan and, if the instrument is an adjustable note and the rate will change, the basis upon which the adjustment will occur; (v) whether monthly payments will be made of principal and interest or of interest only; (vi) if monthly payments are of principal and interest and is, therefore, an amortizing loan, the note should specify the number of years upon which the payment schedule is based; (vii) the date of the first payment, which should be the first day of the second month following the month in which the closing occurs, unless closing is on the first day of the month in which case the first payment will be due on the first day of the month immediately after the month in which the closing occurs; (viii) the date on which the last payment is due; (ix) a statement that the note may be prepaid without penalty; (x) the late charge imposed by the lender if payments are not received by the specific date of each month specified in the note; (xi) notices to be given to the borrower in the event of a default; and (xii) rights and remedies of the lender against the borrower. While these provisions are of practical importance to a borrower, the attorney should be familiar with all of the other terms of the note so that questions of the borrower as to those terms may be adequately addressed.

## EXHIBIT 61 - FNMA NOTE

### NOTE

\_\_\_\_\_, [Date] \_\_\_\_\_, [City] \_\_\_\_\_, [State] \_\_\_\_\_  
 \_\_\_\_\_  
 [Property Address]

#### 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ \_\_\_\_\_ (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is \_\_\_\_\_. I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

#### 2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of \_\_\_\_\_%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

#### 3. PAYMENTS

##### (A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the \_\_\_\_\_ day of each month beginning on \_\_\_\_\_. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on \_\_\_\_\_, 20\_\_\_\_, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at \_\_\_\_\_

\_\_\_\_\_ or at a different place if required by the Note Holder.

##### (B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ \_\_\_\_\_.

#### 4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

#### 5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

## Exhibit 61 - FNMA Note – Continued

### 6. BORROWER'S FAILURE TO PAY AS REQUIRED

#### (A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of \_\_\_\_\_ calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be \_\_\_\_\_ % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

#### (B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

#### (C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

#### (D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

#### (E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

### 7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

### 8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

### 9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

### 10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

**Exhibit 61 - FNMA Note – Continued**

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

\_\_\_\_\_(Seal)  
- Borrower

\_\_\_\_\_(Seal)  
- Borrower

\_\_\_\_\_(Seal)  
- Borrower

*[Sign Original Only]*

(b) **Mortgage.** The mortgage is the instrument which grants an interest in the real property to the lender as security for the loan being made by the lender, which terms of the loans are set forth in the note. The lender will either provide the form of mortgage required by the lender to be used, such as the form of FNMA Mortgage included as Exhibit 62 or, in the event that a lending institution is not specifying the form of instrument, preprinted forms of mortgage such as that of All State Legal Form 204, which appears as Exhibit 18, may be used in conjunction with preprinted Form 2004 Note.

Regardless of whether the borrower's attorney is preparing the mortgage or reviewing the instrument prepared by the lender, it is important to understand all of the provisions in the mortgage in order to protect the borrower's interest. Many of the provisions in the note are repeated in the mortgage since the mortgage of the real property serves to secure the position of the lender under the note. The following provisions should be reviewed and discussed with the borrower: (i) the mortgage date should be the date the loan is being made; (ii) the names of all individual borrowers should be inserted; (iii) the mortgage will reflect pertinent provisions which appear simultaneously in the note regarding the amount of the loan, the amount of the monthly payments and the terms governing the calculation of those payments, and the due date of the note; (iv) since the mortgage is the instrument which grants to the lender an interest in the real property, a description of the property which is the subject of the mortgage is included in the mortgage. The property may be identified by a legal (metes and bounds) description, a lot and block reference from a filed map, a lot and block reference from the tax map of the municipality in which the property is located, and/or the common street address of the property; (v) the mortgage should reference the deed by which the borrower is acquiring title from the seller and state that the deed is being recorded simultaneously with the mortgage; (vi) in accordance with *N.J.S.A. 46:9-8*, the mortgage will state that it is a purchase money mortgage constituting a part of the purchase price paid for the property, thereby giving the lender priority over prior judgments against the borrower.

While the attorney should be familiar with all of the terms of the mortgage, it is extremely important that certain covenants of the borrower appearing the preprinted portion of the mortgage be brought to the borrower's attention. Specifically, statements in the mortgage instrument committing the borrower to fulfill obligations to pay all liens, taxes, assessments, and costs for insurance, homeowners, flood, or otherwise should be brought to the borrower's attention. The lender is likely to also have the right to escrow for any amounts due for these purposes in which case the borrower's fulfills the obligation to pay the cost of real estate taxes, insurance, private mortgage insurance, etc. by paying one-twelfth (1/12th) of the annual cost of each expense simultaneously with and in addition to the monthly payments of principal and interest made to the lender. The mortgage will also set forth certain obligations of the borrower in maintaining the property and those circumstances under which a default will be declared by the lender and the remedies available to the lender.

In most mortgages is a provision commonly referred to as a "due on sale" clause which permits the lender to declare the loan in default and demand full payment of all amounts due under the note and mortgage in the event that ownership to the property is changed or an interest in the property is transferred. A clause such as this can be construed to mean the transfer of the property from two individuals who held title as joint tenants with the right of survivorship to themselves in order to create tenancy by the entirety upon their marriage. Accordingly, the borrower should be advised to consult legal counsel prior to any conveyance of the property.

## EXHIBIT 62 - FNMA MORTGAGE

After Recording Return To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_[Space Above This Line For Recording Data]\_\_\_\_\_

### MORTGAGE

#### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) **“Security Instrument”** means this document, which is dated \_\_\_\_\_, together with all Riders to this document.

(B) **“Borrower”** is \_\_\_\_\_. Borrower is the mortgagor under this Security Instrument.

(C) **“Lender”** is \_\_\_\_\_. Lender is a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_. Lender’s address is \_\_\_\_\_.

\_\_\_\_\_. Lender is the mortgagee under this Security Instrument.

(D) **“Note”** means the promissory note signed by Borrower and dated \_\_\_\_\_, \_\_\_\_\_. The Note states that Borrower owes Lender \_\_\_\_\_.

Dollars (U.S. \$\_\_\_\_\_) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than \_\_\_\_\_.

(E) **“Property”** means the property that is described below under the heading “Transfer of Rights in the Property.”

(F) **“Loan”** means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

**Exhibit 62 - FNMA Mortgage – Continued**

(G) **“Riders”** means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> Second Home Rider        |
| <input type="checkbox"/> Balloon Rider         | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Other(s) [specify] _____ |
| <input type="checkbox"/> 1-4 Family Rider      | <input type="checkbox"/> Biweekly Payment Rider         |   |

(H) **“Applicable Law”** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) **“Community Association Dues, Fees, and Assessments”** means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) **“Electronic Funds Transfer”** means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) **“Escrow Items”** means those items that are described in Section 3.

(L) **“Miscellaneous Proceeds”** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) **“Mortgage Insurance”** means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) **“Periodic Payment”** means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) **“RESPA”** means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, “RESPA” refers to all requirements and restrictions that are imposed in regard to a “federally related mortgage loan” even if the Loan does not qualify as a “federally related mortgage loan” under RESPA.

(P) **“Successor in Interest of Borrower”** means any party that has taken title to the Property, whether or not that party has assumed Borrower’s obligations under the Note and/or this Security Instrument.

## Exhibit 62 - FNMA Mortgage – Continued

### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For these purposes, Borrower does hereby mortgage, grant and convey to Lender the following described property located in the \_\_\_\_\_ of \_\_\_\_\_:  
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

which currently has the address of \_\_\_\_\_  
[Street]  
\_\_\_\_\_, New Jersey \_\_\_\_\_ ("Property Address");  
[City] [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check,

## Exhibit 62 - FNMA Mortgage – Continued

provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future. If Lender accepts such payments, it shall apply such payments at the time such payments are accepted. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been

## Exhibit 62 - FNMA Mortgage – Continued

waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in,

**Exhibit 62 - FNMA Mortgage – Continued**

legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and

## Exhibit 62 - FNMA Mortgage – Continued

Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

**7. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property,

## Exhibit 62 - FNMA Mortgage – Continued

Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the

**Exhibit 62 - FNMA Mortgage – Continued**

Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

**(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.**

**(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.**

## Exhibit 62 - FNMA Mortgage – Continued

**11. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's

## Exhibit 62 - FNMA Mortgage – Continued

judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

**14. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may

## Exhibit 62 - FNMA Mortgage – Continued

choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**17. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**18. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or

## Exhibit 62 - FNMA Mortgage – Continued

transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions

**Exhibit 62 - FNMA Mortgage – Continued**

pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) “Hazardous Substances” are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) “Environmental Law” means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) “Environmental Cleanup” includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an “Environmental Condition” means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower’s breach of any covenant or agreement in this Security

[Space Below This Line For Acknowledgment]

(c) **Mortgagor's Affidavit of Title.** The form of mortgagor's affidavit of title is similar in form to the seller's affidavit of title which is given by the seller in order to induce the purchaser to accept title to the property. The mortgagor's affidavit of title is given to induce the lender to make the loan and to induce the title company to provide mortgage insurance for the loan. The purchaser's attorney is usually responsible for preparing the mortgagor's affidavit of title and many lenders require a copy of the proposed affidavit to be submitted to the lender for approval prior to closing. The mortgagor's affidavit of title appears as Exhibit 63.

In completing the mortgagor's affidavit of title, attention should be paid to the following items which require completion or explanation to the borrower: (i) the county in which the affidavit is being signed should be inserted at the top of the instrument; (ii) the names of all borrowers should be inserted; (iii) the address where the borrower will be residing (usually, the address of the subject property) should be inserted; (iv) the address for the property which the subject of the representations in the affidavit should be inserted; (v) the date of ownership of the property by the borrower, which is usually the closing date, should be inserted; (vi) the borrower will be required to make certain representations regarding knowledge of any improvements made to the property. Absent unusual circumstances, the only date from which the borrower will be in a position to make any representations regarding the improvements will be the date title to the property is acquired, which is the date of closing; (vii) the borrower will be required to make representations regarding any liens or encumbrances upon the property including the existence of any judgments against them. In the event any judgments validly exist against the borrower, they will have to be satisfied and a warrant to satisfy judgment obtained as to any valid judgment. If any judgments have been retrieved against individuals of same or similar name, the borrower should review those judgments and include a representation in the affidavit that the attached judgments are against individuals with same or similar name and not against the deponents. Copies of the judgments should be attached to the affidavit and initialed by the deponent; (viii) the marital history of the borrower is set forth in the affidavit. This includes date of marriage, the maiden name of the wife, and previous marriages of either the husband or the wife and documentation evidencing the divorce in or annulment of any previous marriages; (ix) the representation should be made regarding mortgages, if any, which will encumber the property other than the mortgage given by the lender; (x) a representation should be made that the statements regarding the status of title are based upon the title commitment. A typical cause might be that "the representations made in this affidavit of title are based upon that state of facts set forth in the Title Insurance Commitment issued by ABC Title Insurance Company, no. 123 dated \_\_\_\_\_ and continued through the date hereof; and (xi) the affidavit should be signed by all borrowers and their signatures acknowledged either by an attorney-at-law or a notary public of New Jersey.

# EXHIBIT 63 - AFFIDAVIT OF TITLE (MORTGAGOR)

## Affidavit of Title

STATE OF NEW JERSEY COUNTY OF MIDDLESEX SS:  
**Patrick A. Martin** **Lauren B. Martin**  
 say(s) under oath:

1. **Representations.** If only one person signs this Affidavit the words "we," "us" and "our" shall mean "I," "me" and "my." The statements in this Affidavit are true to the best of our knowledge, information and belief.

2. **Name, Age and Residence.** We have never changed our names or used any other names. We are citizens of the United States and at least 18 years old. After today, we will live at 40 West Dudley Avenue, Westfield, N.J. 07090

3. **Ownership and Possession.** We are the only owners of Property located at 40 West Dudley Avenue, Westfield, New Jersey 07090 called "this Property."  
 We now Mortgage this Property to Pinnacle Mortgage Company

The date of the Mortgage is the same as this Affidavit. This Mortgage is given to secure a loan of \$ 200,000.00. We are in sole possession of this Property. There are no tenants or other occupants of this Property. We have owned this Property since July 15, 2010. Since then no one has questioned our ownership or right to possession. We have never owned any Property which is next to this Property.

4. **Improvements.** No additions, alterations or improvements are now being made or have been made to this Property since July 15, 2010. We have always obtained all necessary permits, Certificates of Occupancy and other necessary approvals. All charges for municipal improvements such as sewers, sidewalks, curbs or similar improvements benefiting this Property have been paid in full. No building, addition, extension or alteration on this Property has been made or worked on within the past 90 days. We are not aware that anyone has filed or intends to file a mechanic's lien, Notice of Unpaid Balance and Right to File Lien Claim, Construction Lien Claim or building contract relating to this Property. No one has notified us that money is due and owing for construction, alteration or repair work on this Property.

5. **Liens or Encumbrances.** We have not allowed any interests (legal rights) to be created which affects our ownership or use of this Property. No other persons have legal rights in this Property, except the rights of utility companies to use this Property along the road or for the purpose of serving this Property. There are no pending lawsuits or judgments against us or other legal obligations which may be enforced against this Property. No bankruptcy or insolvency proceedings have been started by or against us. We have never been declared bankrupt. No one has any security interest in any personal Property or fixtures on this Property. All liens (legal claims, such as judgments) listed on the attached judgment or lien search are not against us, but against others with similar names. There are no unpaid fines or surcharges levied against me by the New Jersey Motor Vehicle Commission.

6. **Marital/Civil Union/Registered Domestic Partnership History** (Check where appropriate)  
☐ We are not married, civil union or registered domestic partners.  
☒ We are married to each other, civil union or registered domestic partners. We were married, became civil union or registered domestic partners on 5/20/00. The maiden/previous name of Lauren O'Brien was Lauren Jackson  
☐ This Property has never been occupied as the principal matrimonial/civil union/registered domestic residence of any of us. (If it has, or if it was acquired before May 28, 1980, each spouse/partner must sign the Mortgage and Affidavit N.J.S.A. 3B:28-2.3.)  
☒ Our complete marital, civil union or registered domestic partnership history is listed above except as listed below under paragraph 7. This includes all marriages, civil union or registered domestic partnerships not listed above, and any pending matrimonial, civil union or registered domestic partnerships actions. We include how each marriage, civil union or registered domestic partnership ended. We have attached copies of any death certificates, judgments for divorce or annulment or dissolution of a civil union or registered domestic partnership including any provisions in these judgments which relate to this Property.

7. **Exceptions and Additions.** The following is a complete list of exceptions and additions to the above statements. This includes all liens or Mortgages which are not being paid off as a result of this Mortgage, as well as marital information not particularly set forth in paragraph 6 above.  
**Subject to such state of facts set forth in the title commitment #12345 issued by Network Title Services, Inc., as agent for First American Title Insurance Company, dated June 14, 2000 and continued through the date hereof.**  
 We have been advised that recognition and/or abstracts or recognition of bail are not being indexed among the records of the Middlesex County Clerk/Register's office and that the Title Company, Buyer(s) and/or Mortgagee will rely on the truthfulness of this statement. The undersigned hereby certify that there are no recognizance filed against the undersigned as either principal or surety on the property which is the subject of this transaction.

8. **Child Support.**  
☒ There are no outstanding child support orders or judgments against this deponent.  
☐ There is a child support order outstanding, Docket No. \_\_\_\_\_ against this deponent. All payments however, are current as of this date.

9. **Reliance.** We make this Affidavit in order to obtain the Mortgage Loan. We are aware that our Lender will rely on our truthfulness and the statements made in this Affidavit.

Signed and sworn to before me on

, 20

**Patrick A. Martin**

Notary Public

**Christine F. Li, Esq., An Attorney at Law of New Jersey** **Lauren B. Martin**

1635 - Affidavit of Title - For Mortgage of Property by  
 Individual - Plain Language  
 Rev. 2/07 P8/09

Powered by  
 HotDocs®

©2007 by ALL-STATE LEGAL®  
 A Division of ALL-STATE International, Inc.  
 www.aslegal.com 800.232.0510

(d) **Mortgage Loan Documents.** The purchaser's attorney should anticipate that the lender will prepare and include in the mortgage package several documents for review and execution by the purchaser at closing. These documents will be not available until the date of the mortgage closing and will accompany the mortgage proceeds and the other mortgage documents described above and prepared by the lender. The documents are necessary in order for the lender to comply with statutes and regulations governing the lender, to protect the lender, and/or to satisfy the requirements of the secondary mortgage market or investor to which the lender will be selling the loan after closing.

Customary supplemental loan documents appear as Exhibit 64 and generally accomplish the following purposes:

(1) Representations and disclosures of the financial and other terms of the loan, and the payments made or to be made by the borrower, e.g., the closing worksheet, closing instructions, HUD-1 Settlement Statement, itemization of amount financed, and tax and insurance information sheet, and amortization schedule.

(2) Supplemental documents for the disposition of the loan by the lender, e.g., the assignment of mortgage which the borrower's attorney will be required to record along with the mortgage, and the request to change insurance policy.

(3) Notices intended to make the borrower aware of the rights and obligations of the lender, e.g., the notice of assignment, sale or transfer or servicing rights, notice that the lender may report information about the borrower's loan account to credit bureaus, and notice of the right of the borrower to receive a copy of the appraisal for the mortgaged property.

(4) Affirmations of the financial condition and status of the borrower upon which the lender relied in making the loan, and authorization to the lender to bring current the information provided by the borrower, e.g., USA Patriot Act, borrower identification, request for a transcript of the borrower's tax return, certification and authorization for release of borrower's information, and occupancy statement.

(5) Agreements and authorizations by the borrower so that the lender may administer the loan and address any oversights which may be detected after the closing, e.g. first payment letter, tax authorization notification, request to change insurance policy, and errors and omissions/compliance agreement.

Some of the more common loan documents are

(1) **Assignment of Mortgage.** Simultaneously with the closing of the mortgage, the lender may be selling the mortgage loan and assigning its interests in the mortgage to another entity. The assignment of the lender's interests in the mortgage is effectuated by means of an assignment of the mortgage. The borrower's attorney will be instructed to record the assignment simultaneously with the mortgage. The cost of the recordation of the assignment will be borne by the lender.

(2) **Notice of Assignment, Sale or Transfer of Servicing Rights.** This form advises of the rights of the borrower upon the transfer of the responsibilities for the servicing the loan.

(3) **Compliance Agreement.** Frequently lenders will ask the borrower to sign a form wherein the borrower agrees to either reexecute or originally execute any documents which the lender requires due to an error or an omission by the lender, or which may be necessary for reasons related to the sale of the loan.

(4) **Name Certification.** Where the name of a borrower has been represented or signed differently at times, e.g. with or without a middle initial, the lender will frequently ask the borrower to sign an affidavit that the various ways the borrower, in the past, has represented or signed the name are, in fact, the name of the borrower. The borrower will be required to sign a form setting forth the various forms of the borrower's name.

(5) **Form W-9 (Request for Taxpayer Identification Number and Certification).** The lender will use this form to secure the correct taxpayer identification number/social security number of the borrower.

(6) **Federal Truth-in-Lending Statement.** The truth-in-lending statement sets forth the annual percentage rate, finance charge, amount of credit provided and the total payments to be paid under the loan and certain disclosures about the loan, such as the permitted prepayment and assumption of the mortgage.

(7) **Itemization of Amount Financed.** Included with the truth-in-lending statement is the calculation of the amount financed and the manner in which the amount financed is to be distributed.

(8) **Estimate of Monthly Payments.** The lender will provide an estimate of the monthly payment based upon preliminary information available for the taxes and insurance for the property.

(9) **First Payment Coupon/Information.** Information regarding the monthly payments and a temporary coupon for use in making the first payment is provided to the borrower for use in making the first payment due under the mortgage if the coupon book or first payment bill has not been received by the borrower by the time the first payment is due.

(10) **Tax Authorization Notification.** Most lenders will require the borrower to pay an amount along with the monthly principal and interest payment to be held in an escrow fund maintained on behalf of the borrower for the payment of real estates taxes. The lender will then make quarterly payments of the real estate taxes so that the lender will be certain that taxes are paid in a timely fashion; otherwise, if the taxes remain unpaid, the lien of the municipality for any unpaid real estate taxes will have priority over the lien of the mortgage of the lender. The lender may also require the taxes due for the quarter in which the closing is being held or for the following quarter, in the event those amounts have not been paid prior to the closing, to be paid at the time of closing. The lender may also require an additional amount to be paid at closing into the real estate tax escrow account.

If the lender will be paying the real estate taxes, it will require the borrower to authorize the tax collector of the municipality in which the property is located to mail all original tax bills to the lender for payment rather than to the borrower. The borrower is likely to receive or may obtain from the municipality a duplicate tax bill for advice to the borrower of the taxes being imposed upon the property.

(11) **HUD-1 Settlement Statement.** The lender may provide a partially completed HUD-1 settlement statement setting forth the line items related to the mortgage loan financing. The statement serves as a confirmation of the costs related to the loan of which the lender advised the borrower's attorney prior to closing so that the borrower's attorney could incorporate those costs into a settlement statement completed in its entirety by the borrower's attorney. A discussion of the preparation of the HUD-1 settlement statement appears in Section 4.6.

(12) **Closing Attorney or Closing Agent Certification.** The lender will require the closing attorney or agent to sign a certification confirming (i) the payment of real estate taxes through the tax quarter required by the lender; (ii) the purchase price of the property; (iii) the status of title to the property; (iv) the recordation of the deed, mortgage, assignment of mortgage, power of attorney, as applicable; and (v) the agreement to deliver the mortgagee policy of title insurance within thirty (30) days of closing.

(13) **Completed Mortgage Application and Amendments, if any.** The lender may confirm and bring current the information in the mortgage application and present at closing a typed version of the completed application for the approval and signature of the borrower.

## EXHIBIT 64A – CLOSING INSTRUCTIONS FOR HUD-1 SETTLEMENT STATEMENT AND ADDENDA

### CLOSING INSTRUCTIONS FOR AMBER SKY HOME MORTGAGE, L.L.C.

10/7/2013 11:43 AM

Settlement Agent: APPLE TITLE AGENCY  
ONE KINDERKAMACK ROAD  
HACKENSACK, NJ 07601  
Telephone No: (201) 621-4301  
Fax No: (201) 621-6202  
GF Number: 13AT736  
Act: ESCROW OFFICER  
Lock Exp. Date: 10/21/2013  
Invoice Number: FMH13-83  
Scheduled to Close: 10/2/2013  
Borrowers: [REDACTED]  
Property Address: [REDACTED]  
Loan Amount: \$292,500.00  
Sales Price: \$390,000.00  
Additional Financing: \$0.00  
Loan Type: Conventional  
Occupancy: Investment  
First Payment Date: 12/1/2013

Lender: AMBER SKY HOME MORTGAGE, L.L.C.  
1 ROUTE 46 WEST, SUITE 1  
ELMWOOD PARK, NJ 07407  
Closing Contact: TEAM B  
Telephone No: (713) 871-0005  
Fax No: (713) 337-8914  
Loan No: 8009005  
JPMVA Case Number:  
MIR #: [REDACTED]  
Loan Purpose: Purchase

Initial Interest Rate: 4.875  
Term: 360/mo  
Initial P&I Payment: \$1,547.93  
Index:  
Estimated Funding Date: 10/2/2013  
Final Payment Date: 11/1/2043

PLEASE CALL TEAM B SALMA AND TIFFANY BAHNEY: TEAMB@BMANBC.COM AT (713) 871-0005 FAX (713) 337-8914 BETWEEN 9:00 AM AND 5:00 PM (CST). CALL PRIOR TO DISBURSEMENT FOR AUTHORIZATION NUMBER.

#### Section II: Loan Fees and Escrows:

Fees Paid at Closing: The following fees must be indicated on the HUD-1 Settlement Statement. The term "POC" means "paid outside of closing." The fee must be collected from the indicated party:

200. Amount Paid by or in Behalf of Borrower		300. Reductions in Amount Due to Seller	
206. Seller Paid Closing Costs		306. Seller Paid Closing Costs	
207. Lender Paid Closing Costs			
208.			
<b>800. Items Payable in Connection with Loan</b>		<b>Borrower</b>	<b>Seller</b>
801. Our origination charge	\$4,551.25 (from GFE #1)		
802. Your credit or charge (resulting from the specific interest rate chosen)	\$0.00 (from GFE #2)		
803. Your adjusted origination charge	(from GFE #3A)	\$4,551.25	
804. Appraisal fee to AMBER SKY HOME MTG FRO DART APPRAISAL (POC-BORROWER)	(from GFE #3)	\$570.00	
805. Credit report fee	(from GFE #3)		
806. Tax service fee	(from GFE #3)		
807. Flood certification to AMBER SKY HOME MTG FRO CORELOGIC	(from GFE #3)	\$12.00	
808. Document Preparation to BLACK, MANN & GRAHAM	\$206.00		
809. CLOSING COORDINATION FEE TO BLACK, MANN & GRAHAM	\$195.00		
810.	(from GFE #3)		
811.	(from GFE #3)		
<b>900. Items Required by Lender to Be Paid in Advance</b>		<b>Borrower</b>	<b>Seller</b>
901. Daily interest charges from 10/2/2013 to 10/31/2013 (a 39.07 day)	(from GFE #10)	\$1,172.10	
902. Mortgage insurance premiums for months to	(from GFE #3)	\$0.00	
903. Homeowner's insurance for years to (POC-BORROWER)	(from GFE #11)	\$1,330.00	
904.			
905.			
906. VA Funding Fee			
<b>1000. Reserves Deposited with Lender</b>		<b>Borrower</b>	<b>Seller</b>
1001. Initial deposit for your escrow account	(from GFE #9)	\$2,108.14	
1002. Homeowner's insurance	3 months @ \$110.83 per month \$332.49		
1003. Mortgage insurance	3 months @ per month \$0.00		
1004. City taxes	months @ per month \$0.00		
1005. County taxes	2 months @ \$943.23 per month \$1,886.46		
1006.	months @ per month \$0.00		
1007.	months @ per month \$0.00		
1008.	months @ per month \$0.00		
1009. Aggregate Adjustment	\$-110.81		
<b>1100. Title Charges</b>		<b>Borrower</b>	<b>Seller</b>
1101. Title services and lender's title insurance	(from GFE #4)	\$946.91	
1102. Settlement or closing fee APPLE TITLE AGENCY	\$375.00		
1103. Owner's title insurance	(from GFE #5)	\$1,646.00	
1104. Lender's title insurance	\$175.00		
1109. Warranty Deed \$130.00 Release of Lien \$0.00 BLACK, MANN & GRAHAM			\$308.00
<b>1200. Government Recording and Transfer Charges</b>		<b>Borrower</b>	<b>Seller</b>
1201. Government recording charges	(from GFE #7)	\$186.00	
1202. Deed \$ Mortgage \$ Release \$			
1203. Transfer taxes	(from GFE #8)		
1204. City/County tax stamps Deed \$ Mortgage \$			
1205. State tax stamps Deed \$ Mortgage \$			
<b>1300. Additional Settlement Charges</b>		<b>Borrower</b>	<b>Seller</b>
1301. Required services that you can shop for	(from GFE #6)	\$883.00	
1302. SALVEY			
1303. BUYER ATTORNEY FEE	\$850.00		

80060401

Schedule 1 of 3

### Exhibit 64A - Closing Instructions for Hud-1 Settlement Statement and Addenda - Continued

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
Charges That Cannot Increase			
HUD-1 Line Number			
Origination charge # 801		\$4,551.25	\$4,551.25
Your credit or charge (points) for the specific interest rate chosen # 802		3.00	3.00
Your adjusted origination charges # 803		\$4,551.25	\$4,551.25
Transfer taxes # 1203			
Charges That in Total Cannot Increase More Than 10%		Good Faith Estimate	HUD-1
Government recording charges # 1201		\$450.00	\$386.00
Appraisal Fee to AMBER SKY HOME MTG FBO DART APPRAISAL		\$50.00	\$70.00
Flood Cert to AMBER SKY HOME MTG FBO CORRELLOGIC		12.00	12.00
		\$1,012.00	\$968.00
Increase between GFE and HUD-1 Charges		(\$44.00)	or -4.35%
Charges That Can Change		Good Faith Estimate	HUD-1
Initial Deposit for your escrow account # 1001		\$4,013.81	\$2,168.14
Daily interest charges # 901 \$29.07/day		\$594.14	\$1,172.10
Homeowner's insurance # 903			\$1,330.00
Title Services and Lenders Title Insurance		3,200.00	946.91
Owners Title Insurance to SURVEY		1,000.00	1,646.00
BUYER ATTORNEY FEE		0.00	0.00
			850.00

Loan Terms	
Your initial loan amount is	\$201,500.00
Your loan term is	30 years
Your initial interest rate is	4.875%
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$1,547.93 includes <input checked="" type="checkbox"/> Principal <input checked="" type="checkbox"/> Interest <input type="checkbox"/> Mortgage Insurance
Can your interest rate rise?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of 7%. The first change will be on and can change again every 12 months after. Every change date, your interest rate can increase or decrease by .5%. Over the life of the loan, your interest rate is guaranteed to never be lower than 5% or higher than 7%.
Even if you make payments on time, can your loan balance rise?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of 5%.
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, the first increase can be on and the monthly amount owed can rise to the maximum it can ever rise to is.
Does your loan have a prepayment penalty?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, your maximum prepayment penalty is 3%.
Does your loan have a balloon payment?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, your first balloon payment is due in years on.
Total monthly amount owed including escrow account payments	<input type="checkbox"/> You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. <input checked="" type="checkbox"/> You have an additional monthly escrow payment of \$1,054.06 that results in a total initial monthly amount owed of \$2,601.99. This includes principal, interest, any mortgage insurance and any items checked below. <input checked="" type="checkbox"/> Property taxes <input checked="" type="checkbox"/> Homeowner's Insurance <input type="checkbox"/> Flood Insurance

FORWARD CLOSED DOCUMENTS TO:

ATTN: FUNDING DEPARTMENT  
 BLACK, MANN & GRAHAM, L.L.P.  
 9575 KATY FREEWAY, SUITE 300  
 HOUSTON, TX 77024

## Exhibit 64A - Closing Instructions for Hud-1 Settlement Statement and Addenda - Continued

### ADDENDUM TO HUD-1 SETTLEMENT STATEMENT

#### TITLE SERVICES AND LENDER'S TITLE INSURANCE ITEMIZATION

Loan Number: 8009005

Property Address: [REDACTED] GARFIELD, NJ 07026

SETTLEMENT/CLOSING FEE APPLE TITLE AGENCY	\$375.00
LENDERS TITLE INSURANCE	\$175.00
NOTARY FEE	\$25.00
TITLE FLOOD CERTIFICATION	\$10.00
TAX & ASSESSMENTS	\$35.00
EXAM FEE	\$100.00
OTHER	\$10.00
PHOTOCOPY	\$25.00
NOTICE OF SETTLEMENT	\$50.00
MISC CHARGE	\$7.91
OVERNIGHT CHARGES	\$50.00
EMAIL PACKAGE FEE	\$50.00
TIDELAND SEARCH	\$25.00
<b>Total</b>	<b>\$946.91</b>

[REDACTED] _____	[REDACTED] _____
Date	Date
[REDACTED] _____	[REDACTED] _____
Date	Date
_____	_____
Date	Date

## Exhibit 64A - Closing Instructions for Hud-1 Settlement Statement and Addenda - Continued

Loan No.: 8009005

### ADDENDUM TO HUD-1/HUD-1A SETTLEMENT STATEMENT

I have carefully reviewed the HUD-1 or HUD-1A Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 or HUD-1A Settlement Statement.

Borrower <span style="background-color: black; color: black;">[REDACTED]</span>	Date	Seller <span style="background-color: black; color: black;">[REDACTED]</span>	Date
Borrower <span style="background-color: black; color: black;">[REDACTED]</span>	Date	Seller	Date
Borrower <span style="background-color: black; color: black;">[REDACTED]</span>	Date	Seller	Date
Borrower	Date	Seller	Date
Borrower	Date	Seller	Date
Borrower	Date	Seller	Date

The HUD-1 or HUD-1A Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

By: \_\_\_\_\_  
Settlement Agent Date

**WARNING:** It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

## Exhibit 64A - Closing Instructions for Hud-1 Settlement Statement and Addenda – Continued

Loan Number: 8009005

### SUPPLEMENTAL INSTRUCTIONS TO THE SETTLEMENT AGENT

#### COMPLETION OF HUD-1 AND HUD-1A SETTLEMENT STATEMENT

Certain revisions to the regulations for the Real Estate Settlement Procedures Act of 1974 (RESPA), commonly known as Regulation X (24 CFR Part 3500), are effective as of May 24, 1995.

Provisions pertinent to the use and completion of the HUD-1 or HUD-1A Settlement Statement are set out in sections 3500.8 and 3500.10, inclusive, 3500.17, Appendix A to Part 3500, and in Example 12 of Appendix B to Part 3500.

You are instructed to complete the HUD-1 or HUD-1A Settlement Statement in accordance with these provisions of Regulation X, as revised.

Under Section E of the HUD-1 or HUD-1A Settlement Statement, for all items except those paid to and retained by the Lender, the name of the person or firm ultimately receiving the payment should be shown. In the case of "no cost" or "no point" loans or of indirect payments or back-funded payments, the charge to be paid by the lender to a third-party provider should be shown as P.O.C. (Paid Outside of Closing) next to the identified item and should not be used in computing totals.

**Exhibit 64A - Closing Instructions for  
Hud-1 Settlement Statement and Addenda - Continued**

**\*\* NOTICE \*\***

All endorsements to the mortgagee title policy must be reflected as line items on page 2 of the HUD-1.



**EXHIBIT 64C – FINAL TRUTH-IN-LENDING DISCLOSURE STATEMENT**

10-2-2013 11:31 AM

**FINAL TRUTH-IN-LENDING DISCLOSURE STATEMENT**

LENDER OR LENDER'S AGENT:  
**AMBER SKY HOME MORTGAGE, LLC**  
 1 ROUTE 46 WEST, SUITE 1  
 ELMWOOD PARK, NJ 07407

LOAN NO.: **8009005**  
 Type of Loan: **Conventional**

BORROWER: **[REDACTED]**  
 ADDRESS: **[REDACTED]**  
 CITY/STATE/ZIP: **[REDACTED]**  
 PROPERTY: **[REDACTED] AVENUE, GARFIELD, NJ 07026**

Annual Percentage Rate <small>The cost of your credit as a yearly rate.</small>	Finance Charge <small>The dollar amount the credit will cost you.</small>	Amount Financed <small>The amount of credit provided to you or on your behalf.</small>	Total of Payments <small>The amount you will have paid after you have made all payments as scheduled.</small>
5.06%	\$272,115.44	\$285,142.74	\$557,258.18

**INTEREST RATE AND PAYMENT SUMMARY**

	Rate & Monthly Payment
Interest Rate	4.875%
Principal + Interest Payment	\$1,547.93
Est. Taxes + Insurance (Escrow)	\$1,054.06
<b>Total Est. Monthly Payment</b>	<b>\$2,601.99</b>
Final Balloon Payment due :	

**DEMAND FEATURE:**  
☒ This loan does not have a Demand Feature. ☐ This loan has a Demand Feature as follows:

**VARIABLE RATE FEATURE:**  
☐ This loan has a Variable Rate Feature. Variable Rate Disclosures have been provided to you earlier.

**SECURITY:**  
 You are giving a security interest in the property located at: **193 BANTA AVENUE, GARFIELD, NJ 07026**

**FILING / RECORDING FEES:**  
**\$386.00 (e)**

**ASSUMPTION:**  
 Somebody buying this property ☒ cannot assume the remaining balance due under original mortgage terms.  
☐ may assume, subject to Lender's conditions, the remaining balance due under original mortgage terms.

**PROPERTY INSURANCE:**  
 Borrower may purchase property hazard insurance from any insurance company acceptable to the lender. Hazard insurance ☐ is not available through the lender at a cost of \_\_\_\_\_ for a \_\_\_\_\_ year term.

**LATE CHARGES:**  
 If your payment is more than 15 days late, you will be charged a late charge of 5% of the overdue payment.

**PREPAYMENT:**  
 If you pay off your loan early, you ☐ may ☒ will not have to pay a penalty.  
☐ may ☒ will not be entitled to a refund of part of the finance charge.

You are not required to complete this agreement merely because you have received these disclosures or signed a loan application. There is no guarantee that you will be able to refinance to lower your rate and payments. See your contract documents for any additional information regarding non-payment, default, right to accelerate before scheduled maturity date, pre-payment refunds and penalties, and further information regarding security interests and the policy regarding assumption of the obligation.  
 (e) appearing by a date or figure means it is an estimate.

I/We hereby acknowledge reading and receiving a complete copy of this disclosure.

**[REDACTED]** Borrower/Date **[REDACTED]** Borrower/Date

**[REDACTED]** Borrower/Date **[REDACTED]** Borrower/Date

**[REDACTED]** Borrower/Date **[REDACTED]** Borrower/Date

**EXHIBIT 64D – ITEMIZATION OF AMOUNT FINANCED****ITEMIZATION OF AMOUNT FINANCED**

Loan Number: 8009005  
 Loan Amount: \$292,500.00

Borrower(s):

Property Address:  
 AVENUE  
 GARFIELD, NJ 07026

Borrower(s) Address:

Lender: AMBER SKY HOME MORTGAGE, LLC  
 1 ROUTE 46 WEST, SUITE 1  
 ELMWOOD PARK, NJ 07407

Itemization of Amount Financed of:		\$285,142.74
Fee Description		Amount
<b>AMOUNT PAID ON YOUR ACCOUNT/PAID TO OTHERS ON YOUR BEHALF:</b>		
Appraisal Fee		\$ 570.00
Hazard Insurance Premium		\$ 1,330.00
Hazard Insurance Reserves		\$ 332.49
County Tax Reserves		\$ 1,886.46
Aggregate Adjustment		(\$ 110.81)
Title Co Misc Fee(s)		\$ .00
Lenders Title Insurance Fee		\$ 175.00
Owners Title Insurance Fee		\$ 1,646.00
Recording Fee		\$ 386.00
<b>ITEMIZATION OF PREPAID FINANCE CHARGE:</b>		
Origination Charge		\$ 4,551.25
Flood Certification Fee		\$ 12.00
Title Closing/Escrow Fee		\$ 375.00
Title Co Misc Fee(s)		\$ 396.91
BUYER ATTORNEY FEE		\$ 850.00
Odd Days Interest for 30 days @ \$39.07 per day		\$ 1,172.10

Total Prepaid Finance Charges

\$7,357.26

_____	Date	_____	Date
_____	Date	_____	Date
_____	Date	_____	Date

**EXHIBIT 64E - NOTE****NOTE**

Loan Number: 8009005  
 MIN: 1011860  
 MERS Phone: 1-888-679-6377

OCTOBER 02, 2013  
 [Date]

HACKENSACK,  
 [City]

NEW JERSEY  
 [State]

AVENUE, GARFIELD, NJ 07026  
 [Property Address]

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$292,500.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is AMBER SKY HOME MORTGAGE, LLC. I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 4.875%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

**3. PAYMENTS****(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1ST day of each month beginning on DECEMBER 01, 2013. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on NOVEMBER 01, 2043, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 1 ROUTE 46 WEST, SUITE 1, ELMWOOD PARK, NJ 07407 or at a different place if required by the Note Holder.

**(B) Amount of Monthly Payments**

My monthly payment will be in the amount of U.S. \$1,547.93.

**4. BORROWER'S RIGHT TO PREPAY**

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

**5. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

**6. BORROWER'S FAILURE TO PAY AS REQUIRED****(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of Fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

**(D) No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

**(E) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

**7. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

Initials: \_\_\_\_\_

**EXHIBIT 64E – Note - Continued****8. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do those things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

**9. WAIVERS**

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

**10. UNIFORM SECURED NOTE**

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of these conditions are described as follows:

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

\_\_\_\_\_  
(Seal)  
- Borrower

\_\_\_\_\_  
(Seal)  
- Borrower

\_\_\_\_\_  
(Seal)  
- Borrower

\_\_\_\_\_  
(Seal)  
- Borrower

*[Sign Original Only]*

**EXHIBIT 64F - MORTGAGE**

After Recording Return To:  
**BLACK, MANN & GRAHAM, L.L.P.**  
**9575 KATY FREEWAY, SUITE 300**  
**HOUSTON, TX 77024**  
**ATTN: FUNDING DEPARTMENT**

[Space Above This Line For Recording Data]

Loan Number **8009005**

MIN: 101186

**MORTGAGE****DEFINITIONS**

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) **"Security Instrument"** means this document, which is dated **OCTOBER 02, 2013**, together with all Riders to this document.

(B) **"Borrower"** is **[REDACTED]**, **HUSBAND AND WIFE AND**  
**[REDACTED]**. Borrower is the mortgagor under this Security Instrument.

(C) **"MERS"** is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the mortgagee under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) **"Lender"** is **AMBER SKY HOME MORTGAGE, LLC**. Lender is a **LIMITED LIABILITY COMPANY** organized and existing under the laws of **NEW JERSEY**. Lender's address is **1 ROUTE 46 WEST, SUITE 1, ELMWOOD PARK, NJ 07407**.

(E) **"Note"** means the promissory note signed by Borrower and dated **OCTOBER 02, 2013**. The Note states that Borrower owes Lender **Two Hundred Ninety-Two Thousand Five Hundred And No/100 Dollars (U.S. \$292,500.00)** plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **NOVEMBER 01, 2043**.

(F) **"Property"** means the property that is described below under the heading "Transfer of Rights in the Property."

(G) **"Loan"** means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) **"Riders"** means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider       | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> Second Home Rider  |
| <input type="checkbox"/> Balloon Rider               | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Other(s) [specify] |
| <input checked="" type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Biweekly Payment Rider         |   |

(I) **"Applicable Law"** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) **"Community Association Dues, Fees, and Assessments"** means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) **"Electronic Funds Transfer"** means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or

Initials: \_\_\_\_\_

**EXHIBIT 64F – Mortgage - Continued**

magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

**TRANSFER OF RIGHTS IN THE PROPERTY**

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For these purposes, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the

County of BERGEN :  
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

**SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN FOR ALL PURPOSES.**

which currently has the address of AVENUE, GARFIELD,  
[Street] [City]  
New Jersey 07026 ("Property Address");  
[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants

Initials: \_\_\_\_\_

**EXHIBIT 64F – Mortgage – Continued**

with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future. If Lender accepts such payments, it shall apply such payments at the time such payments are accepted. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attach priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Initials: \_\_\_\_\_

**EXHIBIT 64F – Mortgage – Continued**

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower. Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security

Initials: \_\_\_\_\_

**EXHIBIT 64F – Mortgage – Continued**

Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

**7. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

Initials: \_\_\_\_\_

**EXHIBIT 64F – Mortgage – Continued****9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If

(a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

**Initials:** \_\_\_\_\_

**EXHIBIT 64F – Mortgage – Continued**

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has – if any – with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

**11. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower

Initials: \_\_\_\_\_

**EXHIBIT 64F – Mortgage – Continued**

or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

**14. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

Initials: \_\_\_\_\_

**EXHIBIT 64F – Mortgage – Continued**

**17. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**18. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal

Initials: \_\_\_\_\_

**EXHIBIT 64F – Mortgage – Continued**

laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property; (e) the Borrower's right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure; and (f) any other disclosure required under the Fair Foreclosure Act, codified at §§ 2A:50-53 et seq. of the New Jersey Statutes, or other Applicable Law. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, attorneys' fees and costs of title evidence permitted by Rules of Court.

**23. Release.** Upon payment of all sums secured by this Security Instrument, Lender shall cancel this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

**24. No Claim of Credit for Taxes.** Borrower will not make deduction from or claim credit on the principal or interest secured by this Security Instrument by reason of any governmental taxes, assessments or charges. Borrower will not claim any deduction from the taxable value of the Property by reason of this Security Instrument.

Initials: \_\_\_\_\_

**EXHIBIT 64F – Mortgage – Continued**

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

(Seal)	(Seal)
_____	_____
-Borrower	-Borrower
 (Seal)	 (Seal)
_____	_____
-Borrower	-Borrower
 (Seal)	 (Seal)
_____	_____
-Borrower	-Borrower

**EXHIBIT 64F – Mortgage – Continued**

STATE OF NEW JERSEY        )  
  ) to wit:  
COUNTY OF BERGEN        )

On       the       \_\_\_\_\_ day       of       \_\_\_\_\_, before me,  
\_\_\_\_\_, a Notary Public of the State and County aforesaid personally appeared  
\_\_\_\_\_, who I am satisfied is/are Person(s) named  
in and who executed the within instrument; and he/she/they signed, sealed and delivered the same as his/her/their act  
and deed for the uses and purposes therein expressed.

My commission expires: \_\_\_\_\_ Notary Public \_\_\_\_\_ (Seal)

**EXHIBIT 64F – Mortgage – Continued****1-4 FAMILY RIDER**

(Assignment of Rents)

Loan Number: **8009005**

THIS 1-4 FAMILY RIDER is made this **2ND** day of **OCTOBER, 2013**, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to **AMBER SKY HOME MORTGAGE, LLC** (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

**AVENUE, GARFIELD, NJ 07026**  
[Property Address]

**1-4 FAMILY COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT.** In addition to the Property described in Security Instrument, the following items now or hereafter attached to the Property to the extent they are fixtures are added to the Property description, and shall also constitute the Property covered by the Security Instrument: building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument (or the leasehold estate if the Security Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security Instrument as the "Property."

**B. USE OF PROPERTY; COMPLIANCE WITH LAW.** Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

**C. SUBORDINATE LIENS.** Except as permitted by federal law, Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission.

**D. RENT LOSS INSURANCE.** Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5.

**E. "BORROWER'S RIGHT TO REINSTATE" DELETED.** Section 19 is deleted.

**F. BORROWER'S OCCUPANCY.** Unless Lender and Borrower otherwise agree in writing, Section 6 concerning Borrower's occupancy of the Property is deleted.

**G. ASSIGNMENT OF LEASES.** Upon Lender's request after default, Borrower shall assign to Lender all lease of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

**H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.** Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until (i) Lender has given Borrower notice of default pursuant to Section 22 of the Security Instrument and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

Initials: \_\_\_\_\_

**EXHIBIT 64F – Mortgage – Continued**

If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9.

Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this paragraph.

Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. Any application of Rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

**1. CROSS-DEFAULT PROVISION.** Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

Initials: \_\_\_\_\_

**EXHIBIT 64F – Mortgage – Continued**

EXHIBIT 64F – Mortgage – Continued

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this 1-4 Family Rider.

\_\_\_\_\_  
Borrower (Seal)

\_\_\_\_\_  
Borrower (Seal)

\_\_\_\_\_  
Borrower (Seal)

\_\_\_\_\_  
Borrower (Seal)

**EXHIBIT 64G – INITIAL TAX AUTHORIZATION NOTICE**

New Jersey Department of Community Affairs  
Division of Local Government Services

**INITIAL TAX  
AUTHORIZATION  
NOTICE**

<b>1. PROPERTY INFORMATION</b> Municipality: <u>GARFIELD</u> County: <u>BERGEN</u> Block: _____ Lot: _____ Qualification: _____ Acct. # _____ Property Location: <u>AVENUE, GARFIELD, NJ 07026</u> Owner Name: <u>XXXXXXXXXXXXXXXXXXXX</u> Owner Mailing Address: <u>XXXXXXXXXXXXXXXXXXXX</u>	
<b>2. MORTGAGEE INFORMATION</b> Name: <u>AMBER SKY HOME MORTGAGE, LLC</u> Address: <u>1 ROUTE 46 WEST, SUITE 1</u> <u>ELMWOOD PARK, NJ 07407</u> Contact: _____ Phone # _____ Bank Code # _____ Loan # <u>8009005</u>	<b>3. SERVICING ORGANIZATION INFORMATION</b> Name: _____ Address: _____ Contact: _____ Phone # _____ Bank Code # _____ Loan # _____
<b>4. SEND DUPLICATE TAX BILL?</b> YES: <input type="checkbox"/> FEE ENCLOSED \$ _____	
<b>TAX BILL INSTRUCTIONS</b>	
<b>5. OWNER AUTHORIZATION</b> <small>(Do not use for mortgage purchase)</small> This form is to serve as authorization to indicate on the municipality's tax collection records that all current and future tax bills on the property described above are to be forwarded to the mortgagee or its designee noted herein unless otherwise indicated. This authorization is assignable in the event the mortgagee or servicing organization sells, assigns or transfers the servicing of the mortgage loan to another mortgagee or servicing organization, pursuant to P.L. 1990, c. 69 and N.J.A.C. 5:33-4.1 <i>et seq.</i>  Owner's Signature: _____ Typed Name: _____ Date: _____ Owner's Signature: _____ Typed Name: _____ Date: _____	<b>6. SELECTION OF ALTERNATE TAX BILL RECIPIENT</b> <small>(Tax bill will be sent to the mortgagee unless this section is completed)</small> Until further written notice from the undersigned, the mortgagee hereby authorizes the tax collector to send all current and future tax bills for the property described above to the following organization: Servicing Organization (#3 above): <input type="checkbox"/> Tax Processor: <input type="checkbox"/> Name: _____ Address: _____ Contact: _____ Phone # _____ Bank Code # _____ Loan # _____ <b>Mortgagee's Authorization:</b> Signature: _____ Name: _____ Title: _____ Phone: _____
<b>7. FORECLOSURE NOTICE REQUEST</b> <small>(Pursuant to N.J.S.A. 54:5-104.48)</small> This form is to serve as notice that the undersigned mortgagee requests notice of foreclosure proceedings on the above listed property.  Date: _____ Signature of Mortgagee: _____	<b>8. ACKNOWLEDGEMENT BY COLLECTOR</b> Date: _____ Tax Collector: _____ Municipality: _____
<b>9. This form prepared on (date) _____, by (name) _____, for (company), _____, at (phone) _____.</b>	

## EXHIBIT 64H – 12 DAY WRITTEN NOTICE OF FEES

Loan Number: 8009005

### 12 DAY WRITTEN NOTICE OF FEES

"You and the seller have the right to be told in writing of all charges made by us in connection with this loan at least twelve days before closing. You may close the loan sooner if both the Seller and you agree." N.J.S.A. 46:10A-1.

To close the loan sooner, we will require a written statement, signed by you and the seller, that either (1) you both have been advised of the charges at least twelve days before closing, or (2) that you understand that you have the right to receive such written notice, but choose to close sooner than twelve days from the date of the notice. If we do not receive this statement, we cannot close the loan sooner than twelve days from the day the mortgage loan commitment is signed.

To: Lender

Re: Loan #: 8009005

Loan Commitment #: 13AT730

Applicants:

Property: AVENUE, GARFIELD, NJ 07026

### CHECK APPROPRIATE BOX

☐ I/We have accepted the mortgage loan commitment and agree to close the loan sooner than twelve days from the day we have received written notice of all fees charged by Lender in connection with this loan.

☐ I/We have accepted the mortgage loan commitment and were advised in writing at least twelve days before closing of all fees charged by Lender in connection with this loan.

_____	Date	Kenneth J. Wolosz, as Beneficiary of the Estate Date of Florence P. Wolosz by Deed from Kenneth J. Wolosz as Executor of the Estate of Florence P. Wolosz, dated January 19, 2012, recorded January 19, 2012 in the Clerk's Office of the County of Bergen, New Jersey. In Deed Book 935, page 2146
_____	Date	_____ Date
_____	Date	_____ Date
_____	Date	_____ Date

**EXHIBIT 64I – NEW JERSEY PROPERTY INSURANCE DISCLOSURE**

Loan Number: 8009005

**NEW JERSEY PROPERTY INSURANCE DISCLOSURE**

Borrower(s): [REDACTED]

Property: [REDACTED] AVENUE, GARFIELD, NJ 07026

The following disclosure is provided to you pursuant to New Jersey Statute §17:11C-73:

**NOTICE TO THE BORROWER**

**YOU MAY BE REQUIRED TO PURCHASE PROPERTY INSURANCE  
AS A CONDITION OF RECEIVING THE LOAN.**

**IF PROPERTY INSURANCE IS REQUIRED, YOU MAY SECURE INSURANCE  
FROM A COMPANY OR AGENT OF YOUR OWN CHOOSING.**

The following disclosure is provided to you pursuant to New Jersey Admin Code §3:1-13.1:

In the event that this loan is granted for personal, family or household purposes, and if insurance is required and available through the lender, you have the option of securing such insurance from the source of your own choosing. Provided, however, that the lender may refuse to accept your choice of insurance provider, for reasonable cause, but must give you written notice stating the specific reasons why the insurance coverage provided by you is unacceptable. No lender shall require that you obtain a fire insurance policy in excess of the replacement value of the property.

(Borrower) [REDACTED] Date

(Borrower) [REDACTED] Date

(Borrower) [REDACTED] Date

(Borrower) \_\_\_\_\_ Date

(Borrower) \_\_\_\_\_ Date

(Borrower) \_\_\_\_\_ Date

Space Above for Recorder's Use

## CORPORATION ASSIGNMENT OF MORTGAGE

all beneficial interest under that certain Mortgage Dated: **OCTOBER 02, 2013**  
Executed by: \_\_\_\_\_  
**AMBER SKY HOME MORTGAGE, LLC**, Mortgagee, to: **AMBER SKY HOME MORTGAGE, LLC** Mortgagee, and  
recorded as Document No. \_\_\_\_\_, on \_\_\_\_\_ in Book \_\_\_\_\_ Page \_\_\_\_\_  
\_\_\_\_\_ of Official Records in the County Recorders Office of **BERGEN** County, NJ, describing land  
therein as:  
**SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN FOR ALL PURPOSES.**

AMBER SKY HOME MORTGAGE, LLC

Attest: \_\_\_\_\_ Asst. Secretary

State of \_\_\_\_\_, County of \_\_\_\_\_

I CERTIFY that on \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, personally come before me and acknowledged under oath, to my satisfaction, that (a) \_\_\_\_\_ signed, sealed and delivered the attached document as \_\_\_\_\_ Vice President and Asst. Secretary of **AMBER SKY HOME MORTGAGE, LLC** the **LIMITED LIABILITY COMPANY** named in this document; (b) the proper corporate seal was affixed; and (c) this document was signed and made by the **LIMITED LIABILITY COMPANY** as its voluntary act and deed by virtue of authority from its Board of Directors.

Name	Title
------	-------

**EXHIBIT 64K – FIRST PAYMENT LETTER****FIRST PAYMENT LETTER**

LOAN NO.: 8009005  
 BORROWER(S): [REDACTED]  
 PROPERTY: [REDACTED] AVENUE  
 GARFIELD, NJ 07026  
 CLOSING DATE: OCTOBER 02, 2013      LOAN AMOUNT: \$292,500.00 TERM: 360 / 360 (months)

**Details of Payment:**

Payment to Principal and Interest	<b>\$1,547.93</b>
Deposit for Taxes and Assessments:	<b>\$943.23</b>
Deposit for Hazard Insurance Premium:	<b>\$110.83</b>
Deposit for Mortgage Insurance Premium:	
Deposit for Flood Insurance Premium:	
Deposit for	
<b>TOTAL PAYMENT</b>	<b>\$2,601.99</b>

First Payment Due Date: **DECEMBER 01, 2013**

If your loan is a Fixed Rate Loan, payments to principal and interest remain constant throughout the term of the loan. If your loan is a Adjustable or other type of Loan, payments to principal and interest may change throughout the term of the loan, see your "Note" for specifics. Deposits for taxes and insurance are subject to change based on the last annual payment. Should you have any questions regarding your mortgage loan, please feel free to call (201) 393-0200 for assistance.

Please forward your first payment to:  
**AMBER SKY HOME MORTGAGE, LLC Attn: Payment Processing**  
**1 ROUTE 46 WEST, SUITE 1**  
**ELMWOOD PARK, NJ 07407**

The undersigned have examined the above statement and find it correct, and hereby acknowledge receipt of the mortgage proceeds and authorize and consent to the disbursement of the mortgage loan proceeds for their account and benefit.

*If you do not receive your payment book by the due date of your first payment,  
 please detach the Payment Coupon below and mail with your payment.*

**PAYMENT COUPON**

Loan Number: 8009005  
 Due Date: **DECEMBER 01, 2013**  
 Borrower(s): **RAFAL RABIANSKI, JOANNA RABIANSKI**  
**and DANUTA ZDEB**  
 Property Address: 193 BANTA AVENUE  
 GARFIELD, NJ 07026  
 Mail Payment To:  
**AMBER SKY HOME MORTGAGE, LLC Attn: Payment**  
**Processing**  
**1 ROUTE 46 WEST, SUITE 1**  
**ELMWOOD PARK, NJ 07407**

Principal and Interest:	<b>\$1,547.93</b>
Taxes, Insurance, etc.:	<b>\$1,054.06</b>
<b>TOTAL PAYMENT:</b>	<b>\$2,601.99</b>
Additional Payment (to be applied towards principal)	
<b>Amount Enclosed \$</b>	

**EXHIBIT 64L – INITIAL ESCROW ACCOUNT DISCLOSURE****Initial Escrow Account Disclosure**Date: **OCTOBER 02, 2013**Loan Number: **8009005**

Case Number:

Lender's Name and Address:

AMBER SKY HOME MORTGAGE, LLC  
1 ROUTE 46 WEST, SUITE 1  
ELMWOOD PARK, NJ 07407

Borrower(s):

[REDACTED]

Property Address:

[REDACTED] AVENUE  
GARFIELD, NJ 07026

Mailing Address:

[REDACTED]

This is an estimate of activity in your escrow account during the coming year based on payments anticipated to be made from your account.

Month (or Period)	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Initial Deposit:				\$2,108.14
December	\$1,054.06			\$3,162.20
January	\$1,054.06			\$4,216.26
February	\$1,054.06	\$2,761.00	County Tax	\$2,509.32
March	\$1,054.06			\$3,563.38
April	\$1,054.06			\$4,617.44
May	\$1,054.06	\$2,761.00	County Tax	\$2,910.50
June	\$1,054.06			\$3,964.56
July	\$1,054.06			\$5,018.62
August	\$1,054.06	\$2,898.74	County Tax	\$3,173.94
September	\$1,054.06			\$4,228.00
October	\$1,054.06	\$1,330.00	Hazard Ins	\$3,952.06
November	\$1,054.06	\$2,898.00	County Tax	\$2,108.12

PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE ESCROW ACCOUNTING COMPUTATION YEAR.

Cushion selected by servicer: \$2,108.12

Your mortgage payment for the coming year will be \$2,601.99 of which \$1,547.93 will be for principal and interest and \$1,054.06 will go into your escrow account.

[REDACTED]

[REDACTED]

[REDACTED]

**EXHIBIT 64M – OCCUPANCY AFFIDAVIT****OCCUPANCY AFFIDAVIT**

LENDER: AMBER SKY HOME MORTGAGE, LLC

LOAN NO.: 8809805

BORROWER(S):

PROPERTY: [REDACTED] AVENUE, GARFIELD, NJ 07026

DATE: OCTOBER 02, 2013

CASE NO.:

Before me, the undersigned duly authorized to take acknowledgments and administer oaths, personally appeared the undersigned Borrower(s), who upon being duly sworn on oath stated the following:

1. That I/we am/are the Borrower(s) named in a Note and Deed of Trust evidencing a Loan made by Lender secured by the Property.
- 2.1 ☐ The Property is/will be Borrower(s)'s Primary Residence. At least one of the Borrowers who executes the Note and Deed of Trust will take title to and occupy the Property. The Property is now occupied as Borrower(s)'s principal residence or will be occupied as Borrower(s)'s principal residence no later than sixty (60) days after this date or sixty (60) days after the property shall first become ready for occupancy as a habitable dwelling whichever is later. Borrower has no present intention that is contrary to this representation.
- 2.2 ☐ The Property is/will be Borrower(s)'s Secondary Residence. A Secondary Residence is a single family property that is currently or will be occupied by at least one of the undersigned Borrower(s) in addition to his/her/their Primary Residence. It will not be income producing property.
- 2.3 ☒ The Property is/will be investment property. The Property will not be occupied or claimed as a Primary or Secondary Residence by any of the Borrowers, and may produce revenue. Each Borrower(s) now owns, resides, uses and claims another property or properties as Borrower(s)'s residential and/or business homestead, and, if applicable, exempt from forced sale under the laws of the State in which the property is located.
3. If Borrower(s) has indicated that the Property is his/her/their Primary Residence, Borrower(s) represents that I/we have no present intent to sell, lease, rent or otherwise dispose of said Residence, and that upon Occupancy of said Residence, I/we will not have any other permanent and Primary Residence. I/we also represent that the Residence is not to be used for investment purposes. Borrower(s) agrees to furnish, upon Lender's request, evidence satisfactory to Lender of my/our continuing occupancy of the Property as my/our permanent full time residence. In the event that I/we shall fail to occupy the Property within the sixty (60) day period above specified or fail to continue occupying the Property as my/our Primary Residence for one (1) year from the date of Loan closing, such shall constitute a default under the Loan and at Lender's option, the whole sum of principal and interest payable pursuant to said Note shall become immediately due and payable without further demand and Lender may invoke the power of sale and any other remedies permitted by applicable law.
4. Lender has advised me/us that it has originated the Loan in reliance upon the occupancy status indicated above. Should the occupancy status not be as represented above, and in consideration of Lender making the Loan, I/we hereby agree to indemnify Lender and hold Lender harmless from and against any and all loss, damage, liability or expense, including costs and reasonable attorneys' fees, to which Lender may be put or which Lender may incur by reason of or in connection with my/our failure to provide the correct representation as to occupancy. Borrower(s) understands that Lender may be entitled, in addition to or instead of the remedies set forth in 3 above, to receive from Borrower(s) an amount sufficient to reduce the principal amount of the Loan to the maximum amount allowed for non-occupant owners under applicable regulations or industry guidelines.
5. Notwithstanding the foregoing, if I/we commence to occupy the Property as my/our permanent, full time Residence within sixty (60) days after the Loan is closed but cease to so occupy the Property during the one (1) year period, I/we shall not be deemed to be in default by reason of ceasing to occupy the Property, if I/we sell the Property, and payoff the debt to Lender or the purchaser is approved for assumption of such debt, or if such non-occupancy is due to extenuating circumstances beyond Borrower's control, if I/we supply evidence of same to Lender and Lender, in its sole discretion, shall be satisfied with such proof.
6. Borrower(s) also understands that any false statements, misrepresentations or material omissions may result in civil and criminal penalties. The agreements and covenants contained herein shall survive the closing of this loan transaction.

\_\_\_\_\_  
-Borrower

\_\_\_\_\_  
-Borrower

\_\_\_\_\_  
-Borrower

\_\_\_\_\_  
-Borrower

State of NEW JERSEY )  
County of BERGEN )

This instrument was acknowledged before me on \_\_\_\_\_  
and \_\_\_\_\_

(Seal)

My commission expires: \_\_\_\_\_

Notary Public, State of \_\_\_\_\_  
Notary's typed or printed name: \_\_\_\_\_

## EXHIBIT 64N – ERRORS AND OMISSIONS CORRECTION DOCUMENT AGREEMENT

Loan Number 8009005

### ERRORS AND OMISSIONS CORRECTION DOCUMENT AGREEMENT

Date: OCTOBER 02, 2013

Name and Address of Borrower(s)

Property Address: AVENUE  
GARFIELD, NJ 07026

#### Lost, Misplaced, Misstated, or Inaccurate Documents or Omissions

Occasionally, documents evidencing loans (such as Notes) or securing loans (such as Deeds of Trust or mortgages) or reflecting costs associated with the loans are either lost or misplaced or inaccurately reflect the true and correct covenants, terms, and conditions of the loan or have certain omissions or mistakes. Loss, misplacement, misstatement, omission or inaccuracy can be solely caused by the Lender, solely by the Borrower (whether one or more), the closing agent, the Lender's attorney, or otherwise. The terms of this agreement pertain to all documents associated with the loan whether originated by Lender, Borrower, closing agent, Lender's attorney, or third party contractor.

#### Agreement to Replace Lost or Misplaced Documents and to Correct Misstated or Inaccurate Documents or Omissions thereto

Regardless of the reason for any loss, misplacement, misstatement, omission or inaccuracy in any document evidencing and/or securing the above-referenced loan (the "Loan"), Borrower agrees to execute and/or initial and deliver to Lender any documents Lender, or any party on behalf of Lender, deems necessary to replace or correct the lost, misplaced, misstated, omitted or inaccurate document(s) or term thereof. The documents Lender or a party on behalf of Lender requests Borrower to execute and/or initial and deliver pursuant to this paragraph shall hereinafter be referred to as "Replacement Documents." Borrower agrees to deliver the Replacement Documents within 10 days after receipt by Borrower of a written request from Lender, or a party acting on behalf of Lender.

#### Failure to Deliver Replacement Documents can Constitute Default

Borrower's failure or refusal to execute and/or initial and deliver the Replacement Documents to Lender or a party acting on behalf of Lender more than 10 days after written request by Lender or other party shall, at Lender's sole option, constitute a default under the Note evidencing the Loan.

#### Borrower Liable for Loss Attributed to Failure to Execute and/or Initial and Deliver the Replacement Documents

Should Borrower fail or refuse to execute and/or initial and deliver the Replacement Documents to Lender or to another party acting on behalf of Lender more than 10 days after written request by Lender or other party, Borrower shall be responsible and liable for any loss suffered by Lender due to such failure or refusal.

#### Agreement Benefits Lender's Successors and Binds Borrower's Successors

This agreement shall inure to the benefit of Lender's successors and assigns and be binding upon the heirs, personal representatives, successors and assigns of Borrower.

Borrower

Borrower

Borrower

Borrower

**EXHIBIT 640 – BORROWER'S ACCEPTANCE OF PROPERTY**

Loan Number: 8009005

**BORROWER'S ACCEPTANCE OF PROPERTY**

RE: [REDACTED] AVENUE  
GARFIELD, NJ 07026

WE, THE UNDERSIGNED PURCHASERS OF THE ABOVE REFERENCED PROPERTY, DO  
HEREBY ACCEPT THE PROPERTY IN ITS AS IS CONDITION.

[REDACTED] \_\_\_\_\_ [REDACTED] \_\_\_\_\_  
[REDACTED] \_\_\_\_\_  
\_\_\_\_\_

Date:

**EXHIBIT 64P – BORROWER AFFIDAVIT  
ACKNOWLEDGING LENDER COMPLIANCE WITH  
FEDERAL REQUIREMENT TO PROVIDE CREDIT SCORE DISCLOSURES**

**BORROWER AFFIDAVIT ACKNOWLEDGING LENDER COMPLIANCE  
WITH FEDERAL REQUIREMENT TO PROVIDE CREDIT SCORE  
DISCLOSURES**

(Section 609 of the Fair Credit Reporting Act, 15 U.S.C. 1681g)

Loan No.: 8009005

Lender: AMBER SKY HOME MORTGAGE, LLC

Property Address: [REDACTED] AVENUE, GARFIELD, NJ 07026

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned person(s) collectively the "Borrower", whether one or more, being all the owners of the residential real property located at the referenced Property Address securing the loan made or arranged by Lender, who, first being duly sworn according to law, upon oath depose(s) and say(s):

Prior to the closing of the loan, Borrower received from the Lender the following disclosures required by the Fair Credit Reporting Act:

- (A) the current credit score of the Borrower or the most recent credit score of the Borrower that was previously calculated by a credit reporting agency for a purpose related to the loan;
- (B) the range of possible credit scores under the model used;
- (C) all of the key factors that adversely affected the credit score of the Borrower in the model used, the total number of which did not exceed 4, subject to (F) below;
- (D) the date on which the credit score was created;
- (E) the name of the person or entity that provided the credit score or credit file upon which the credit score was created;
- (F) if a key factor that adversely affected the credit score of the Borrower consists of the number of enquiries made with respect to the Borrower's consumer report, that factor was included in the disclosure pursuant to (C) above without regard to the numerical limitation in (C); and
- (G) the Notice to the Home Loan Applicant (including the name, address, and telephone number of each consumer reporting agency providing a credit score that was used).

When the Borrower is more than one person, this instrument shall read as though pertinent verbs, nouns, and pronouns were changed to correspond, and reference to any gender shall include either gender.

**CAUTION: THIS IS A SWORN STATEMENT. DO NOT SIGN THIS AFFIDAVIT UNLESS YOU HAVE READ IT AND, ON OATH, YOU BELIEVE IT TO BE TRUE AND CORRECT.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SWORN TO AND SUBSCRIBED BEFORE ME, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My Commission Expires:

Notary Public

Notary's Typed or Printed Name

## EXHIBIT 64Q – BORROWER AFFIDAVIT

BORROWER(S) \_\_\_\_\_

LENDER: AMBER SKY HOME MORTGAGE, LLC

PROPERTY ADDRESS: \_\_\_\_\_ AVENUE, GARFIELD, NJ 07026

LOAN NUMBER: 8009005

### BORROWER AFFIDAVIT

The State of **NEW JERSEY**

The County of **BERGEN**

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned person(s), being all the credit applicants for the above-referenced loan ("Loan") and referred to herein as Borrower, whether one or more, who, first being duly sworn according to law, upon oath deposes and says:

I/We the undersigned borrower(s) for and in consideration of the loan advanced by the above referenced Lender attest that, since the date of my/our original loan application:

1. I/we have not incurred any additional debt obligations and all debt information stated on the original loan application is the only debt I/we have and the credit balances and payments have not increased.
2. The status of my/our employment has not changed; all employment information stated on the original loan application remains true and accurate; and I/we have not received any notification from my/our employer(s) indicating a change to my/our employment and/or income status.

Borrower \_\_\_\_\_

Borrower \_\_\_\_\_

Borrower \_\_\_\_\_

Borrower \_\_\_\_\_

Borrower \_\_\_\_\_

Borrower \_\_\_\_\_

SUBSCRIBED AND SWORN TO before me on \_\_\_\_\_, by \_\_\_\_\_

(Seal)

Notary Public, State of \_\_\_\_\_  
Notary's typed or printed name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

## EXHIBIT 64R – NAME AFFIDAVIT

Loan Number 8009005

### NAME AFFIDAVIT

STATE OF NEW JERSEY

§  
§  
§

COUNTY OF BERGEN

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared [REDACTED] (Affiant), a credible person to me well and truly known, who, having been by me first duly and lawfully sworn upon oath deposes and states:

The Affiant is one and the same as

[REDACTED]

who is obtaining a loan secured by the property located at

[REDACTED] AVENUE  
GARFIELD, NJ 07026

AFTER carefully reading the foregoing affidavit, the Affiant does hereby solemnly swear that the facts set forth herein are true and correct, to witness which Affiant hereunto sets hand and seal this 2ND day of OCTOBER, 2013.

[REDACTED]

SWORN AND SUBSCRIBED by the above Affiant before me, the undersigned Notary Public on this \_\_\_\_\_ day of \_\_\_\_\_ A.D.,

My Commission Expires:

Notary Public, BERGEN County, NEW JERSEY

(Seal)

(Notary's Name: Typed or Printed)

**EXHIBIT 64S – PATRIOT ACT DISCLOSURE****PATRIOT ACT DISCLOSURE**

Must be completed for each person (individual or business).

Loan No.: 8009005

Borrower: [REDACTED]

(Read to Customer)

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who applies for a loan.

What this means for you: When you open an account we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

Customer Name: [REDACTED]

Identification No.: [REDACTED] Date of Birth (if individual): [REDACTED]  
(Social Security/Tax ID)

Residential Address (no P.O. Boxes): 16 KIME AVENUE, WAYNE, NJ 07470

Telephone Number (home for individuals, office for businesses): [REDACTED]

Employer: [REDACTED]

**IDENTIFICATION DOCUMENTATION / INDIVIDUALS**

Document Type	Country/State	Issue Date	Document No.	Expiration Date	Photo Matches
Driver's License with Photo					
Passport with Photo					
Government Issued ID					
Student ID with Photo					
Resident Alien Card					
Current photo ID issued by Employer					
State Identification Card					
Medicare/Medicaid Insurance Card					
Other:					

**IDENTIFICATION DOCUMENTATION / BUSINESSES**

Business Type/Entity	Document Type	Dated
Trust		
Corporation		
Limited Liability Company		
Partnership		
Sole Proprietorship		
Other:		

I took reasonable measures to view the document(s) indicated above that concern the identity of the borrower(s) and recorded the information related to such document(s).

Date: OCTOBER 02, 2013

By: [REDACTED]  
(Settlement Agent)Its: [REDACTED]  
(Printed Name and Title)

For persons without a SSN/TIN, the ID number must be from one of the following: passport, alien ID card, or any other government issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

## EXHIBIT 64T – NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS

Loan Number: 8009005

### NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS

**Borrower Name & Address:**

**RAFAL RABIANSKI, JOANNA RABIANSKI and DANUTA ZDEB**  
**16 KIME AVENUE**  
**WAYNE, NJ 07470**

You are hereby notified that the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from **AMBER SKY HOME MORTGAGE, LLC** to **COLE TAYLOR BANK**, effective **DECEMBER 01, 2013**.

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before the effective date of transfer, or at closing. Your new servicer must also send you this notice no later than 15 days after this effective date or at closing. [In this case, all necessary information is combined in this one notice.]

Your present servicer is **AMBER SKY HOME MORTGAGE, LLC**. If you have any questions relating to the transfer of servicing from your present servicer call **(201) 393-0200** between **8:00 a.m.** and **5:00 p.m.** on the following days Monday thru Friday.

Your new servicer will be **COLE TAYLOR BANK**.  
The business address for your new servicer is: **2350 GREEN ROAD, SUITE 100 ANN ARBOR MI 49105**.  
The toll-free or collect call telephone number of your new servicer is **(855) 926-2400**. If you have any questions relating to the transfer of servicing to your new servicer call between **8:00 a.m.** and **5:00 p.m.** on the following days Monday thru Friday.

The date that your present servicer will stop accepting payments from you is **DECEMBER 01, 2013**.  
The date that your new servicer will start accepting payments from you is **DECEMBER 01, 2013**.  
Send all payments due on or after that date to your new servicer.

The transfer of servicing rights may affect the terms of or the continued availability of mortgage life or disability insurance or any other type of optional insurance in the following manner: \_\_\_\_\_

and you should take the following action to maintain coverage: \_\_\_\_\_

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. Section 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 6 RESPA (12 U.S.C. Section 2605) gives you certain consumer rights. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. If you want to send a "qualified written request" regarding the servicing of your loan, it must be sent to this address: **2350 GREEN ROAD, SUITE 100 ANN ARBOR MI 49105**. Not later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request. However, this does not prevent the servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A Business Day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

\*This notification is a requirement of Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. Section 2605).

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## EXHIBIT 64U – FORM W-9 REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION

<b>Form W-9</b> (Rev. December 2011) Department of the Treasury Internal Revenue Service	<b>Request for Taxpayer Identification Number and Certification</b>	Give form to the requestor. Do Not send to the IRS.
Name (as shown on your income tax return) _____		
Business name/disregarded entity name, if different from above _____		
Check appropriate box: Classification (required): <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Exempt payee <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S Corporation, P=partnership) <input type="checkbox"/> Other (see instructions)		
Address (number, street, and apt. or suite no.) _____		Requestor's name and address (optional) _____ _____
City, state, and ZIP code _____		
List account number(s) here (optional) _____		
<b>Part I Taxpayer Identification Number (TIN)</b>		
Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3. <b>Note.</b> If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.		
		<b>Social Security number</b> _____
		<b>Employer identification number</b> _____
<b>Part II Certification</b>		
Under penalties of perjury, I certify that:		
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3. I am a U.S. citizen or other U.S. person (defined below).		
<b>Certification instructions.</b> You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.		
<b>Sign Here</b>	<b>Signature of U.S. Person</b>	<b>Date</b>
<b>General Instructions</b>		
Section references are to the Internal Revenue Code unless otherwise noted.		
<b>Purpose of Form</b> A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:		
1. Certify the TIN you are giving is correct (or you are waiting for a number to be issued), 2. Certify that you are not subject to backup withholding, or 3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.		
<b>Note.</b> If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.		
<b>Definition of a U.S. person.</b> For federal tax purposes, you are considered a U.S. person if you are:		
<ul style="list-style-type: none"> <li>• An individual who is a U.S. citizen or U.S. resident alien,</li> <li>• A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,</li> <li>• An estate (other than a foreign estate), or</li> <li>• A domestic trust (as defined in Regulations section 301.7701-7).</li> </ul>		
<b>Special rules for partnerships.</b> Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.		
The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:		
<ul style="list-style-type: none"> <li>• The U.S. owner of a disregarded entity and not the entity,</li> </ul>		

## EXHIBIT 64U – Form W-9 Request for Taxpayer Identification Number and Certification - Continued

Form W-9 (Rev. 1-2011)

Page **2**

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

### Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

### Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

### Specific Instructions

#### Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name/disregarded entity name" line.

**Partnership, C Corporation, or S Corporation.** Enter the entity's name on the "Name" line and any business, trade, or "doing business as (DBA)" name on the "Business name/disregarded entity name" line.

**Disregarded entity.** Enter the owner's name on the "Name" line. The name of the entity entered on the "Name" line should never be a disregarded entity. The name on the "Name" line must be the name shown on the income tax return on which the income will be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a domestic owner, the domestic owner's name is required to be provided on the "Name" line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the "Business name/disregarded entity name" line. If the owner of the disregarded entity is a foreign person, you must complete an appropriate Form W-8.

**Note.** Check the appropriate box for the federal tax classification of the person whose name is entered on the "Name" line (Individual/sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

**Limited Liability Company (LLC).** If the person identified on the "Name" line is an LLC, check the "Limited liability company" box only and enter the appropriate code for the tax classification in the space provided. If you are an LLC that is treated as a partnership for federal tax purposes, enter "P" for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter "C" for C corporation or "S" for S corporation. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the "Name" line) is another LLC that is not disregarded for federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the "Name" line.

## EXHIBIT 64U – Form W-9 Request for Taxpayer Identification Number and Certification - Continued

Form W-9 (Rev. 1-2011)

Page **3**

**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/ disregarded entity name" line.

### Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the "Business name/ disregarded entity name," sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2);
2. The United States or any of its agencies or instrumentalities;
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities;
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities;
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation;
7. A foreign central bank of issue;
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States;
9. A futures commission merchant registered with the Commodity Futures Trading Commission;
10. A real estate investment trust;
11. An entity registered at all times during the tax year under the Investment Company Act of 1940;
12. A common trust fund operated by a bank under section 584(a);
13. A financial institution;
14. A middleman known in the investment community as a nominee or custodian; or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 5 and 7 through 13. Also, C corporations
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 7 <sup>2</sup>

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

### Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [IRS.gov](http://IRS.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

### Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, below, and items 4 and 5 on page 4 indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt Payee* on page 3.

**Signature requirements.** Complete the certification as indicated in items 1 through 3, below, and items 4 and 5 on page 4.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

## EXHIBIT 64U – Form W-9 Request for Taxpayer Identification Number and Certification - Continued

Form W-9 (Rev. 1-2011)

Page 4

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

### Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN.
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

### Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-368-4484. You can forward suspicious emails to the Federal Trade Commission at [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 1-877-IDTHEFT (1-877-438-4338).

Visit [IRS.gov](http://IRS.gov) to learn more about identity theft and how to reduce your risk.

### What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))	The grantor <sup>4</sup>
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
9. Corporate or LLC electing corporate status on Form 9632 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see regulation section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup>List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup>Circle the minor's name and furnish the minor's SSN.

<sup>3</sup>You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup>List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

<sup>5</sup>Note. Grantor also must provide a Form W-9 to trustee of trust.

### Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

**EXHIBIT 64V – FORM 4506-T REQUEST FOR TRANSCRIPT OF TAX RETURN**Form **4506-T**  
(Rev. January 2012)**Request for Transcript of Tax Return**

OMB No. 1545-1872

Department of the Treasury  
Internal Revenue Service

▶ Request may be rejected if the form is incomplete, illegible

**TIP:** Use Form 4506-T to order a transcript or other return information free of charge. See the product list below. You can quickly request transcripts by using our automated self-help service tools. Please visit us at IRS.gov and click on "Order a Transcript" or call 1-800-808-9946. If you need a copy of your return, use Form 4506, Request for Copy of Tax Return. There is a fee to get a copy of your return.

1a Name shown on tax return. If a joint return, enter the name shown first.

1b First social security number on tax return, individual taxpayer identification number, or employer identification number (see instructions)

2a If a joint return, enter spouse's name shown on tax return

2b Second social security number or individual taxpayer identification number if joint tax return

3 Current name, address (including apt., room, or suite no.), city, state and ZIP code (See instructions)

4 Previous address shown on the last return filed if different from line 3 (See instructions)

5 If the transcript or tax information is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number.

AMBER SKY HOME MORTGAGE, LLC, ISAOA (201) 393-0200  
1 ROUTE 46 WEST, SUITE 1  
ELMWOOD PARK, NJ 07407

**Caution.** If the transcript is being mailed to a third party, ensure that you have filled in line 6 and line 9 before signing. Sign and date the form once you have filled in these lines. Completing these steps helps to protect your privacy. Once the IRS discloses your IRS transcript to the third party listed on line 5, the IRS has no control over what the third party does with the information. If you would like to limit the third party's authority to disclose your transcript information, you can specify this limitation in your written agreement with the third party.

6 **Transcript requested.** Enter the tax form number here (1040, 1065, 1120, etc.) and check the appropriate box below. Enter only one tax form number per request. ▶ 1040

a **Return Transcript**, which includes most of the line items of a tax return as filed with the IRS. A tax return transcript does not reflect changes made to the account after the return is processed. Transcripts are only available for the following returns: Form 1040 series, Form 1065, Form 1120, Form 1120A, Form 1120H, Form 1120L, and Form 1120S. Return transcripts are available for the current year and returns processed during the prior 3 processing years. Most requests will be processed within 10 business days. ☒

b **Account Transcript**, which contains information on the financial status of the account, such as payments made on the account, penalty assessments, and adjustments made by you or the IRS after the return was filed. Return information is limited to items such as tax liability and estimated tax payments. Account transcripts are available for most returns. Most requests will be processed within 30 calendar days. ☐

c **Record of Account**, which is a combination of line item information and later adjustments to the account. Available for current year and 3 prior tax years. Most requests will be processed within 30 calendar days. ☐

7 **Verification of Nonfiling**, which is proof from the IRS that you **did not** file a return for the year. Current year requests are only available after June 15th. There are no availability restrictions on prior year requests. Most requests will be processed within 10 business days. ☐

8 **Form W-2, Form 1099 series, Form 1098 series, or Form 5498 series transcript.** The IRS can provide a transcript that includes data from these information returns. State or local information is not included with the Form W-2 information. The IRS may be able to provide this transcript information for up to 10 years. Information for the current year is generally not available until the year after it is filed with the IRS. For example, W-2 information for 2010, filed in 2011, will not be available from the IRS until 2012. If you need W-2 information for retirement purposes, you should contact the Social Security Administration at 1-800-772-1213. Most requests will be processed within 45 days. ☐

**CAUTION:** If you need a copy of Form W-2 or Form 1099, you should first contact the payer. To get a copy of the Form W-2 or Form 1099 filed with your return, you must use Form 4506 and request a copy of your return, which includes all attachments.

9 **Year or period requested.** Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than four years or periods, you must attach another Form 4506-T. For requests relating to quarterly tax returns, such as Form 941, you must enter each quarter or tax period separately.

12 / 31 /2009

12 / 31 /2010

12 / 31 /2011

12 / 31 /2012

Check this box if you have notified the IRS or the IRS has notified you that one of the years for which you are requesting a transcript involved identity theft on your federal tax return. ☐

**Caution.** Do not sign this form unless all applicable lines have been completed.

**Signature of taxpayer(s).** I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax information requested. If the request applies to a joint return, **either** husband or wife must sign. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506-T on behalf of the taxpayer. **Note.** For transcripts being sent to a third party, this form must be received within 120 days of signature date.

**Sign Here**

Signature (see instructions)

Date

Telephone number of taxpayer on line 1a or 2a ( )

Title (if line 1a above is a corporation, partnership, estate, or trust)

Spouse's signature

Date

For Privacy Act and Paperwork Reduction Act Notice, see page 2.

Cat No. 37667N

Form **4506-T** (Rev. 1-2012)

**Exhibit 64V – Form 4506-T Request for Transcript of Tax Return - Continued**

Form 4506-T (Rev. 1-2012)

Page 2

Section references are to the Internal Revenue Code unless otherwise noted.

**What's New**

The IRS has created a page on IRS.gov for information about Form 4506-T at [www.irs.gov/form4506](http://www.irs.gov/form4506). Information about any recent developments affecting Form 4506-T (such as legislation enacted after we release it) will be posted on that page.

**General Instructions**

**Caution.** Do not sign this form unless all applicable lines have been completed.

**Purpose of form.** Use Form 4506-T to request tax return information. You can also designate (on line 5) a third party to receive the information. Taxpayers using a tax year beginning in one calendar year and ending in the following year (fiscal tax year) must file Form 4506-T to request a return transcript.

**Note.** If you are unsure of which type of transcript you need, request the Record of Account, as it provides the most detailed information.

**Tip.** Use Form 4506, Request for Copy of Tax Return, to request copies of tax returns.

**Where to file.** Mail or fax Form 4506-T to the address below for the state you lived in, or the state your business was in, when that return was filed. There are two address charts: one for individual transcripts (Form 1040 series and Form W-2) and one for all other transcripts.

If you are requesting more than one transcript or other product and the chart below shows two different addresses, send your request to the address based on the address of your most recent return.

**Automated transcript request.** You can quickly request transcripts by using our automated self help service tools. Please visit us at IRS.gov and click on "Order a Transcript" or call 1-800-908-9948.

**Chart for individual transcripts (Form 1040 series and Form W-2)**

**If filed an individual return and lived in:**

Alabama, Kentucky, Louisiana, Mississippi, Tennessee, Texas, a foreign country, American Samoa, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or A.P.O. or F.P.O. address

**Mail or fax to the "Internal Revenue Service" at:**

RAIVS Team  
Stop 9716 AISC  
Austin, TX 73301

512-460-2272

Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, Wyoming

RAIVS Team  
Stop 37106  
Fresno, CA 93888

559-456-5878

Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia

RAIVS Team  
Stop 6705 P-6  
Kansas City, MO 64999

816-292-6102

**Chart for all other transcripts**

**If you lived in or your business was in:**

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming, a foreign country, or A.P.O. or F.P.O. address

**Mail or fax to the "Internal Revenue Service" at:**

RAIVS Team  
P.O. box 9941  
Mail Stop 6734  
Ogden, UT 84409

801-620-6922

Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin

RAIVS Team  
P.O. box 145600  
Stop 2800 F  
Cincinnati, OH 45250

859-669-3592

**Line 1b.** Enter your employer identification number (EIN) if your request relates to a business return. Otherwise, enter the first social security number (SSN) or your individual taxpayer identification number (ITIN) shown on the return. For example, if you are requesting Form 1040 that includes Schedule C (Form 1040), enter your SSN.

**Line 3.** Enter your current address. If you use a P.O. box, include it on this line.

**Line 4.** Enter the address shown on the last return filed if different from the address entered on line 3.

**Note.** If the address on Lines 3 and 4 are different and you have not changed your address with the IRS, file Form 8822, Change of Address.

**Line 6.** Enter only one tax form number per request.

**Signature and date.** Form 4506-T must be signed and dated by the taxpayer listed on line 1a or 2a. If you completed line 5 requesting the information be sent to a third party, the IRS must receive Form 4506-T within 120 days of the date signed by the taxpayer or it will be rejected.

**Individuals.** Transcripts of jointly filed tax returns may be furnished to either spouse. Only one signature is required. Sign Form 4506-T exactly as your name appeared on the original return. If you changed your name, also sign your current name.

**Corporations.** Generally, Form 4506-T can be signed by: (1) an officer having legal authority to bind the corporation, (2) any person designated by the board of directors or other governing body, or (3) any officer or employee on written request by any principal officer and attested to by the secretary or other officer.

**Partnerships.** Generally, Form 4506-T can be signed by any person who was a member of the partnership during any part of the tax period requested on line 6.

**All others.** See Internal Revenue Code section 6103(e) if the taxpayer has died, is insolvent, is a dissolved corporation, or if a trustee, guardian, executor, receiver, or administrator is acting for the taxpayer.

**Documentation.** For entities other than individuals, you must attach the authorization document. For example, this could be the letter from the principal officer authorizing an employee of the corporation or the Letters Testamentary authorizing an individual to act for an estate.

**Privacy Act and Paperwork Reduction Act Notice.**

We ask for the information on this form to establish your right to gain access to the requested tax information under the Internal Revenue Code. We need this information to properly identify the tax information and respond to your request. You are not required to request any transcript. If you do request a transcript, sections 6103 and 6109 and their regulations require you to provide this information, including your SSN or EIN. If you do not provide this information, we may not be able to process your request. Providing false or fraudulent information may subject you to penalties.

Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and cities, states, and the District of Columbia for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file Form 4506-T will vary depending on individual circumstances. The estimated average time is: Learning about the law or the form, 10 min.; Preparing the form, 12 min.; and Copying, assembling, and sending the form to the IRS, 20 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making Form 4506-T simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6626, Washington, DC 20224. Do not send the form to this address, instead, see *Where to file* on this page.

#### **Section 4.6     Closing Adjustments/HUD-1 Settlement Statement (RESPA)**

Real Estate Settlement Procedures Act at 12 U.S.C.A. § 2601-2617 (“RESPA”) states the use of a standard real estate settlement form is required in all transactions involving federally related mortgage loans. The form has come to be a universally used closing statement even where no lending institution is involved. Since the form is required by the United States Department of Housing and Urban Development (HUD), it is also frequently referred to as the HUD-1 Uniform Settlement Statement. RESPA applies not only to first lien purchase money mortgages but to refinances as well. For purposes of this discussion, the form will be referred to as the HUD-1 settlement statement. A completed HUD-1 settlement statement which serves as the basis of the following discussion appears as Exhibit 65. Appendix A to Part 3500-Instructions for Completing HUD-1 and HUD-1A Settlement Statements issued by HUD also appears as part of Exhibit 65.

Where special circumstances require, separate forms of title closing statements and mortgage closing statements are available for use. A form of title closing statement appears as Exhibit 66. Since the title closing duplicates much of the information in a HUD-1 settlement statement, most attorneys rely solely on the HUD-1 settlement statement in the context of residential (and commercial) closings, even when no mortgage financing is involved.

The HUD-1 settlement statement essentially serves two purposes. One is to reflect the amount to be paid to the seller and the second is to reflect the amount of money due from the purchaser to close the transaction. The second figure of the amount due from the purchaser in order to close the transaction would be the amount required not only to pay the amount due to the seller but also to cover all other costs, e.g. mortgage, title insurance, professional fees, incurred by the purchaser in connection with the transaction. If a cost was previously or will be paid by the borrower (or seller) outside of the closing, the amount should be reflected on the HUD-1 settlement statement with a notation of P.O.C. (paid outside of closing) in the column where the amount would normally be inserted so that the borrower has a complete record of all funds expended relative to the transaction.

HUD issued revised RESPA rules on November 14, 2008. As part of the regulatory changes were those affecting closings and settlement agents. Use of the new Good Faith Estimate (GFE) and the new HUD-1 settlement statement, became mandatory on January 1, 2010. The HUD-1A settlement statement is for use in transactions without sellers, such as refinances of mortgages.

The purpose of the GFE is to provide borrowers with accurate loan and settlement cost estimates early in the mortgage loan process. The use of the GFE and its comparison with the line items on the HUD-1 is intended to hold settlement service providers accountable if actual charges differ from estimated charges. Mortgage brokers' payments must be disclosed separately, so that borrowers may see how the yield spread premium (YSP) affects settlement costs. A YSP is a form of compensation that a mortgage broker, acting as an intermediary, receives from the original lender for selling an interest rate to a borrower that is above the lender's par rate for which the borrower qualifies. The YSP is usually paid in origination fees, broker fees or discount points. The YSP must be disclosed on the HUD-1 settlement statement.

The first page of the HUD-1 settlement statement introduced no significant changes from the HUD-1 that was previously used. The second page, however, brought a comparison of the HUD-1 charges with the GFE charges. A third page was added for a comparison of GFE and HUD charges and the recapture of key loan terms.

A HUD-1 settlement statement prepared by the lender for inclusion in its mortgage loan package appears as Exhibit 64F. The Good Faith Estimate (GFE) for the transaction is included in the completed Loan Application that appears as Exhibit 39Q.

## EXHIBIT 65 - RESPA/HUD-1 UNIFORM SETTLEMENT STATEMENT

U.S. Department of Housing and Urban Development

## A. Settlement Statement (HUD-1)

OMB Approval No. 2502-0265

<b>B. Type of Loan</b>		6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:
1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> RHS 3. <input checked="" type="checkbox"/> Conv. Unins			246897	
4. <input type="checkbox"/> VA 5. <input type="checkbox"/> Conv. Ins				
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.				
D. Name & Address of Borrower: Michael Stratton Linda Stratton 245 Arbor Road Edison, NJ 08848		E. Name & Address of Seller: Robert Baker Andrea Baker 9 Highland Place Metuchen, NJ 08840		F. Name & Address of Lender: Royal Bank 200 Mountain Road Parsippany, NJ 07054
G. Property Location: 9 Highland Place Metuchen, NJ 08840		H. Settlement Agent: Christine F. Li P. O. Box 5600 Woodbridge, NJ 07095		TIN: 22-5796343 Phone: (732) 549-5600
Lot: 2 Block: 430		I. Settlement Date: 11/9/2010 Funding Date: 11/9/2010		
<b>J. Summary of Borrower's Transaction</b>			<b>K. Summary of Seller's Transaction</b>	
100. Gross Amount Due From Borrower			400. Gross Amount Due To Seller	
101. Contract sales price 400,000.00			401. Contract sales price 400,000.00	
102. Personal property			402. Personal property	
103. Settlement charges to borrower (line 1400) 18,834.04			403.	
104.			404.	
105.			405.	
Adjustments for items paid by seller in advance			Adjustments for items paid by seller in advance	
106. City/town taxes:			406. City/town taxes:	
to			to	
107. County taxes:			407. County taxes:	
to			to	
108. Assessments:			408. Assessments:	
to			to	
109. Water/Sewer-pd. 4th qtr.; Seller 56.16			409. Water/Sewer-pd. 4th qtr.; Seller 56.16	
110. credit 52 days at \$1.08 per day			410. credit 52 days at \$1.08 per day	
111.			411.	
112.			412.	
120. Gross Amount Due From Borrower 418,890.20			420. Gross Amount Due To Seller 400,056.16	
200. Amounts Paid By Or In Behalf Of Borrower			500. Reductions In Amount Due To Seller	
201. Deposit or earnest money 40,000.00			501. Excess deposit (see instructions) 40,000.00	
202. Principal amount of new loan(s) 320,000.00			502. Settlement charges to seller (line 1400) 28,223.00	
203. Existing loan(s) taken subject to			503. Existing loan(s) taken subject to	
204.			504. Payoff of first mortgage loan 275,353.85	
205.			505. Payoff of second mortgage loan	
206. Seller Paid Closing Costs Credit 3,000.00			506. Seller Paid Closing Costs Credit 3,000.00	
207.			507.	
208.			508.	
209.			509.	
Adjustments for items unpaid by seller			Adjustments for items unpaid by seller	
210. City/town taxes: 1/1/2010-11/9/2010 2,464.26			510. City/town taxes: 1/1/2010-11/9/2010 2,464.26	
to			to	
211. County taxes:			511. County taxes:	
to			to	
212. Assessments:			512. Assessments:	
to			to	
213.			513.	
214.			514.	
215.			515.	
216. Taxes Current Year \$14535			516.	
217. Per Diem \$39.82192			517.	
218. Seller Paid \$10000			518.	
219. Seller Owes 313 days			519.	
220. Total Paid By/For Borrower 365,464.26			520. Total Reduction Amount Due Seller 349,041.11	
300. Cash At Settlement From/To Borrower			600. Cash At Settlement To/From Seller	
301. Gross amount due from borrower (line 120) 418,890.20			601. Gross amount due to seller (line 420) 400,056.16	
302. Less amounts paid by/for borrower (line 220) 365,464.26			602. Less reductions in amount due seller (line 520) 349,041.11	
303. Cash <input checked="" type="checkbox"/> From <input type="checkbox"/> To Borrower 53,425.94			603. Cash <input checked="" type="checkbox"/> To <input type="checkbox"/> From Seller 51,015.05	

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

## Exhibit 65 - RESPA/HUD-1 Uniform Settlement - Continued

L. Settlement Charges		File Number:	Loan Number: 246897		
700. Total Real Estate Broker Fees				Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
Division of Commission (line 700) as follows:					
701. \$12,100.00	to Seller's Broker				
702. \$11,900.00	to Buyer's Broker				
703. Commission paid at settlement					24,000.00
704.					
800. Items Payable In Connection With Loan					
801. Our origination charge	\$8,400.00	(from GFE #1)			
802. Your credit or charge (points) for the specific interest rate chosen	\$-4,200.00	(from GFE #2)			
803. Your adjusted origination charges	Royal Bank	(from GFE A)		4,200.00	
804. Appraisal fee to		(from GFE #3)		350.00	
805. Credit report to		(from GFE #3)		15.00	
806. Tax service to		(from GFE #3)		20.00	
807. Flood certification		(from GFE #3)		25.00	
808. Application Fee \$450 - POC					
809.					
810.					
811.					
900. Items Required By Lender To Be Paid In Advance					
901. Daily interest charges from 11/9/2010 to 12/1/2010 @ \$42.73/day		(from GFE #10)		940.06	
902. Mortgage insurance premium for 0 months to		(from GFE #3)			
903. Homeowner's insurance for 1 years to \$1,300.00 POC		(from GFE #11)			
904. 4th Quarter 2010 Taxes to Metuchen Tax Collector		(from GFE #6)		4,535.00	
905.					
1000. Reserves Deposited With Lender					
1001. Initial deposit for your escrow account		(from GFE #9)		3,239.98	
1002. Homeowner's insurance	2 months @ 108.33 per mo	\$216.66			
1003. Mortgage insurance	months @ per mo	\$			
1004. Property taxes	2 months @ 1,511.66 per mo	\$3,023.32			
1005.	months @ per mo	\$			
1006.	months @ per mo	\$			
1007. Aggregate Adjustment		\$0.00			
1100. Title Charges					
1101. Title services and lender's title insurance		(from GFE #4)		235.00	
1102. Settlement or closing fee					
1103. Owner's title insurance		(from GFE #5)		1,950.00	
1104. Lender's title insurance					
1105. Lender's title policy limit		\$320,000.00			
1106. Owner's title policy limit		\$400,000.00			
1107. Agent's portion of the total insurance premium		\$1,400.00			
1108. Underwriter's portion of the total insurance premium		\$1,400.00			
1109.					
1110.					
1111.					
1200. Government Recording and Transfer Charges					
1201. Government recording charges		(from GFE #7)		276.00	
1202. Deed \$93.00	Mortgage \$183.00	Release \$33.00			33.00
1203. Transfer taxes					
1204. City/County tax/stamps: Deed \$	Mortgage \$				
1205. State tax/stamps: Deed \$3,215.00	Mortgage \$				3,215.00
1206.				\$	
1207.				\$	
1300. Additional Settlement Charges					
1301. Required services that you can shop for		(from GFE #6)			
1302. Notice of Settlement Filing Fees to Greenbaum Rowe				46.00	
1303. Buyer's Legal Fee to Greenbaum, Rowe				1,500.00	
1304. Seller's Legal Fee to Jones & Smith					950.00
1305. Overnight Fed Ex (mtg. payoff) to Greenbaum, Rowe					25.00
1306. Survey to Ernst Surveying				650.00	
1307.					
1308.					
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)				17,982.04	28,223.00

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Michael Stratton

Buyer/Borrower

Robert Baker

Seller

Linda Stratton

Buyer/Borrower

Andrea Baker

Seller

This Settlement Statement which I've prepared is a true and accurate account of this transaction. I've caused or will cause the funds to be disbursed in accordance with this statement.

Christine F. Li

Settlement Agent

11/9/2010

Date

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine or imprisonment.

## Exhibit 65 - RESPA/HUD-1 Uniform Settlement - Continued

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
<b>Charges That Cannot Increase</b>			
Our origination charge	#801	8,400.00	8,400.00
Your credit or charge (points) for the specific rate chosen	#802	-4,200.00	-4,200.00
Your adjusted origination charges	#803	4,200.00	4,200.00
Transfer taxes	#1203	0.00	0.00
<b>Charges That in Total Cannot Increase More Than 10%</b>			
Government recording charges	#1201	275.00	276.00
Appraisal fee	#804	300.00	350.00
Credit report	#805	15.00	15.00
Tax service	#806	20.00	20.00
Flood certification	#807	25.00	25.00
<b>Total</b>		635.00	686.00
<b>Increase between GFE and HUD-1 Charges</b>		51.00	or 8.03%
<b>Charges That Can Change</b>			
Initial deposit for your escrow account	#1001	2,500.00	3,239.98
Daily interest charges	#901 \$42.73/day	750.00	940.06
Homeowner's insurance	#903	1,000.00	1,300.00
4th Quarter 2010 Taxes	#904	4,535.00	4,535.00
Title services and lender's title insurance	#1101	2,800.00	3,000.00
Owner's title insurance	#1103	40.00	37.00

Loan Terms	
Your initial loan amount is	\$320,000.00
Your loan term is	30 Years
Your initial interest rate is	4.875%
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$1,693.47 includes <input checked="" type="checkbox"/> Principal <input checked="" type="checkbox"/> Interest <input type="checkbox"/> Mortgage Insurance
Can your interest rate rise?	<input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of % . The first change will be on and can change again every after . Every change date, your interest rate can increase or decrease by % . Over the life of the loan, your interest rate is guaranteed to never be lower than % or higher than % .
Even if you make payments on time, can your loan balance rise?	<input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, it can rise to a maximum of \$ .
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	<input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, the first increase can be on and the monthly amount owed can rise to \$ . The maximum it can ever rise to is \$ .
Does your loan have a prepayment penalty?	<input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, your maximum prepayment penalty is \$ .
Does your loan have a balloon payment?	<input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes, you have a balloon payment of \$ due in years on .
Total monthly amount owed including escrow account payments	<input type="checkbox"/> You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. <input checked="" type="checkbox"/> You have an additional monthly escrow payment of \$1,619.99 that results in a total initial monthly amount owed of \$3,313.46. This includes principal, interest, any mortgage insurance and any items checked below: <input checked="" type="checkbox"/> Property taxes <input checked="" type="checkbox"/> Homeowner's insurance <input type="checkbox"/> Flood insurance <input type="checkbox"/>

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

Exhibit 65 - RESPA/HUD-1 Uniform Settlement - Continued

Page 1



1 of 1 DOCUMENT

LEXISNEXIS' CODE OF FEDERAL REGULATIONS  
Copyright (c) 2010, by Matthew Bender & Company, a member  
of the LexisNexis Group. All rights reserved.

\*\*\* THIS SECTION IS CURRENT THROUGH THE APRIL 1, 2010 ISSUE OF \*\*\*  
\*\*\* THE FEDERAL REGISTER \*\*\*

TITLE 24 -- HOUSING AND URBAN DEVELOPMENT  
SUBTITLE B -- REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT  
CHAPTER XX -- OFFICE OF ASSISTANT SECRETARY FOR HOUSING -- FEDERAL HOUSING COMMIS-  
SIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
PART 3500 -- REAL ESTATE SETTLEMENT PROCEDURES ACT

**Go to the CFR Archive Directory**

*24 CFR PART 3500 APPENDIX A*

Appendix A to Part 3500--Instructions for Completing HUD-1 and HUD-1a Settlement Statements; Sample HUD-1 and HUD-1a Statements

The following are instructions for completing the HUD-1 settlement statement, required under section 4 of RESPA and 24 CFR part 3500 (Regulation X) of the Department of Housing and Urban Development regulations. This form is to be used as a statement of actual charges and adjustments paid by the borrower and the seller, to be given to the parties in connection with the settlement. The instructions for completion of the HUD-1 are primarily for the benefit of the settlement agents who prepare the statements and need not be transmitted to the parties as an integral part of the HUD-1. There is no objection to the use of the HUD-1 in transactions in which its use is not legally required. Refer to the definitions section of HUD's regulations (24 CFR 3500.2) for specific definitions of many of the terms that are used in these instructions.

**General Instructions**

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to HUD's regulations (Regulation X) regarding rules applicable to reproduction of the HUD-1 for the purpose of including customary recitals and information used locally in settlements; for example, a breakdown of payoff figures, a breakdown of the Borrower's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between Borrower and Seller, and the date funds are transferred.

The settlement agent shall complete the HUD-1 to itemize all charges imposed upon the Borrower and the Seller by the loan originator and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the Borrower or the Seller will pay at settlement. Charges for loan origination and title services should not be itemized except as provided in these instructions. For each separately identified settlement service in connection with the transaction, the name of the person ultimately receiving the payment must be shown together with the total amount paid to such person. Items paid to and retained by a loan originator are disclosed as required in the instructions for lines in the 800-series of the HUD-1 (and for per diem interest, in the 900-series of the HUD-1).

**Exhibit 65 - RESPA/HUD-1 Uniform Settlement - Continued**

Page 2

24 CFR PART 3500 APPENDIX A

As a general rule, charges that are paid for by the seller must be shown in the seller's column on page 2 of the HUD-1 (unless paid outside closing), and charges that are paid for by the borrower must be shown in the borrower's column (unless paid outside closing). However, in order to promote comparability between the charges on the GFE and the charges on the HUD-1, if a seller pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD-1. That charge should also be offset by listing a credit in that amount to the borrower on lines 204-209 on page 1 of the HUD-1, and by a charge to the seller in lines 506-509 on page 1 of the HUD-1. If a loan originator (other than for no-cost loans), real estate agent, other settlement service provider, or other person pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD-1, with an offsetting credit reported on page 1 of the HUD-1, identifying the party paying the charge.

Charges paid outside of settlement by the borrower, seller, loan originator, real estate agent, or any other person, must be included on the HUD-1 but marked "P.O.C." for "Paid Outside of Closing" (settlement) and must not be included in computing totals. However, indirect payments from a lender to a mortgage broker may not be disclosed as P.O.C., and must be included as a credit on Line 802. P.O.C. items must not be placed in the Borrower or Seller columns, but rather on the appropriate line outside the columns. The settlement agent must indicate whether P.O.C. items are paid for by the Borrower, Seller, or some other party by marking the items paid for by whoever made the payment as "P.O.C." with the party making the payment identified in parentheses, such as "P.O.C. (borrower)" or "P.O.C. (seller)".

In the case of "no cost" loans where "no cost" encompasses third party fees as well as the upfront payment to the loan originator, the third party services covered by the "no cost" provisions must be itemized and listed in the borrower's column on the HUD-1/1A with the charge for the third party service. These itemized charges must be offset with a negative adjusted origination charge on Line 803 and recorded in the columns.

Blank lines are provided in section L for any additional settlement charges. Blank lines are also provided for additional insertions in sections J and K. The names of the recipients of the settlement charges in section L and the names of the recipients of adjustments described in section J or K should be included on the blank lines.

Lines and columns in section J which relate to the Borrower's transaction may be left blank on the copy of the HUD-1 which will be furnished to the Seller. Lines and columns in section K which relate to the Seller's transaction may be left blank on the copy of the HUD-1 which will be furnished to the Borrower.

**Line Item Instructions**

Instructions for completing the individual items on the HUD-1 follow.

Section A. This section requires no entry of information.

Section B. Check appropriate loan type and complete the remaining items as applicable.

Section C. This section provides a notice regarding settlement costs and requires no additional entry of information.

Sections D and E. Fill in the names and current mailing addresses and zip codes of the Borrower and the Seller. Where there is more than one Borrower or Seller, the name and address of each one is required. Use a supplementary page if needed to list multiple Borrowers or Sellers.

Section F. Fill in the name, current mailing address and zip code of the Lender.

Section G. The street address of the property being sold should be listed. If there is no street address, a brief legal description or other location of the property should be inserted. In all cases give the zip code of the property.

Section H. Fill in name, address, zip code and telephone number of settlement agent, and address and zip code of "place of settlement."

Section I. Fill in date of settlement.

Section J. Summary of Borrower's Transaction. Line 101 is for the contract sales price of the property being sold, excluding the price of any items of tangible personal property if Borrower and Seller have agreed to a separate price for such items.

## Exhibit 65 - RESPA/HUD-1 Uniform Settlement - Continued

Page 3

### 24 CFR PART 3500 APPENDIX A

Line 102 is for the sales price of any items of tangible personal property excluded from Line 101. Personal property could include such items as carpets, drapes, stoves, refrigerators, etc. What constitutes personal property varies from state to state. Manufactured homes are not considered personal property for this purpose.

Line 103 is used to record the total charges to Borrower detailed in Section L and totaled on Line 1400.

Lines 104 and 105 are for additional amounts owed by the Borrower, such as charges that were not listed on the GFE or items paid by the Seller prior to settlement but reimbursed by the Borrower at settlement. For example, the balance in the Seller's reserve account held in connection with an existing loan, if assigned to the Borrower in a loan assumption case, will be entered here. These lines will also be used when a tenant in the property being sold has not yet paid the rent, which the Borrower will collect, for a period of time prior to the settlement. The lines will also be used to indicate the treatment for any tenant security deposit. The Seller will be credited on Lines 404-405.

Lines 106 through 112 are for items which the Seller had paid in advance, and for which the Borrower must therefore reimburse the Seller. Examples of items for which adjustments will be made may include taxes and assessments paid in advance for an entire year or other period, when settlement occurs prior to the expiration of the year or other period for which they were paid. Additional examples include flood and hazard insurance premiums, if the Borrower is being substituted as an insured under the same policy; mortgage insurance in loan assumption cases; planned unit development or condominium association assessments paid in advance; fuel or other supplies on hand, purchased by the Seller, which the Borrower will use when Borrower takes possession of the property; and ground rent paid in advance.

Line 120 is for the total of Lines 101 through 112.

Line 201 is for any amount paid against the sales price prior to settlement.

Line 202 is for the amount of the new loan made by the Lender when a loan to finance construction of a new structure constructed for sale is used as or converted to a loan to finance purchase. Line 202 should also be used for the amount of the first user loan, when a loan to purchase a manufactured home for resale is converted to a loan to finance purchase by the first user. For other loans covered by 24 CFR part 3500 (Regulation X) which finance construction of a new structure or purchase of a manufactured home, list the sales price of the land on Line 104, the construction cost or purchase price of manufactured home on Line 105 (Line 101 would be left blank in this instance) and amount of the loan on Line 202. The remainder of the form should be completed taking into account adjustments and charges related to the temporary financing and permanent financing and which are known at the date of settlement.

Line 203 is used for cases in which the Borrower is assuming or taking title subject to an existing loan or lien on the property.

Lines 204-209 are used for other items paid by or on behalf of the Borrower. Lines 204-209 should be used to indicate any financing arrangements or other new loan not listed in Line 202. For example, if the Borrower is using a second mortgage or note to finance part of the purchase price, whether from the same lender, another lender or the Seller, insert the principal amount of the loan with a brief explanation on Lines 204-209. Lines 204-209 should also be used where the Borrower receives a credit from the Seller for closing costs, including seller-paid GFE charges. They may also be used in cases in which a Seller (typically a builder) is making an "allowance" to the Borrower for items that the Borrower is to purchase separately.

Lines 210 through 219 are for items which have not yet been paid, and which the Borrower is expected to pay, but which are attributable in part to a period of time prior to the settlement. In jurisdictions in which taxes are paid late in the tax year, most cases will show the proration of taxes in these lines. Other examples include utilities used but not paid for by the Seller, rent collected in advance by the Seller from a tenant for a period extending beyond the settlement date, and interest on loan assumptions.

Line 220 is for the total of Lines 201 through 219.

Lines 301 and 302 are summary lines for the Borrower. Enter total in Line 120 on Line 301. Enter total in Line 220 on Line 302.

Line 303 must indicate either the cash required from the Borrower at settlement (the usual case in a purchase transaction), or cash payable to the Borrower at settlement (if, for example, the Borrower's earnest money exceeds the Borrower's cash obligations in the transaction or there is a cash-out refinance). Subtract Line 302 from Line 301 and enter the amount of cash due to or from the Borrower at settlement on Line 303. The appropriate box should be checked. If the Borrower's earnest money is applied toward the charge for a settlement service, the amount so applied should not be

**Exhibit 65 - RESPA/HUD-1 Uniform Settlement - Continued**

Page 4

24 CFR PART 3500 APPENDIX A

included on Line 303 but instead should be shown on the appropriate line for the settlement service, marked "P.O.C. (Borrower)", and must not be included in computing totals.

Section K. Summary of Seller's Transaction. Instructions for the use of Lines 101 and 102 and 104-112 above, apply also to Lines 401-412. Line 420 is for the total of Lines 401 through 412.

Line 501 is used if the Seller's real estate broker or other party who is not the settlement agent has received and holds a deposit against the sales price (earnest money) which exceeds the fee or commission owed to that party. If that party will render the excess deposit directly to the Seller, rather than through the settlement agent, the amount of excess deposit should be entered on Line 501 and the amount of the total deposit (including commissions) should be entered on Line 201.

Line 502 is used to record the total charges to the Seller detailed in section L and totaled on Line 1400.

Line 503 is used if the Borrower is assuming or taking title subject to existing liens which are to be deducted from sales price.

Lines 504 and 505 are used for the amounts (including any accrued interest) of any first and/or second loans which will be paid as part of the settlement.

Line 506 is used for deposits paid by the Borrower to the Seller or other party who is not the settlement agent. Enter the amount of the deposit in Line 201 on Line 506 unless Line 501 is used or the party who is not the settlement agent transfers all or part of the deposit to the settlement agent, in which case the settlement agent will note in parentheses on Line 507 the amount of the deposit that is being disbursed as proceeds and enter in the column for Line 506 the amount retained by the above-described party for settlement services. If the settlement agent holds the deposit, insert a note in Line 507 which indicates that the deposit is being disbursed as proceeds.

Lines 506 through 509 may be used to list additional liens which must be paid off through the settlement to clear title to the property. Other Seller obligations should be shown on Lines 506-509, including charges that were disclosed on the GFE but that are actually being paid for by the Seller. These Lines may also be used to indicate funds to be held by the settlement agent for the payment of either repairs, or water, fuel, or other utility bills that cannot be prorated between the parties at settlement because the amounts used by the Seller prior to settlement are not yet known. Subsequent disclosure of the actual amount of these post-settlement items to be paid from settlement funds is optional. Any amounts entered on Lines 204-209 including Seller financing arrangements should also be entered on Lines 506-509.

Instructions for the use of Lines 510 through 519 are the same as those for Lines 210 to 219 above.

Line 520 is for the total of Lines 501 through 519.

Lines 601 and 602 are summary lines for the Seller. Enter the total in Line 420 on Line 610. Enter the total in Line 520 on Line 602.

Line 603 must indicate either the cash required to be paid to the Seller at settlement (the usual case in a purchase transaction), or the cash payable by the Seller at settlement. Subtract Line 602 from Line 601 and enter the amount of cash due to or from the Seller at settlement on Line 603. The appropriate box should be checked.

**Section L. Settlement Charges.**

Line 700 is used to enter the sales commission charged by the sales agent or real estate broker.

Lines 701-702 are to be used to state the split of the commission where the settlement agent disburses portions of the commission to two or more sales agents or real estate brokers.

Line 703 is used to enter the amount of sales commission disbursed at settlement. If the sales agent or real estate broker is retaining a part of the deposit against the sales price (earnest money) to apply towards the sales agent's or real estate broker's commission, include in Line 703 only that part of the commission being disbursed at settlement and insert a note on Line 704 indicating the amount the sales agent or real estate broker is retaining as a "P.O.C." item.

Line 704 may be used for additional charges made by the sales agent or real estate broker, or for a sales commission charged to the Borrower, which will be disbursed by the settlement agent.

Line 801 is used to record "Our origination charge," which includes all charges received by the loan originator, except any charge for the specific interest rate chosen (points). This number must not be listed in either the buyer's or

## Exhibit 65 - RESPA/HUD-1 Uniform Settlement - Continued

Page 5

### 24 CFR PART 3500 APPENDIX A

seller's column. The amount shown in Line 801 must include any amounts received for origination services, including administrative and processing services, performed by or on behalf of the loan originator.

Line 802 is used to record "Your credit or charge (points) for the specific interest rate chosen," which states the charge or credit adjustment as applied to "Our origination charge," if applicable. This number must not be listed in either column or shown on page one of the HUD-1.

For a mortgage broker originating a loan in its own name, the amount shown on Line 802 will be the difference between the initial loan amount and the total payment to the mortgage broker from the lender. The total payment to the mortgage broker will be the sum of the price paid for the loan by the lender and any other payments to the mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments. For a mortgage broker originating a loan in another entity's name, the amount shown on Line 802 will be the sum of all payments to the mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments.

In either case, when the amount paid to the mortgage broker exceeds the initial loan amount, there is a credit to the borrower and it is entered as a negative amount. When the initial loan amount exceeds the amount paid to the mortgage broker, there is a charge to the borrower and it is entered as a positive amount. For a lender, the amount shown on Line 802 may include any credit or charge (points) to the Borrower.

Line 803 is used to record "Your adjusted origination charges," which states the net amount of the loan origination charges, the sum of the amounts shown in Lines 801 and 802. This amount must be listed in the columns as either a positive number (for example, where the origination charge shown in Line 801 exceeds any credit for the interest rate shown in Line 802 or where there is an origination charge in Line 801 and a charge for the interest rate (points) is shown on Line 802) or as a negative number (for example, where the credit for the interest rate shown in Line 802 exceeds the origination charges shown in Line 801).

In the case of "no cost" loans, where "no cost" refers only to the loan originator's fees, the amounts shown in Lines 801 and 802 should offset, so that the charge shown on Line 803 is zero. Where "no cost" includes third party settlement services, the credit shown in Line 802 will more than offset the amount shown in Line 801. The amount shown in Line 803 will be a negative number to offset the settlement charges paid indirectly through the loan originator.

Lines 804-808 may be used to record each of the "Required services that we select." Each settlement service provider must be identified by name and the amount paid recorded either inside the columns or as paid to the provider outside closing ("P.O.C."), as described in the General Instructions.

Line 804 is used to record the appraisal fee.

Line 805 is used to record the fee for all credit reports.

Line 806 is used to record the fee for any tax service.

Line 807 is used to record any flood certification fee.

Lines 808 and additional sequentially numbered lines, as needed, are used to record other third party services required by the loan originator. These Lines may also be used to record other required disclosures from the loan originator. Any such disclosures must be listed outside the columns.

Lines 901-904. This series is used to record the items which the Lender requires to be paid at the time of settlement, but which are not necessarily paid to the lender (e.g., FHA mortgage insurance premium), other than reserves collected by the Lender and recorded in the 1000-series.

Line 901 is used if interest is collected at settlement for a part of a month or other period between settlement and the date from which interest will be collected with the first regular monthly payment. Enter that amount here and include the per diem charges. If such interest is not collected until the first regular monthly payment, no entry should be made on Line 901.

Line 902 is used for mortgage insurance premiums due and payable at settlement, including any monthly amounts due at settlement and any upfront mortgage insurance premium, but not including any reserves collected by the Lender and recorded in the 1000-series. If a lump sum mortgage insurance premium paid at settlement is included on Line 902, a note should indicate that the premium is for the life of the loan.

**Exhibit 65 - RESPA/HUD-1 Uniform Settlement - Continued**

Page 6

24 CFR PART 3500 APPENDIX A

Line 903 is used for homeowner's insurance premiums that the Lender requires to be paid at the time of settlement, except reserves collected by the Lender and recorded in the 1000-series.

Lines 904 and additional sequentially numbered lines are used to list additional items required by the Lender (except for reserves collected by the Lender and recorded in the 1000-series), including premiums for flood or other insurance. These lines are also used to list amounts paid at settlement for insurance not required by the Lender.

Lines 1000-1007. This series is used for amounts collected by the Lender from the Borrower and held in an account for the future payment of the obligations listed as they fall due. Include the time period (number of months) and the monthly assessment. In many jurisdictions this is referred to as an "escrow", "impound", or "trust" account. In addition to the property taxes and insurance listed, some Lenders may require reserves for flood insurance, condominium owners' association assessments, etc. The amount in line 1001 must be listed in the columns, and the itemizations in lines 1002 through 1007 must be listed outside the columns.

After itemizing individual deposits in the 1000 series, the servicer shall make an adjustment based on aggregate accounting. This adjustment equals the difference between the deposit required under aggregate accounting and the sum of the itemized deposits. The computation steps for aggregate accounting are set out in *24 CFR § 3500.17(d)*. The adjustment will always be a negative number or zero (-0-), except for amounts due to rounding. The settlement agent shall enter the aggregate adjustment amount outside the columns on a final line of the 1000 series of the HUD-1 or HUD-1A statement. Appendix E to this part sets out an example of aggregate analysis.

Lines 1100-1108. This series covers title charges and charges by attorneys and closing or settlement agents. The title charges include a variety of services performed by title companies or others, and include fees directly related to the transfer of title (title examination, title search, document preparation), fees for title insurance, and fees for conducting the closing. The legal charges include fees for attorneys representing the lender, seller, or borrower, and any attorney preparing title work. The series also includes any settlement, notary, and delivery fees related to the services covered in this series. Disbursements to third parties must be broken out in the appropriate lines or in blank lines in the series, and amounts paid to these third parties must be shown outside of the columns if included in Line 1101. Charges not included in Line 1101 must be listed in the columns.

Line 1101 is used to record the total for the category of "Title services and lender's title insurance." This amount must be listed in the columns.

Line 1102 is used to record the settlement or closing fee.

Line 1103 is used to record the charges for the owner's title insurance and related endorsements. This amount must be listed in the columns.

Line 1104 is used to record the lender's title insurance premium and related endorsements.

Line 1105 is used to record the amount of the lender's title policy limit. This amount is recorded outside of the columns.

Line 1106 is used to record the amount of the owner's title policy limit. This amount is recorded outside of the columns.

Line 1107 is used to record the amount of the total title insurance premium, including endorsements, that is retained by the title agent. This amount is recorded outside of the columns.

Line 1108 used to record the amount of the total title insurance premium, including endorsements, that is retained by the title underwriter. This amount is recorded outside of the columns.

Additional sequentially numbered lines in the 1100-series may be used to itemize title charges paid to other third parties, as identified by name and type of service provided.

Lines 1200-1206. This series covers government recording and transfer charges. Charges paid by the borrower must be listed in the columns as described for lines 1201 and 1203, with itemizations shown outside the columns. Any amounts that are charged to the seller and that were not included on the Good Faith Estimate must be listed in the columns.

Line 1201 is used to record the total "Government recording charges," and the amount must be listed in the columns.

## Exhibit 65 - RESPA/HUD-1 Uniform Settlement - Continued

Page 7

### 24 CFR PART 3500 APPENDIX A

Line 1202 is used to record, outside of the columns, the itemized recording charges.

Line 1203 is used to record the transfer taxes, and the amount must be listed in the columns.

Line 1204 is used to record, outside of the columns, the amounts for local transfer taxes and stamps.

Line 1205 is used to record, outside of the columns, the amounts for State transfer taxes and stamps.

Line 1206 and additional sequentially numbered lines may be used to record specific itemized third party charges for government recording and transfer services, but the amounts must be listed outside the columns.

Line 1301 and additional sequentially numbered lines must be used to record required services that the borrower can shop for, such as fees for survey, pest inspection, or other similar inspections. These lines may also be used to record additional itemized settlement charges that are not included in a specific category, such as fees for structural and environmental inspections; pre-sale inspections of heating, plumbing or electrical equipment; or insurance or warranty coverage. The amounts must be listed in either the borrower's or seller's column.

Line 1400 must state the total settlement charges as calculated by adding the amounts within each column.

#### Page 3

#### Comparison of Good Faith Estimate (GFE) and HUD-1/1A Charges

The comparison chart must be prepared using the exact information and amounts from the GFE and the actual settlement charges shown on the HUD-1/1A Settlement Statement. The comparison chart is comprised of three sections: "Charges That Cannot Increase", "Charges That Cannot Increase More Than 10%", and "Charges That Can Change".

"Charges That Cannot Increase". The amounts shown in Blocks 1 and 2, in Line A, and in Block 8 on the borrower's GFE must be entered in the appropriate line in the Good Faith Estimate column. The amounts shown on Lines 801, 802, 803 and 1203 of the HUD-1/1A must be entered in the corresponding line in the HUD-1/1A column. The HUD-1/1A column must include any amounts shown on page 2 of the HUD-1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. If there is a credit in Block 2 of the GFE or Line 802 of the HUD-1/1A, the credit should be entered as a negative number.

"Charges That Cannot Increase More Than 10%". A description of each charge included in Blocks 3 and 7 on the borrower's GFE must be entered on separate lines in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. For each charge included in Blocks 4, 5 and 6 on the borrower's GFE for which the loan originator selected the provider or for which the borrower selected a provider identified by the loan originator, a description must be entered on a separate line in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. The loan originator must identify any third party settlement services for which the borrower selected a provider other than one identified by the loan originator so that the settlement agent can include those charges in the appropriate category. Additional lines may be added if necessary. The amounts shown on the HUD-1/1A for each line must be entered in the HUD-1/1A column next to the corresponding charge from the GFE, along with the appropriate HUD-1/1A line number. The HUD-1/1A column must include any amounts shown on page 2 of the HUD-1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower.

The amounts shown in the Good Faith Estimate and HUD-1/1A columns for this section must be separately totaled and entered in the designated line. If the total for the HUD-1/1A column is greater than the total for the Good Faith Estimate column, then the amount of the increase must be entered both as a dollar amount and as a percentage increase in the appropriate line.

"Charges That Can Change". The amounts shown in Blocks 9, 10 and 11 on the borrower's GFE must be entered in the appropriate line in the Good Faith Estimate column. Any third party settlement services for which the borrower selected a provider other than one identified by the loan originator must also be included in this section. The amounts shown on the HUD-1/1A for each charge in this section must be entered in the corresponding line in the HUD-1/1A column, along with the appropriate HUD-1/1A line number. The HUD-1/1A column must include any amounts shown on page 2 of the HUD-1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. Additional lines may be added if necessary.

#### Loan Terms

## Exhibit 65 - RESPA/HUD-1 Uniform Settlement - Continued

Page 8

### 24 CFR PART 3500 APPENDIX A

This section must be completed in accordance with the information and instructions provided by the lender. The lender must provide this information in a format that permits the settlement agent to simply enter the necessary information in the appropriate spaces, without the settlement agent having to refer to the loan documents themselves.

#### Instructions for Completing HUD-1A

Note: The HUD-1A is an optional form that may be used for refinancing and subordinate-lien federally related mortgage loans, as well as for any other one-party transaction that does not involve the transfer of title to residential real property. The HUD-1 form may also be used for such transactions, by utilizing the borrower's side of the HUD-1 and following the relevant parts of the instructions as set forth above. The use of either the HUD-1 or HUD-1A is not mandatory for open-end lines of credit (home-equity plans), as long as the provisions of Regulation Z are followed.

#### Background

The HUD-1A settlement statement is to be used as a statement of actual charges and adjustments to be given to the borrower at settlement, as defined in this part. The instructions for completion of the HUD-1A are for the benefit of the settlement agent who prepares the statement; the instructions are not a part of the statement and need not be transmitted to the borrower. There is no objection to using the HUD-1A in transactions in which it is not required, and its use in open-end lines of credit transactions (home-equity plans) is encouraged. It may not be used as a substitute for a HUD-1 in any transaction that has a seller.

Refer to the "definitions" section (§ 3500.2) of 24 CFR part 3500 (Regulation X) for specific definitions of terms used in these instructions.

#### General Instructions

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to 24 CFR 3500.9 regarding rules for reproduction of the HUD-1A. Additional pages may be attached to the HUD-1A for the inclusion of customary recitals and information used locally for settlements or if there are insufficient lines on the HUD-1A. The settlement agent shall complete the HUD-1A in accordance with the instructions for the HUD-1 to the extent possible, including the instructions for disclosing items paid outside closing and for no cost loans.

Blank lines are provided in Section L for any additional settlement charges. Blank lines are also provided in Section M for recipients of all or portions of the loan proceeds. The names of the recipients of the settlement charges in Section L and the names of the recipients of the loan proceeds in Section M should be set forth on the blank lines.

#### Line-Item Instructions

##### Page 1

The identification information at the top of the HUD-1A should be completed as follows:

The borrower's name and address is entered in the space provided. If the property securing the loan is different from the borrower's address, the address or other location information on the property should be entered in the space provided. The loan number is the lender's identification number for the loan. The settlement date is the date of settlement in accordance with 24 CFR 3500.2, not the end of any applicable rescission period. The name and address of the lender should be entered in the space provided.

Section L. Settlement Charges. This section of the HUD-1A is similar to Section L of the HUD-1, with minor changes or omissions, including deletion of lines 700 through 704, relating to real estate broker commissions. The instructions for Section L in the HUD-1, should be followed insofar as possible. Inapplicable charges should be ignored, as should any instructions regarding seller items.

Line 1400 in the HUD-1A is for the total settlement charges charged to the borrower. Enter this total on line 1601. This total should include Section L amounts from additional pages, if any are attached to this HUD-1A.

Section M. Disbursement to Others. This section is used to list payees, other than the borrower, of all or portions of the loan proceeds (including the lender, if the loan is paying off a prior loan made by the same lender), when the payee will be paid directly out of the settlement proceeds. It is not used to list payees of settlement charges, nor to list funds disbursed directly to the borrower, even if the lender knows the borrower's intended use of the funds.

## Exhibit 65 - RESPA/HUD-1 Uniform Settlement - Continued

Page 9

## 24 CFR PART 3500 APPENDIX A

For example, in a refinancing transaction, the loan proceeds are used to pay off an existing loan. The name of the lender for the loan being paid off and the pay-off balance would be entered in Section M. In a home improvement transaction when the proceeds are to be paid to the home improvement contractor, the name of the contractor and the amount paid to the contractor would be entered in Section M. In a consolidation loan, or when part of the loan proceeds is used to pay off other creditors, the name of each creditor and the amount paid to that creditor would be entered in Section M. If the proceeds are to be given directly to the borrower and the borrower will use the proceeds to pay off existing obligations, this would not be reflected in Section M.

Section N. Net Settlement. Line 1600 normally sets forth the principal amount of the loan as it appears on the related note for this loan. In the event this form is used for an open-ended home equity line whose approved amount is greater than the initial amount advanced at settlement, the amount shown on Line 1600 will be the loan amount advanced at settlement. Line 1601 is used for all settlement charges that both are included in the totals for lines 1400 and 1602, and are not financed as part of the principal amount of the loan. This is the amount normally received by the lender from the borrower at settlement, which would occur when some or all of the settlement charges were paid in cash by the borrower at settlement, instead of being financed as part of the principal amount of the loan. Failure to include any such amount in line 1601 will result in an error in the amount calculated on line 1604. Items paid outside of closing (P.O.C.) should not be included in Line 1601.

Line 1602 is the total amount from line 1400.

Line 1603 is the total amount from line 1520.

Line 1604 is the amount disbursed to the borrower. This is determined by adding together the amounts for lines 1600 and 1601, and then subtracting any amounts listed on lines 1602 and 1603.

## Page 2

This section of the HUD-1A is similar to page 3 of the HUD-1. The instructions for page 3 of the HUD-1, should be followed insofar as possible. The HUD-1/1A Column should include any amounts shown on page 1 of the HUD-1A in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by the borrower. Inapplicable charges should be ignored.

Display Image

Display Image

Display Image

Display Image

Display Image

**HISTORY:** [57 FR 49607, Nov. 2, 1991; 57 FR 56857, Dec. 1, 1992; 59 FR 6515, Feb. 10, 1994; 59 FR 53908, Oct. 26, 1994; 60 FR 8816, Feb. 15, 1995; 60 FR 24735, May 9, 1995; 61 FR 13232, 13251, March 26, 1996; 63 FR 3214, 3237, Jan. 21, 1998; 73 FR 68204, 68243, Nov. 17, 2008]

**AUTHORITY:** AUTHORITY NOTE APPLICABLE TO ENTIRE PART:  
12 U.S.C. 2601 et seq.; 42 U.S.C. 3535(d).

**NOTES:** [EFFECTIVE DATE NOTE: 73 FR 68204, 68243, Nov. 17, 2008, revised this section, effective Jan. 16, 2009.]

NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Farmers Home Administration, Department of Agriculture: For agricultural credit, see 7 CFR Chapter XVIII.

Office of Thrift Supervision, Department of the Treasury, 12 CFR Chapter V.

Department of Veterans Affairs regulations on assistance to certain veterans in acquiring specially adapted housing and guaranty of loans on homes: See Loan Guaranty, 38 CFR Part 36.

NOTES APPLICABLE TO ENTIRE PART:

**Exhibit 65 - RESPA/HUD-1 Uniform Settlement - Continued**

24 CFR PART 3500 APPENDIX A

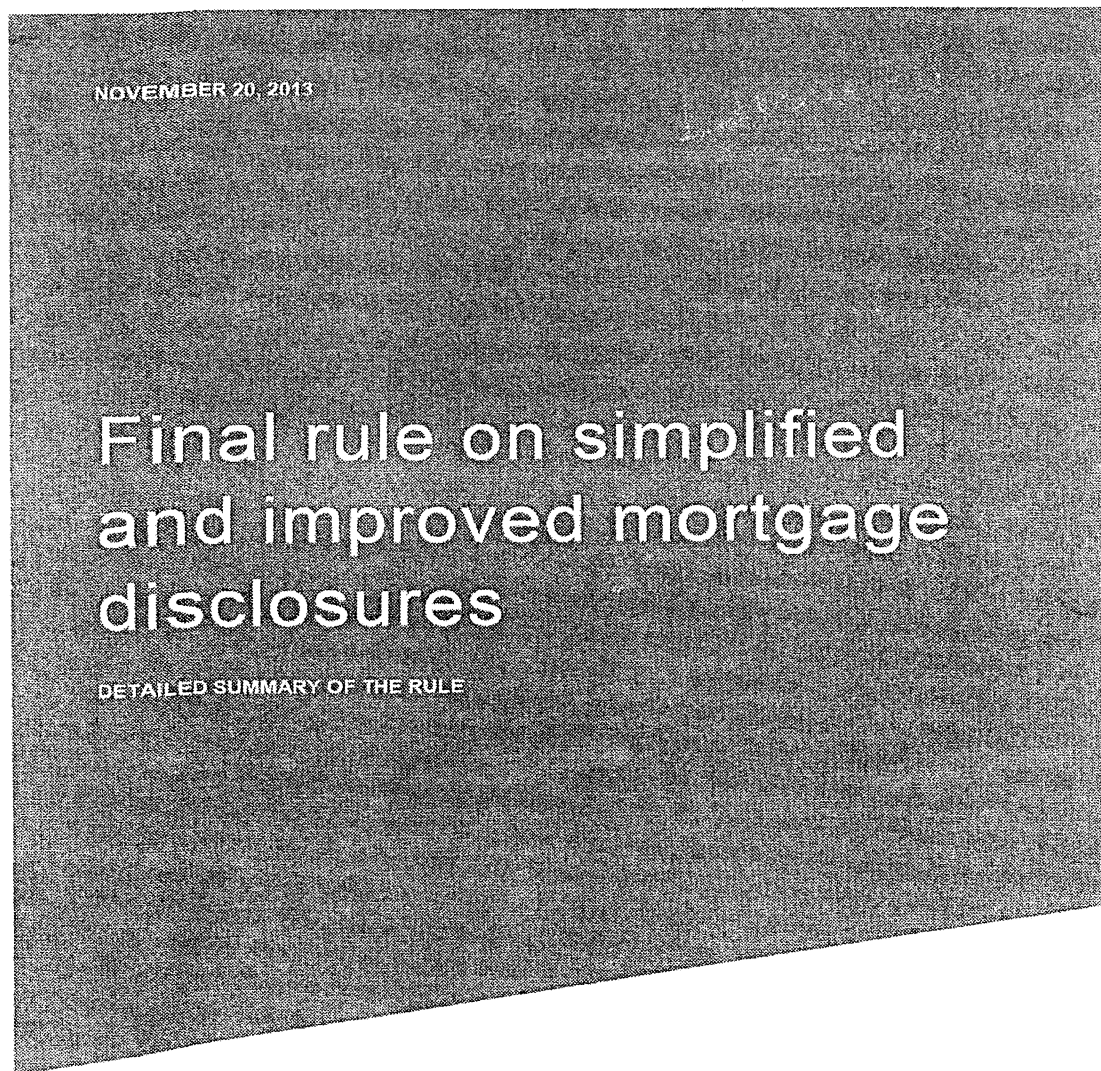
Page 10

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 3500 Interpretive Rules, see: *58 FR 5520*, Jan. 21, 1993; *58 FR 13706*, Mar. 15, 1993.]

[PUBLISHER'S NOTE: For Federal Register citation concerning Part 3500 Statement of Policies, see: *61 FR 29255*, *29258*, *29264*, June 7, 1996; *61 FR 49398*, Sept. 19, 1996; *61 FR 56624*, Nov. 4, 1996; *64 FR 10080*, Mar. 1, 1999; *66 FR 53052*, Oct. 18, 2001.]

6304 words

**Exhibit 65A – CONSUMER FINANCIAL PROTECTION BUREAU DISCLOSURE**



Consumer Financial  
Protection Bureau

## **Exhibit 65A – Consumer Financial Protection Bureau Disclosure - Continued**

The Consumer Financial Protection Bureau (Bureau) has issued a rule that will simplify and improve disclosure forms for mortgage transactions. The mortgage disclosures: the **Loan Estimate** given three business days after application, and the **Closing Disclosure** given three business days before closing, will be required to be given to consumers for mortgage applications received on or after **August 1, 2015**. For the complete rule and other materials about the final rule, please go to [www.consumerfinance.gov/regulations](http://www.consumerfinance.gov/regulations).

### **Background**

For more than 30 years, federal law has required lenders to provide two different disclosure forms to consumers applying for a mortgage. The law also has generally required two different forms at or shortly before closing on the loan. Two different federal agencies developed these forms separately, under two federal statutes: the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act of 1974 (RESPA). The information on these forms is overlapping and the language is inconsistent. Not surprisingly, consumers often find the forms confusing. It is also not surprising that lenders and settlement agents find the forms burdensome to provide and explain.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directs the Bureau to integrate the mortgage loan disclosures under TILA and RESPA sections 4 and 5. Section 1032(f) of the Dodd-Frank Act mandated that the Bureau propose for public comment rules and model disclosures that integrate the TILA and RESPA disclosures by July 21, 2012. The Bureau issued a proposed rule and forms on July 9, 2012 (Proposal). To accomplish this, the Bureau engaged in extensive consumer and industry research, analysis of public feedback through qualitative usability testing and its Know Before You Owe public initiative, and public

## Exhibit 65A – Consumer Financial Protection Bureau Disclosure – Continued

outreach for more than a year. After issuing the Proposal, the Bureau conducted additional qualitative usability testing and a large-scale quantitative validation study of its integrated disclosures with 858 consumers, which concluded that the Bureau's integrated disclosures had on average statistically significant better performance than the current disclosures under TILA and RESPA. The Bureau is now finalizing a rule with new, integrated disclosures (final rule). The final rule also provides a detailed explanation of how the forms should be filled out and used.

The first new form (the **Loan Estimate**) is designed to provide disclosures that will be helpful to consumers in understanding the key features, costs, and risks of the mortgage loan for which they are applying. This form will be provided to consumers within three business days after they submit a mortgage loan application. The second form (the **Closing Disclosure**) is designed to provide disclosures that will be helpful to consumers in understanding all of the costs of the transaction. This form will be provided to consumers three business days before they close on the mortgage loan.

The forms use clear language and design to make it easier for consumers to locate key information, such as the interest rate, monthly payments, and costs to close the loan. The forms also provide more information to help consumers decide whether they can afford the loan and to compare the cost of different loan offers, including the cost of the loans over time.

In developing the new Loan Estimate and Closing Disclosure forms, the Bureau has reconciled the differences between the existing forms and combined several other mandated disclosures, such as the appraisal notice under the Equal Credit Opportunity Act and the servicing application disclosure under RESPA. The Bureau also has responded to industry complaints of uncertainty about how to fill out the existing forms by providing detailed instructions on how to complete the new forms and examples. This should reduce the burden on lenders and others in preparing the forms in the future.

## Summary of the final rule

### SCOPE OF THE FINAL RULE

The final rule applies to most closed-end consumer mortgage loans. It does not apply to home equity lines of credit, reverse mortgages, or mortgage loans secured by a mobile home or by a

## Exhibit 65A – Consumer Financial Protection Bureau Disclosure – Continued

dwelling that is not attached to real property. The final rule also does not apply to loans made by a creditor who makes five or fewer mortgages in a year.

### THE LOAN ESTIMATE

The Loan Estimate form replaces two current federal forms. It replaces the Good Faith Estimate designed by the Department of Housing and Urban Development (HUD) under RESPA and the “early” Truth-in-Lending disclosure designed by the Board of Governors of the Federal Reserve System (Board) under TILA. The final rule and the Official Interpretations (on which creditors and other persons can rely) contain detailed instructions as to how each line on the Loan Estimate form should be completed. There are sample forms for different types of loan products. The Loan Estimate form also incorporates new disclosures required by Congress under the Dodd-Frank Act.

*Provision by mortgage broker.* Recognizing that consumers may work more closely with a mortgage broker than with the creditor, under the final rule and similar to current rules, either a mortgage broker or creditor is required to provide the Loan Estimate form upon receipt of an application by a mortgage broker. However, even if the mortgage broker provides the Loan Estimate, the creditor remains responsible for complying with the all requirements concerning provision of the form.

*Timing.* The creditor or mortgage broker must provide the form to the consumer no later than three business days after the consumer applies for a mortgage loan. The final rule contains a definition of what constitutes an “application” for these purposes, which consists of the consumer’s name, income, social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought.

*Limitation on fees.* Consistent with current law, the creditor generally cannot charge consumers any fees until after the consumers have been given the Loan Estimate form and the consumers have communicated their intent to proceed with the transaction. There is an exception that allows creditors to charge fees to obtain consumers’ credit reports.

*Disclaimer on early estimates.* Creditors and other persons may provide consumers with written estimates prior to application. The rule requires that any such written estimates contain a disclaimer to prevent confusion with the Loan Estimate form. This disclaimer is required for advertisements.

## Exhibit 65A – Consumer Financial Protection Bureau Disclosure – Continued

### THE CLOSING DISCLOSURE

The Closing Disclosure form replaces the current form used to close a loan, the HUD-1, which was designed by HUD under RESPA. It also replaces the revised Truth in Lending disclosure designed by the Board under TILA. The final rule and the Official Interpretations (on which creditors and other persons can rely) contain detailed instructions as to how each line on the Closing Disclosure form should be completed. The Closing Disclosure form contains additional new disclosures required by the Dodd-Frank Act and a detailed accounting of the settlement transaction.

*Timing.* The creditor must give the Closing Disclosure form to consumers so that they receive it at least three business days before the consumer closes on the loan. If the creditor makes certain significant changes between the time the Closing Disclosure form is given and the closing – specifically, if the creditor makes changes to the APR above 1/8 of a percent for most loans (and 1/4 of a percent for loans with irregular payments or periods), changes the loan product, or adds a prepayment penalty to the loan – the consumer must be provided a new form and an additional three-business-day waiting period after receipt of the new form. Less significant changes can be disclosed on a revised Closing Disclosure form provided to the consumer at or before closing, without delaying the closing. This requirement will provide the important protection to consumers of an additional three-day waiting period for the three significant changes, but will not cause closing delays for less significant costs that may frequently change.

*Provision of disclosures.* Currently, settlement agents are required to provide the HUD-1 under RESPA, while creditors are required to provide the revised Truth in Lending disclosure under TILA. Under the final rule, the creditor is responsible for delivering the Closing Disclosure form to the consumer, but creditors may use settlement agents to provide the Closing Disclosure, provided that the settlement agents comply with the final rule's requirements for the Closing Disclosure. The final rule acknowledges settlement agents' longstanding involvement in the closing of real estate and mortgage loan transactions, as well as their preparation and delivery of the HUD-1. The final rule avoids creating uncertainty regarding the role of settlement agents and also leaves sufficient flexibility for creditors and settlement agents to arrive at the most efficient means of preparation and delivery of the Closing Disclosure to consumers.

### LIMITS ON CLOSING COST INCREASES

Similar to existing law, the final rule restricts the circumstances in which consumers can be required to pay more for settlement services – the various services required to complete a loan,

## **Exhibit 65A – Consumer Financial Protection Bureau Disclosure – Continued**

such as appraisals, inspections, etc. — than the amount stated on their Loan Estimate form. Unless an exception applies, charges for the following services cannot increase: (1) the creditor's or mortgage broker's charges for its own services; (2) charges for services provided by an affiliate of the creditor or mortgage broker; and (3) charges for services for which the creditor or mortgage broker does not permit the consumer to shop. Charges for other services can increase, but generally not by more than 10%, unless an exception applies.

The exceptions include, for example, situations when: (1) the consumer asks for a change; (2) the consumer chooses a service provider that was not identified by the creditor; (3) information provided at application was inaccurate or becomes inaccurate; or (4) the Loan Estimate expires. When an exception applies, the creditor generally must provide an updated Loan Estimate form within three business days.

### **PROPOSALS NOT ADOPTED IN THE FINAL RULE**

The proposed rule would have redefined the way the Annual Percentage Rate or "APR" is calculated. Under the Proposal, the APR would have encompassed almost all of the up-front costs of the loan. The proposed rule also would have required creditors to keep records of the Loan Estimate and Closing Disclosure forms provided to consumers in an electronic, machine readable format to make it easier for regulators to monitor compliance.

Based on public comments the Bureau received raising implementation and cost concerns regarding these two proposals, the Bureau has determined not to finalize these provisions in the final rule. The Bureau continues to believe these ideas may have benefits for consumers and industry, however, and intends to continue following up on both issues. For example, the Bureau intends to work closely with industry on private data standard initiatives to promote consistency in data transmission and storage. After additional study, the Bureau may propose rules on either or both topics.

The Bureau also decided not to require in the final rule a disclosure item that had been mandated by the Dodd-Frank Act, but that caused confusion at its consumer testing. Specifically, the Dodd-Frank Act requires creditors to disclose, in the case of residential mortgage loans, "the approximate amount of the wholesale rate of funds in connection with the loan." To implement this requirement, the proposal would have required creditors to disclose the approximate cost of funds used to make a loan on the Closing Disclosure. Based its consumer testing and the comments it received on this proposed disclosure; the Bureau has decided to exempt creditors from the cost of funds disclosure requirement. The Bureau believes

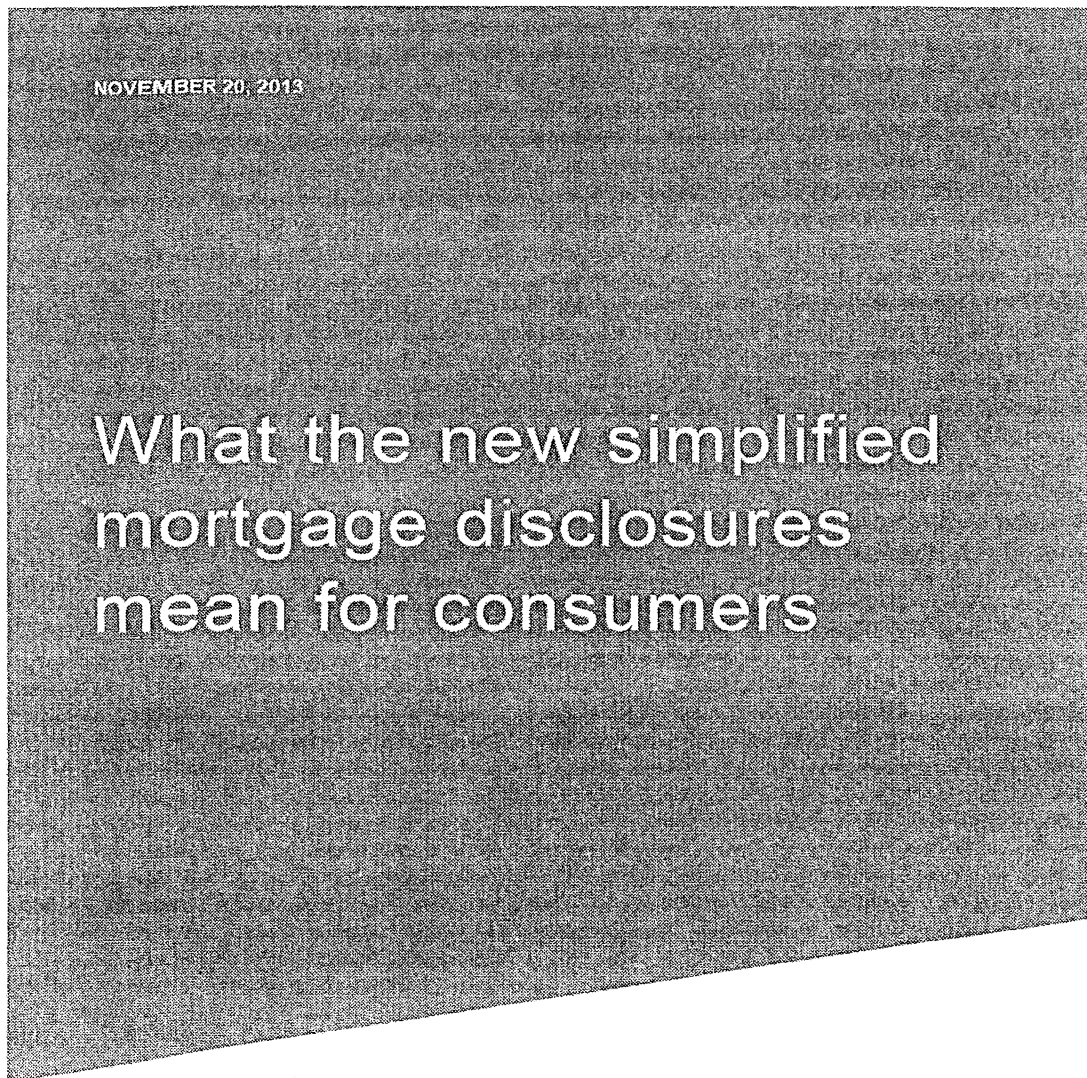
**Exhibit 65A – Consumer Financial Protection Bureau Disclosure – Continued**

this approach will simplify the disclosure forms, making them more effective for consumers, and reduce compliance burden.

**EFFECTIVE DATE**

The final rule is effective on **August 1, 2015**. The final rule applies to transactions for which the creditor or mortgage broker receives an application on or after that date, except that new provisions concerning pre-disclosure activity of creditors and revisions to existing regulations concerning the rule's effect on State laws and State exemptions will be effective on that date without regard to whether an application has been received.

**Exhibit 65A – Consumer Financial Protection Bureau Disclosure – Continued**



Consumer Financial  
Protection Bureau

**Exhibit 65A – Consumer Financial Protection Bureau Disclosure – Continued**

Mortgages are complex transactions that may include risky features, so we've issued a rule that will simplify and improve disclosure forms for mortgage transactions. Consumers currently receive different, but overlapping federal disclosure forms with the terms and costs of mortgage loans. Because these forms are confusing for many people, Congress directed the Bureau to create new forms. The rule replaces the current forms with two new forms: the **Loan Estimate**, given three business days after application, and the **Closing Disclosure**, given three business days before closing. Lenders will be required to give consumers these forms for mortgage applications submitted on or after **August 1, 2015**. Specific benefits of the new forms and rules include:

- Combining several forms and additional statutory disclosure requirements into two forms. This will reduce paperwork and consumer confusion.
- Using clear language and design that will help consumers understand complicated mortgage loan and real estate transactions.
- Highlighting the information that has proven to be most important to consumers. On the new forms, the interest rate, monthly payments, and the total closing costs will be clearly presented on the first page. This will make it easier for consumers to compare mortgage loans and choose the one that is right for them.
- Providing more information about the costs of taxes and insurance and how the interest rate and payments may change in the future. This information will help consumers decide whether they can afford the mortgage loan and the home, now and in the future.
- Warning consumers about features they may want to avoid, like penalties for paying off the loan early or increases to the mortgage loan balance even if payments are made on time.
- Making the cost estimates consumers receive for services required to close a mortgage loan more reliable, for example, appraisal or pest inspection fees. The rule prohibits

**Exhibit 65A – Consumer Financial Protection Bureau Disclosure – Continued**

increases in charges from lenders, their affiliates, and for services for which the lender does not permit the consumer to shop unless a specific exception applies. Examples of the specific exceptions include when information provided by a consumer at application was inaccurate or becomes inaccurate, or when the consumer asks for a change in the services.

- Requiring that consumers receive the Closing Disclosure at least three business days before closing on the mortgage loan. Currently, consumers often receive this information at closing or shortly before closing. This additional time will allow consumers to compare the final terms and costs to the terms and costs they received in the estimate. That will better equip them to raise any questions before they go to the closing table.

**Exhibit 65A – Consumer Financial Protection Bureau Disclosure – Continued**

## What to do if your lender doesn't follow the rules

If you think your lender is not following the rules that apply to mortgage disclosure, the Consumer Financial Protection Bureau wants to know. You can get in touch with us in any of these ways.

**Online:** [www.consumerfinance.gov/complaint](http://www.consumerfinance.gov/complaint)

**By telephone** (in 187 languages):

855-411-CFPB (2372)

Español 855-411-CFPB (2372)

TTY/TDD 855- 729-CFPB (2372)

8 a.m. to 8 p.m. Eastern, Monday–Friday

**By mail:** Consumer Financial Protection Bureau

P.O. Box 4503

Iowa City, Iowa 52244

**By fax:** 855-237-2392

The rules governing mortgage disclosure are among many rules that protect you when you get a mortgage. Our website has information on many other consumer protection laws and regulations that apply to mortgages at [consumerfinance.gov/regulations/](http://consumerfinance.gov/regulations/)

## Exhibit 65A – Consumer Financial Protection Bureau Disclosure – Continued

FICUS BANK

4321 Random Boulevard • Somecity, ST 12340

Save this Loan Estimate to compare with your Closing Disclosure.

**Loan Estimate**

DATE ISSUED 2/15/2013  
 APPLICANTS Michael Jones and Mary Stone  
 123 Anywhere Street  
 Anytown, ST 12345  
 PROPERTY 456 Somewhere Avenue  
 Anytown, ST 12345  
 SALE PRICE \$180,000

LOAN TERM 30 years  
 PURPOSE Purchase  
 PRODUCT Fixed Rate  
 LOAN TYPE ☒ Conventional ☐ FHA ☐ VA ☐  
 LOAN ID # 123456789  
 RATE LOCK ☐ NO ☒ YES, until 4/16/2013 at 5:00 p.m. EDT  
 Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on 3/4/2013 at 5:00 p.m. EDT

Loan Terms		Can this amount increase after closing?
Loan Amount	\$162,000	NO
Interest Rate	3.875%	NO
Monthly Principal & Interest <i>See Projected Payments below for your Estimated Total Monthly Payment</i>	\$761.78	NO
Prepayment Penalty	<b>Does the loan have these features?</b> <b>YES</b> • As high as \$3,240 if you pay off the loan during the first 2 years	
Balloon Payment	NO	

Projected Payments			
Payment Calculation	Years 1-7		Years 8-30
Principal & Interest	\$761.78		\$761.78
Mortgage Insurance	+	82	+
Estimated Escrow <i>Amount can increase over time</i>	+	206	+
Estimated Total Monthly Payment	\$1,050		\$968
Estimated Taxes, Insurance & Assessments <i>Amount can increase over time</i>	\$206 a month	<b>This estimate includes</b> <input checked="" type="checkbox"/> Property Taxes <input checked="" type="checkbox"/> Homeowner's Insurance <input type="checkbox"/> Other: <i>See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.</i>	<b>In escrow?</b> <b>YES</b> <b>YES</b>

Costs at Closing	
Estimated Closing Costs	\$8,054 Includes \$5,672 in Loan Costs + \$2,382 in Other Costs – \$0 in Lender Credits. <i>See page 2 for details.</i>
Estimated Cash to Close	\$16,054 Includes Closing Costs. <i>See Calculating Cash to Close on page 2 for details.</i>

Visit [www.consumerfinance.gov/mortgage-estimate](http://www.consumerfinance.gov/mortgage-estimate) for general information and tools.

LOAN ESTIMATE

PAGE 1 OF 3 • LOAN ID # 123456789

## Exhibit 65A – Consumer Financial Protection Bureau Disclosure – Continued

## Closing Cost Details

Loan Costs		Other Costs	
<b>A. Origination Charges</b>	<b>\$1,802</b>	<b>E. Taxes and Other Government Fees</b>	<b>\$85</b>
.25 % of Loan Amount (Points)	\$405	Recording Fees and Other Taxes	\$85
Application Fee	\$300	Transfer Taxes	
Underwriting Fee	\$1,097		
		<b>F. Prepaids</b>	<b>\$867</b>
		Homeowner's Insurance Premium ( 6 months)	\$605
		Mortgage Insurance Premium ( months)	
		Prepaid Interest ( \$17.44 per day for 15 days @ 3.875%)	\$262
		Property Taxes ( months)	
		<b>G. Initial Escrow Payment at Closing</b>	<b>\$413</b>
		Homeowner's Insurance \$100.83 per month for 2 mo.	\$202
		Mortgage Insurance per month for mo.	
		Property Taxes \$105.30 per month for 2 mo.	\$211
<b>B. Services You Cannot Shop For</b>	<b>\$672</b>	<b>H. Other</b>	<b>\$1,017</b>
Appraisal Fee	\$405	Title – Owner's Title Policy (optional)	\$1,017
Credit Report Fee	\$30		
Flood Determination Fee	\$20		
Flood Monitoring Fee	\$32		
Tax Monitoring Fee	\$75		
Tax Status Research Fee	\$110		
		<b>I. TOTAL OTHER COSTS (E + F + G + H)</b>	<b>\$2,382</b>
<b>C. Services You Can Shop For</b>	<b>\$3,198</b>	<b>J. TOTAL CLOSING COSTS</b>	<b>\$8,054</b>
Pest Inspection Fee	\$135	D + I	\$8,054
Survey Fee	\$65	Lender Credits	
Title – Insurance Binder	\$700		
Title – Lender's Title Policy	\$535		
Title – Settlement Agent Fee	\$502		
Title – Title Search	\$1,261		
		<b>Calculating Cash to Close</b>	
		Total Closing Costs (J)	\$8,054
		Closing Costs Financed (Paid from your Loan Amount)	\$0
		Down Payment/Funds from Borrower	\$18,000
		Deposit	– \$10,000
		Funds for Borrower	\$0
		Seller Credits	\$0
		Adjustments and Other Credits	\$0
		<b>Estimated Cash to Close</b>	<b>\$16,054</b>
<b>D. TOTAL LOAN COSTS (A + B + C)</b>	<b>\$5,672</b>		

## Exhibit 65A – Consumer Financial Protection Bureau Disclosure – Continued

## Additional Information About This Loan

LENDER	Ficus Bank	MORTGAGE BROKER
NMLS/___ LICENSE ID		NMLS/___ LICENSE ID
LOAN OFFICER	Joe Smith	LOAN OFFICER
NMLS/___ LICENSE ID	12345	NMLS/___ LICENSE ID
EMAIL	joesmith@ficusbank.com	EMAIL
PHONE	123-456-7890	PHONE

Comparisons	Use these measures to compare this loan with other loans.	
In 5 Years	\$56,582	Total you will have paid in principal, interest, mortgage insurance, and loan costs.
	\$15,773	Principal you will have paid off.
Annual Percentage Rate (APR)	4.274%	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	69.45%	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

## Other Considerations

Appraisal	We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.
Assumption	If you sell or transfer this property to another person, we <input type="checkbox"/> will allow, under certain conditions, this person to assume this loan on the original terms. <input checked="" type="checkbox"/> will not allow assumption of this loan on the original terms.
Homeowner's Insurance	This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.
Late Payment	If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.
Refinance	Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.
Servicing	We intend <input type="checkbox"/> to service your loan. If so, you will make your payments to us. <input checked="" type="checkbox"/> to transfer servicing of your loan.

## Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature

Date

Co-Applicant Signature

Date

## Exhibit 65A – Consumer Financial Protection Bureau Disclosure – Continued

## Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

## Closing Information

Date Issued 4/15/2013  
 Closing Date 4/15/2013  
 Disbursement Date 4/15/2013  
 Settlement Agent Epsilon Title Co.  
 File # 12-3456  
 Property 456 Somewhere Ave  
 Anytown, ST 12345  
 Sale Price \$180,000

## Transaction Information

Borrower Michael Jones and Mary Stone  
 123 Anywhere Street  
 Anytown, ST 12345  
 Seller Steve Cole and Amy Doe  
 321 Somewhere Drive  
 Anytown, ST 12345  
 Lender Ficus Bank

## Loan Information

Loan Term 30 years  
 Purpose Purchase  
 Product Fixed Rate  
 Loan Type ☒ Conventional ☐ FHA  
☐ VA ☐  
 Loan ID # 123456789  
 MIC # 000654321

Loan Terms		Can this amount increase after closing?
Loan Amount	\$162,000	NO
Interest Rate	3.875%	NO
Monthly Principal & Interest <i>See Projected Payments below for your Estimated Total Monthly Payment</i>	\$761.78	NO
Does the loan have these features?		
Prepayment Penalty	YES • As high as \$3,240 if you pay off the loan during the first 2 years	
Balloon Payment	NO	

Projected Payments			
Payment Calculation	Years 1-7		Years 8-30
Principal & Interest	\$761.78		\$761.78
Mortgage Insurance	+	82.35	+ —
Estimated Escrow <i>Amount can increase over time</i>	+	206.13	+ 206.13
Estimated Total Monthly Payment	\$1,050.26		\$967.91
Estimated Taxes, Insurance & Assessments <i>Amount can increase over time See page 4 for details</i>	This estimate includes		
	<input checked="" type="checkbox"/> Property Taxes <input checked="" type="checkbox"/> Homeowner's Insurance <input checked="" type="checkbox"/> Other: Homeowner's Association Dues <i>See Escrow Account on page 4 for details. You must pay for other property costs separately.</i>		
	\$356.13 a month		In escrow? YES YES NO

Costs at Closing	
Closing Costs	\$9,712.10 Includes \$4,694.05 in Loan Costs + \$5,018.05 in Other Costs – \$0 in Lender Credits. <i>See page 2 for details.</i>
Cash to Close	\$14,147.26 Includes Closing Costs. <i>See Calculating Cash to Close on page 3 for details.</i>

## Exhibit 65A – Consumer Financial Protection Bureau Disclosure – Continued

## Closing Cost Details

Loan Costs	Borrower-Paid		Seller-Paid		Paid by Others
	At Closing	Before Closing	At Closing	Before Closing	
<b>A. Origination Charges</b>		<b>\$1,802.00</b>			
01 0.25 % of Loan Amount (Points)	\$405.00				
02 Application Fee	\$300.00				
03 Underwriting Fee	\$1,097.00				
04					
05					
06					
07					
08					
<b>B. Services Borrower Did Not Shop For</b>		<b>\$236.55</b>			
01 Appraisal Fee to John Smith Appraisers Inc.					\$405.00
02 Credit Report Fee to Information Inc.		\$29.80			
03 Flood Determination Fee to Info Co.	\$20.00				
04 Flood Monitoring Fee to Info Co.	\$31.75				
05 Tax Monitoring Fee to Info Co.	\$75.00				
06 Tax Status Research Fee to Info Co.	\$80.00				
07					
08					
09					
10					
<b>C. Services Borrower Did Shop For</b>		<b>\$2,655.50</b>			
01 Pest Inspection Fee to Pests Co.	\$120.50				
02 Survey Fee to Surveys Co.	\$85.00				
03 Title – Insurance Binder to Epsilon Title Co.	\$650.00				
04 Title – Lender's Title Insurance to Epsilon Title Co.	\$500.00				
05 Title – Settlement Agent Fee to Epsilon Title Co.	\$500.00				
06 Title – Title Search to Epsilon Title Co.	\$800.00				
07					
08					
<b>D. TOTAL LOAN COSTS (Borrower-Paid)</b>		<b>\$4,694.05</b>			
Loan Costs Subtotals (A + B + C)	\$4,664.25	\$29.80			
<b>Other Costs</b>					
<b>E. Taxes and Other Government Fees</b>		<b>\$85.00</b>			
01 Recording Fees Deed: \$40.00 Mortgage: \$45.00	\$85.00				
02 Transfer Tax to Any State			\$950.00		
<b>F. Prepays</b>		<b>\$2,120.80</b>			
01 Homeowner's Insurance Premium ( 12 mo.) to Insurance Co.	\$1,209.96				
02 Mortgage Insurance Premium ( mo.)					
03 Prepaid Interest ( \$17.44 per day from 4/15/13 to 5/1/13 )	\$279.04				
04 Property Taxes ( 6 mo.) to Any County USA	\$631.80				
05					
<b>G. Initial Escrow Payment at Closing</b>		<b>\$412.25</b>			
01 Homeowner's Insurance \$100.83 per month for 2 mo.	\$201.66				
02 Mortgage Insurance per month for mo.					
03 Property Taxes \$105.30 per month for 2 mo.	\$210.60				
04					
05					
06					
07					
08 Aggregate Adjustment	-0.01				
<b>H. Other</b>		<b>\$2,400.00</b>			
01 HOA Capital Contribution to HOA Acre Inc.	\$500.00				
02 HOA Processing Fee to HOA Acre Inc.	\$150.00				
03 Home Inspection Fee to Engineers Inc.	\$750.00			\$750.00	
04 Home Warranty Fee to XYZ Warranty Inc.			\$450.00		
05 Real Estate Commission to Alpha Real Estate Broker			\$5,700.00		
06 Real Estate Commission to Omega Real Estate Broker			\$5,700.00		
07 Title – Owner's Title Insurance (optional) to Epsilon Title Co.	\$1,000.00				
08					
<b>I. TOTAL OTHER COSTS (Borrower-Paid)</b>		<b>\$5,018.05</b>			
Other Costs Subtotals (E + F + G + H)	\$5,018.05				
<b>J. TOTAL CLOSING COSTS (Borrower-Paid)</b>		<b>\$9,712.10</b>			
Closing Costs Subtotals (D + I)	\$9,682.30	\$29.80	\$12,800.00	\$750.00	\$405.00
Lender Credits					

CLOSING DISCLOSURE

PAGE 2 OF 5 • LOAN ID # 123456789

## Exhibit 65A – Consumer Financial Protection Bureau Disclosure – Continued

Calculating Cash to Close		Use this table to see what has changed from your Loan Estimate.	
	Loan Estimate	Final	Did this change?
Total Closing Costs (J)	\$8,054.00	\$9,712.10	YES • See Total Loan Costs (D) and Total Other Costs (I)
Closing Costs Paid Before Closing	\$0	– \$29.80	YES • You paid these Closing Costs before closing
Closing Costs Financed (Paid from your Loan Amount)	\$0	\$0	NO
Down Payment/Funds from Borrower	\$18,000.00	\$18,000.00	NO
Deposit	– \$10,000.00	– \$10,000.00	NO
Funds for Borrower	\$0	\$0	NO
Seller Credits	\$0	– \$2,500.00	YES • See Seller Credits in Section L
Adjustments and Other Credits	\$0	– \$1,035.04	YES • See details in Sections K and L
<b>Cash to Close</b>	<b>\$16,054.00</b>	<b>\$14,147.26</b>	

Summaries of Transactions		Use this table to see a summary of your transaction.	
BORROWER'S TRANSACTION		SELLER'S TRANSACTION	
<b>K. Due from Borrower at Closing</b>	<b>\$189,762.30</b>	<b>M. Due to Seller at Closing</b>	<b>\$180,080.00</b>
01 Sale Price of Property	\$180,000.00	01 Sale Price of Property	\$180,000.00
02 Sale Price of Any Personal Property Included in Sale		02 Sale Price of Any Personal Property Included in Sale	
03 Closing Costs Paid at Closing (J)	\$9,682.30	03	
04		04	
05		05	
06		06	
07		07	
08		08	
<b>Adjustments</b>		<b>Adjustments for Items Paid by Seller in Advance</b>	
09		09 City/Town Taxes to	
10		10 County Taxes to	
11		11 Assessments to	
12		12 HOA Dues 4/15/13 to 4/30/13	\$80.00
13		13	
14		14	
15		15	
16		16	
<b>L. Paid Already by or on Behalf of Borrower at Closing</b>	<b>\$175,615.04</b>	<b>N. Due from Seller at Closing</b>	<b>\$115,665.04</b>
01 Deposit	\$10,000.00	01 Excess Deposit	
02 Loan Amount	\$162,000.00	02 Closing Costs Paid at Closing (J)	\$12,800.00
03 Existing Loan(s) Assumed or Taken Subject to		03 Existing Loan(s) Assumed or Taken Subject to	
04		04 Payoff of First Mortgage Loan	\$100,000.00
05		05 Payoff of Second Mortgage Loan	
06		06	
07		07	
08		08	
09 Seller Credit	\$2,500.00	09	
10		10	
11		11	
12		12	
13		13	
14		14	
15		15	
16		16	
17		17	
<b>Other Credits</b>		<b>Other Credits</b>	
01 Rebate from Epsilon Title Co.	\$750.00	01	
02		02	
03		03	
04		04	
05		05	
06		06	
07		07	
08		08	
09		09	
10		10	
11		11	
12		12	
13		13	
14		14	
15		15	
16		16	
17		17	
<b>Adjustments for Items Unpaid by Seller</b>		<b>Adjustments for Items Unpaid by Seller</b>	
12 City/Town Taxes 1/1/13 to 4/14/13	\$365.04	12 City/Town Taxes 1/1/13 to 4/14/13	\$365.04
13		13	
14		14	
15		15	
16		16	
17		17	
<b>CALCULATION</b>		<b>CALCULATION</b>	
Total Due from Borrower at Closing (K)	\$189,762.30	Total Due to Seller at Closing (M)	\$180,080.00
Total Paid Already by or on Behalf of Borrower at Closing (L)	– \$175,615.04	Total Due from Seller at Closing (N)	– \$115,665.04
<b>Cash to Close</b> <input checked="" type="checkbox"/> From <input type="checkbox"/> To Borrower	<b>\$14,147.26</b>	<b>Cash</b> <input type="checkbox"/> From <input checked="" type="checkbox"/> To Seller	<b>\$64,414.96</b>

## Exhibit 65A – Consumer Financial Protection Bureau Disclosure – Continued

## Additional Information About This Loan

## Loan Disclosures

**Assumption**

If you sell or transfer this property to another person, your lender

☐ will allow, under certain conditions, this person to assume this loan on the original terms.

☒ will not allow assumption of this loan on the original terms.

**Demand Feature**

Your loan

- ☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
- ☒ does not have a demand feature.

**Late Payment**

If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

**Negative Amortization (Increase in Loan Amount)**

Under your loan terms, you

- ☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
- ☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
- ☒ do not have a negative amortization feature.

**Partial Payments**

Your lender

- ☒ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
- ☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
- ☐ does not accept any partial payments.

If this loan is sold, your new lender may have a different policy.

**Security Interest**

You are granting a security interest in  
456 Somewhere Ave., Anytown, ST 12345

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

**Escrow Account**

For now, your loan

- ☒ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1	\$2,473.56	Estimated total amount over year 1 for your escrowed property costs: Homeowner's Insurance Property Taxes
Non-Escrowed Property Costs over Year 1	\$1,860.00	Estimated total amount over year 1 for your non-escrowed property costs: Homeowner's Association Dues  You may have other property costs.
Initial Escrow Payment	\$412.25	A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment	\$206.13	The amount included in your total monthly payment.

- ☐ will not have an escrow account because ☐ you declined it ☐ your lender does not offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

**No Escrow**

Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

**In the future,**

Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

## Exhibit 65A – Consumer Financial Protection Bureau Disclosure – Continued

## Loan Calculations

<b>Total of Payments.</b> Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	\$285,803.36
<b>Finance Charge.</b> The dollar amount the loan will cost you.	\$118,830.27
<b>Amount Financed.</b> The loan amount available after paying your upfront finance charge.	\$162,000.00
<b>Annual Percentage Rate (APR).</b> Your costs over the loan term expressed as a rate. This is not your interest rate.	4.174%
<b>Total Interest Percentage (TIP).</b> The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	69.46%

**Questions?** If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at [www.consumerfinance.gov/mortgage-closing](http://www.consumerfinance.gov/mortgage-closing)

## Other Disclosures

## Appraisal

If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

## Contract Details

See your note and security instrument for information about

- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

## Liability after Foreclosure

If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

- ☒ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and have to pay any debt remaining even after foreclosure. You may want to consult a lawyer for more information.
- ☐ state law does not protect you from liability for the unpaid balance.

## Refinance

Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

## Tax Deductions

If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

## Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
<b>Name</b>	Ficus Bank		Omega Real Estate Broker Inc.	Alpha Real Estate Broker Co.	Epsilon Title Co.
<b>Address</b>	4321 Random Blvd. Somecity, ST 12340		789 Local Lane Sometown, ST 12345	987 Suburb Ct. Someplace, ST 12340	123 Commerce Pl. Somecity, ST 12344
<b>NMLS ID</b>					
<b>ST License ID</b>			Z765416	Z61456	Z61616
<b>Contact</b>	Joe Smith		Samuel Green	Joseph Cain	Sarah Arnold
<b>Contact NMLS ID</b>	12345				
<b>Contact ST License ID</b>			P16415	P51461	PT1234
<b>Email</b>	joesmith@ficusbank.com		sam@omegare.biz	joe@alphare.biz	sarah@epsilontitle.com
<b>Phone</b>	123-456-7890		123-555-1717	321-555-7171	987-555-4321

## Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature

Date

Co-Applicant Signature

Date

CLOSING DISCLOSURE

PAGE 5 OF 5 • LOAN ID # 123456789

The RESPA statement consists of four basic sections, as follows:

1. First page on the top, the headings "A through I".
2. First page on the bottom, Section "J. SUMMARY OF BORROWER'S TRANSACTION" and Section "K. SUMMARY OF SELLER'S TRANSACTION".
3. Second page, Section "L. SETTLEMENT CHARGES".
4. Third page on the top,
  - Comparison of Good Faith Estimate (GFE) and HUD-1 Charges;
  - Charges That in Total Cannot Increase More than 10%; and
  - Charges That Can Change.
5. Third page on the bottom, Loan Terms.

**BEGIN AT THE TOP OF FIRST PAGE:** The following information should be inserted at the top of the first page of the form:

**BLOCK B.** Check the box adjacent to the correct description of the loan which is the subject of the transaction.

**BLOCK D.** Insert the name of each borrower and the current address of the borrower.

**BLOCK E.** Insert the name of each seller and the address of the seller at the property. Insert the TIN (Taxpayer's Identification Number) of the seller. Where the seller consists of individuals, insert the social security number of the seller in accordance with the discussion in Section 5.5.4.

**BLOCK F.** Insert the name and address of the lender.

**BLOCK G.** Insert the street address and the zip code of the property. Also insert the tax lot and block reference for the property.

**BLOCK H.** Insert the name of the settlement agent, which is usually the name of the attorney representing the borrower, the address of the attorney, the taxpayer identification number of the attorney, and the phone number of the attorney.

**BLOCK I.** Insert the settlement date which is date of closing, and the funding date which will usually be the same as the settlement date.

**PLACE OF SETTLEMENT.** Insert the place of settlement which is usually the purchaser's attorney's office unless the contract requires that the closing be held elsewhere.

**ONCE THE HEADINGS AT THE TOP OF THE FIRST PAGE HAVE BEEN COMPLETED, YOU SHOULD COMMENCE WITH THE CALCULATIONS ON THE SECOND PAGE OF THE HUD-1 settlement statement.**

## L. SETTLEMENT CHARGES (LINES 701-1400)

This section sets forth the closing costs for settlement charges incurred by both the purchaser/borrower and the seller.

**SELLER'S SETTLEMENT CHARGES.** It is advantageous to begin with the Seller's Settlement Charges (rather than the Borrower's Settlement Charges) since they are fewer in number and can be readily isolated from the charges of the borrower. Practically, it may be important to first finalize the figures affecting the seller so they may be reviewed and confirmed by the seller's attorney. The figures affecting the borrower do not require the input of the seller's attorney. The seller's settlement charges consist of the following lines:

Line 700. *Total Commission.* Insert the purchase price of the property and the percentage of that number which the seller agreed to pay as a commission.

Lines 701 and 702. *Division of Commission.* Where the commission is to be paid to more than one real estate broker, e.g. to a listing broker and to a selling broker, each broker should be identified on these lines and the amount to be paid to each. Do not assume that the commission is to be divided equally between two brokers where more than one broker is involved in the transaction since there may be an adjustment that must be made in the amount (by approximately \$100) to reflect the payment of one broker to the other of a portion of the listing fee. The allocation of the commission should be confirmed with the brokers.

Line 703. *Commission Paid.* The total amount of the commission to be paid by the seller should be inserted.

Line 1202. *Release.* The fee for the cancellation of the seller's mortgage(s) should be inserted at this line. The fee usually includes not only the fee for recording a discharge of mortgage or for canceling the mortgage of record but also an amount attributable to the services rendered by the purchaser's attorney in canceling the mortgage. The payoff letter may include the cost of recording the discharge of the mortgage; accordingly, it should not be duplicated if already included.

Line 1205. *State tax/stamps (realty transfer fee).* The realty transfer fee, which is the obligation of the seller absent a contract provision to the contrary, should be inserted. The calculation of the fee is discussed in Section 5.6.2. By way of example, based upon a purchase price of \$400,000 of consideration, the standard fee is \$2.90 per \$500 of consideration up to \$150,000. For the first \$150,000 of consideration, the fee is \$870 (\$150,000 divided by \$500 = \$300 x \$2.90 = \$870). The fee for each \$500 of consideration over \$150,000 up to \$200,000 is \$4.25. Accordingly, the sum of \$425 (\$200,000 - \$150,000 = \$50,000 divided by \$500 = 100 x \$4.25 = \$425) must be added to the \$870 fee. The fee for each \$500 of consideration over \$200,000, but not in excess of \$550,000 is \$4.80. Accordingly, the sum of \$1,920.00 (\$400,000 - \$200,000 = \$200,000 divided by \$500 = 400 x \$4.80 = \$1,920.00) must be added for a total realty transfer of \$3,215.00 (the sum of \$870 + \$425 + \$1,920.00).

Line 1304. *Seller's Legal Fee.* If the legal fee of the seller's attorney is being paid from the closing proceeds, the amount should be inserted.

**BORROWER'S SETTLEMENT CHARGES.** The borrower's settlement charges are usually reflected on the following lines:

Section 800. **ITEMS PAYABLE IN CONNECTION WITH LOAN.** This section reflects all of the charges and costs imposed by the lender in making the loan. Note that the costs inserted in the HUD-1 at Section 800 (as well as in Sections 900, 1000, 1100, 1200 and 1300) must be compared with the same items as had been inserted in the Good Faith Estimate for the transaction. See references to "(from GFE #\_\_\_).

Line 801. *Our origination charge.* "Our" refers to the loan originator. All charges received by the loan originator, except any charge for the interest rate chosen (points), are inserted on this line. This charge includes administrative and processing services, performed by or on behalf of the loan originator. The number is not to be listed in either the borrower's or seller's column (at the right hand side of the page) but rather adjacent to the description of the item. The charge must be compared with GFE #1.

Line 802. *Your credit or charge (points) for the interest rate.* "Your" refers to the borrower. The charge or credit adjustment applied to the origination charge (appearing at Line 801) is inserted. When the amount paid to the mortgage broker is greater than the initial loan amount, there is a credit to the borrower that appears adjacent to the description of the item as a negative amount. When the initial loan amount exceeds the amount paid to the mortgage broker, a positive amount is entered as a charge to the borrower. The credit or charge is sometimes reflected as "points", which each point being equal to 1% of the mortgage amount. The charge must be compared with GFE #2.

Line 803. *Your adjusted origination charges.* This charge is the net amount of the loan origination charges, the sum of the amounts shown in Lines 801 and 802. The amount inserted in the column will be a positive number in the instance where the origination charge in Line 801 exceeds any credit for interest rate shown in Line 802 or where there is an origination charge in Line 801 and a charge for the interest rate (points) is shown on Line 802. It will be a negative number in the instance where the credit for the interest rate shown in Line 802 exceeds the origination charges shown in Line 801. The charge must be compared with GFE A.

Lines 804-808 is for use to set forth each of the "*Required services that we select.*" Once again, "we" refers to the loan originator.

Line 804. *Appraisal Fee.* This is the fee imposed by the lender for the appraisal performed of the property. The lender or other party to whom the fee is paid is inserted on this line. The charge must be compared with GFE #3.

Line 805. *Credit Report.* The fee for the credit report and the party to which it is to be paid is inserted on this line. The charge must be compared with GFE #3.

Line 806. *Tax Service.* The cost for the services of the company arranging for the payment of the real estate taxes by the lender from escrows paid under the mortgage is inserted on this line. The charge must be compared with GFE #3.

Line 807. *Flood Certificate.* The cost of obtain a flood certificate for the property is inserted on this line. The charge must be compared with GFE #3.

Lines 808 through 811. *Miscellaneous.* Other third party services required by the loan originator that the borrower paid in connection with the loan should be inserted on these lines. If an item was paid prior to the closing, it should be described and the amount inserted adjacent to the description as having been paid outside of closing ("P.O.C.") as in the instance of the application fee.

SECTION 900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE. This section includes all advance payments required by the lender to be paid including payment of annual premiums and prepayment of costs billed on a quarterly or periodic basis.

Line 901. *Interest.* The lender will usually require interest to be paid on the loan from the date of closing through the last day of the month and will provide the amount per day (per diem amount) upon which to calculate that interest payment. The charge must be compared with GFE #10.

Line 902. *Mortgage Insurance Premium.* If the transaction is subject to mortgage insurance, the lender may require several months' premium to be paid into escrow at the closing. The charge must be compared with GFE #3.

Line 903. *Homeowner's Insurance.* The lender will usually require the first year's premium for hazard insurance (homeowners policy) to be paid at the time of closing. Since the borrower is usually required to produce proof of that payment by means of a receipt along with the policy as a condition of the lender scheduling the closing, this payment is usually already paid by the time of closing and reflected as a "P.O.C." charge. The charge must be compared with GFE #11.

Lines 904 and 905. *Miscellaneous (Items Required by Lender to be Paid in Advance).* Any other amounts which may give rise to municipal liens against the property will be required to be paid by the borrower at closing. The lender may require the current or next quarter's real estate tax payment to be paid to the municipality at the time of the closing. This amount has been inserted in Line 904. The charge must be compared with GFE #11.

SECTION 1000. RESERVES DEPOSITED WITH LENDER. The section sets forth the escrows which the lender is requiring the borrower to pay to the lender at closing. The borrower should understand that these amounts are required even though a monthly escrow amount is required by the borrower to be paid to the lender along with the monthly principal and interest payment. The payment of these reserve amounts ensures the lender that sufficient amounts will be available when the next payment comes due. The charge must be compared with GFE #9.

Line 1001. *Initial deposit for your escrow account.* This is the total deposit to be placed in escrow with the lender. The amount is inserted in the column. The charge must be compared with GFE #9.

Line 1002. *Homeowners Insurance.* An escrow for mortgage insurance is inserted on this line. The hazard insurance escrow reflecting the number of months multiplied by the amount per month should be inserted. This calculation is based upon the invoice issued by the insurance company for the current annual premium.

Line 1004. *Property Taxes.* An escrow for municipal real estate taxes is inserted on this line.

Line 1007. *Aggregate Adjustment.* An adjustment based on aggregate accounting is made by the servicer after the individual reserve amounts are itemized as described above. The adjustment is the difference between the deposit required under aggregate accounting and the sum of the itemized deposits. The adjustment will be a negative amount or zero.

SECTION 1100. TITLE CHARGES. The charges are those incurred relative to acquiring title insurance to the property.

Line 1101. *Title services and lender's title insurance.* The total cost for title services and the lender's title insurance is inserted in the column in this section. The charge must be compared with GFE #4.

Line 1102. *Settlement or closing fee.* Any closing fee imposed by the title insurer is to be inserted on this line.

Line 1103. *Owner's title insurance.* The cost associated with the owner's title insurance coverage should be inserted. The charge must be compared with GFE #5.

Line 1105. *Lender's Title Policy Limit.* The amount of the loan policy required by the lender should be inserted. This amount is usually equal to the amount of the mortgage.

Line 1106. *Owner's Title Policy Limit.* The amount of the owner's title insurance coverage should be inserted on this line. It would typically equal the amount of the purchase price of the property.

Line 1107. *Agent's portion of the total insurance premium.* The allocation between the agent's portion at Line 1107 and the underwriter's portion at Line 1108 must be determined by the title insurer.

Line 1108. *Underwriter's portion of the total insurance premium.* Advice of this amount should come from the title insurer. See Line 1107 above.

SECTION 1200. GOVERNMENT RECORDING AND TRANSFER CHARGES. These are the charges relative to the recording of documents, such as the deed and mortgage. The payments paid

by the seller for mortgage release fees and realty transfer fee are discussed above at SELLER'S SETTLEMENT CHARGES.

Line 1201. *Government recording charges.* The recording fees paid by the purchaser to the county recording office are inserted in this section. Currently, the fee for recording a deed is \$40.00 for the first page plus \$10.00 for each additional page. The fee for recording a mortgage is \$30.00 and \$10.00 for each additional page. The charge must be compared with GFE #7.

SECTION 1300. ADDITIONAL SETTLEMENT CHARGES. In this section are the additional costs incurred by the purchaser in closing title. Charges might include a survey, pest inspection, home inspection, fee for filing the notice of settlement, and the attorneys fees of the purchaser. These services are identified at Line 1301 as "Required services that you can shop for." Additional costs incurred by the seller, such as the fees for recording the seller's mortgage endorsed for cancellation or a discharge of mortgage are also inserted as amounts to be paid from the seller's funds.

Line 1400. *Total Settlement Charges.* These are the total settlement charges by adding the amounts in each column.

**SECTION J. SUMMARY OF BORROWER'S TRANSACTION.  
and  
SECTION K. SUMMARY OF SELLER'S TRANSACTION.**

Turn to the first page of the HUD-1 RESPA form. The left hand side of the first page is captioned "SECTION J. SUMMARY OF BORROWER'S TRANSACTION." The component parts of this portion of the RESPA are as follows:

Lines 100-120. GROSS AMOUNT DUE FROM BORROWER.

Lines 200-220. TOTAL PAID BY/FOR BORROWER.

Lines 300-303. CASH FROM BORROWER.

The right hand side of the RESPA form is captioned "SECTION K. SUMMARY OF SELLER'S TRANSACTION." The component parts of this portion of the RESPA are as follows:

Lines 400-420. GROSS AMOUNT DUE TO SELLER.

Lines 500-520. TOTAL REDUCTION IN AMOUNT DUE TO SELLER.

Lines 600-603. CASH TO SELLER.

If there is a need to expedite the calculation of the seller's transaction, e.g. so that the amount due to seller can be submitted for review by the seller's attorney, start with Section K. which is the Summary of Seller's Transaction. This discussion starts with Section J. which is the Summary of

Borrower's Transaction and is followed by the discussion of Section K. which is the Summary of Seller's Transaction.

## SECTION J. SUMMARY OF BORROWER'S TRANSACTION

### SECTION 100. GROSS Amount Due From Borrower

Line 101. *Contract Sales Price.* This is the sales price on the contract for the property.

Line 102. *Personal Property.* Any personal property, the cost related to the personal property is set forth on this line.

Line 103. *Settlement charges to borrower.* Carry over to the front of the form the amount at Line 1400 appearing on the back of the form. This amount reflects the closing costs of the borrower.

Lines 106 through 112. *Adjustments for Items Paid by Seller in Advance.* This section reflects a reimbursement by the purchaser to the seller for those amounts paid by the seller prior to closing but where the payment applies to a period of time after the closing (for which the purchaser is responsible).

Line 109 through 112. *Miscellaneous.* These lines are available for other items paid in advance by seller for which seller should be reimbursed. As follows, costs such as sewer and water charges, and fuel oil reimbursement the seller would be inserted in this section when charges have been paid beyond the period of ownership of the property by the seller. Corresponding entries would be made at Lines 406 through 412.

Line 109. *Water/sewer charges.* Water/sewer charges for this property are imposed on a periodic basis, rather than on usage. This item reflects the adjustment for water/sewer costs where the seller has paid an amount in excess of the amount attributable to the period of time which the seller will own the property. For this property, the municipality issues separate water/sewer bills on a quarterly basis. The first quarter consists of January, February and March, the second quarter consists of April, May and June, the third quarter consists of July, August and September and the fourth quarter consists of October, November and December. The annual water/sewer charge is \$400. The per diem cost for water/sewer is approximately \$1.08 (\$400 divided by 365 days). The seller has paid through and including the fourth quarter and is therefore entitled to a credit for the remaining 52 days of the fourth quarter (November 9 through December 31) of \$56.16 (52 days at \$1.08 per day. The figures that appear in the HUD-1 settlement statement have been rounded.

Line 111. *Fuel oil.* If the property is served by fuel oil, the reimbursement by the purchaser of the seller for fuel oil remaining in the tank based upon the reading of the fuel oil in the tank would be inserted on the line.

Line 120. *Gross Amount Due From Borrower.* This represents the sum of Lines 100 through 112.

SECTION 200. AMOUNTS PAID BY OR ON BEHALF OF BORROWER. This section reflects the amounts which the borrower is or has paid, or which have been paid on behalf of the borrower by virtue of items for which the seller is responsible and for which the purchaser is receiving a credit at closing.

Line 201. *Deposit.* This is the amount of deposit placed under the contract. At the closing, this amount should be produced by the party holding the escrow.

Line 202. *Principal Amount of New Loan(s).* This is the amount of the mortgage received from the lender.

Line 203. *Existing Loan(s) Taken Subject To.* If any mortgages are being assumed, the amount of the mortgage should be inserted on this line.

Lines 204 through 209. *Miscellaneous.* Other amounts which are paid by or on behalf of the borrower should be inserted in these lines.

Line 206. *Seller Paid Closing Costs Credit.* By way of example, the seller, with the consent of the lender, has agreed to pay a sum toward the buyer's closing costs. This amount has been inserted in this line.

Lines 210 through 219. *Adjustments for Items Unpaid by Seller.* The adjustments in this section are similar to those made at Lines 106 through 112 setting forth adjustments for items paid by the seller in advance. The adjustments in this section reflect those items for which the seller is responsible but for which the seller has not yet paid.

Line 210. *City/town taxes.* This item reflects the adjustment for taxes where the seller has paid an amount for real estate taxes in excess of the amount attributable to the period of time which the seller will own the property. In general, the municipality will issue separate tax bills for a period of the four tax quarters. The first tax quarter consists of January, February and March, the second tax quarter consists of April, May and June, the third tax quarter consists of July, August and September and the fourth tax quarter consists of October, November and December. Payment is due on the first day of the middle month of each quarter, i.e. February 1, May 1, August 1, and November 1. The taxes were \$14,515 for the entire year. Divide that amount by 365 days to arrive at a per diem tax amount of \$39.82192. Since the is being held on November 9, 2010, the seller is responsible for 313 days x \$39.82192 per day or \$12,464.26. Since the seller has paid the sum of \$10,000.00 toward taxes for 2010, the seller is entitled to a credit of \$2,464.26 (\$12,464.26-\$10,000.00) from the purchaser. The figures that appear in the HUD-1 settlement statement have been rounded.

It should be noted that, where the final tax bills (third and fourth quarter) have not issued from the municipality, the parties may agree to adjust taxes based on the first and second tax quarter (first half). However, where there is no contractual provision governing the adjustment of real estate taxes or no agreement is subsequently reached, *N.J.S.A. 54:4-56 et seq.* determines the apportionment of real estate taxes. The apportionment is based upon the taxes for the current year where the amount for the full year has been determined for the current year by the date of closing. If the amount of the real estate

taxes for the current year has not been determined by the date of closing, the annual taxes last previously assessed against the property is to be used as the basis for computing the apportionment.

The figures that appear in the HUD-1 settlement statement may have been rounded.

Lines 300 through 303. This section reflects the total cash due from the borrower.

## **SECTION K. SUMMARY OF SELLER'S TRANSACTION**

This section reflects the net amount which will be paid to the seller.

Line 401. *Contract for Sales Price*. This is the contract price (see Line 101).

Line 402. *Personal Property*. This is the personal property (see Line 102).

Lines 406-412. *Adjustments for Items Paid by Seller in Advance*. See explanation for Lines 106-112.

Lines 420. *Gross Amount Due to Seller*. This is the gross amount due to seller.

## **SECTION 500. REDUCTIONS IN AMOUNT DUE TO SELLER**

Line 501. *Excess Deposit*. This line is used to reflect the deposit monies placed under the contract.

Line 502. *Settlement Charges to Seller*. These are the closing costs incurred by the seller as reflected on Line 1400 on the back of the form and carried over to the front of the form.

Line 503. *Existing Loan(s) Taken Subject To*. This is the amount of any mortgage held by the seller which the purchaser is assuming. Accordingly, the amount received by the seller will be reduced by this amount.

Line 504. *Payoff of First Mortgage Loan*. This amount represents the amount required to be paid in order to satisfy the lender which gave the seller a mortgage which encumbers the property. The figure will include principal plus interest through the date of receipt by the lending institution of the payment.

Line 505. *Payoff of Second Mortgage Loan (see Line 504)*. An amount representing amount required to be paid to satisfy the second mortgage would be inserted if the property were further encumbered by a second mortgage.

Line 506 through 509. *Miscellaneous Reductions in Amount Due to Seller*. This reflects any other reductions in the amount due to the seller. By way of example, if the payoff of the mortgage reflected Line 504 is being delivered by overnight delivery, the cost of the overnight delivery service is

the responsibility of the seller and should be reflected at Line 506. Another example is if the seller is taking back the mortgage, this amount should be reflected on Line 507.

Lines 506 through 509. *Adjustments for Items Unpaid By Seller.* See explanation for Lines 210 - 219.

Lines 600 through 603. This reflects the total cash to be paid to the seller.

### **COMPARISON OF GOOD FAITH ESTIMATE (GFE) AND HUD-1/1A CHARGES - Page 3 of HUD-1 Settlement Statement**

The comparison chart is prepared using the information and amounts from the GFE and the actual settlement charges shown on the HUD-1 Settlement Statement. The chart has three sections, as briefly described:

(1) Charges that Cannot Increase. These are the costs the lender disclosed in the GFE that it would charge for the loan, such as the origination charge, and credit or charge (points) in order for the borrower to receive a specific interest rate. The lender is required to accurately determine and charge the costs, as disclosed

(2) Charges that Cannot Increase More Than 10%. These include the costs charged by providers selected by the loan originator or by providers that the borrower selected that were identified by the loan originator. The 10% limit on increases is intended to hold providers selected or identified by the loan originator accountable for its costs, as disclosed on the GFE.

(3) Charges that Can Change. These are the costs of third party service providers selected by the borrower (not identified by the loan originator). Since the borrower selected these providers (without lender involvement), the charges estimated in the GFE may change.

#### **Section 4.6.1 Consumer Financial Protection Bureau**

The Dodd-Frank Wall Street Reform Act directed the Consumer Financial Protection Bureau (the “CFPB”) to issue rules that combine certain disclosures that consumers receive in applying for and closing on a residential mortgage loan. The rules include the disclosures required under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA).

The disclosures and new forms arise out of the federal government’s response to the past financial crisis. According to the CFPB, the previous forms, which were mandated by the TILA and RESPA, including the TILA Disclosure Statement, Good Faith Estimate, and HUD-1 Settlement Statement, were confusing, contained contradictory information, and made it difficult for prospective borrowers to comparison shop for mortgage loans.

On November 20, 2013, the CFPB issued a 1,888 page rule requiring mortgage lenders to use two new disclosures when making mortgage loans to consumers. The new “Know Before

You Owe” mortgage forms will replace the existing federal disclosures, and the preparation and delivery of the HUD-1. The rule is effective August 1, 2015, and mortgage lenders must use the new forms by that date.

The final rule mandates the use of two disclosures, the three-page Loan Estimate (which replaces the Good Faith Estimate (GFE) and the initial Truth in Lending Disclosure) and the five-page Closing Disclosure (which replaces the HUD-1 and final Truth in Lending Disclosure). The final rule requires that lenders use the CFPB’s new disclosures, puts in place rules about when the new forms are given to the consumer, and limits how the final transaction can change from the original loan estimate.

(a) **Loan Estimate:** The Loan Estimate form will be provided to consumers within three business days after they submit a loan application. It replaces the early Truth in Lending statement and the Good Faith Estimate, and provides a summary of the key loan terms and estimated loan and closing costs. Consumers will be able to use this new form to compare the costs and features of different loans.

The Loan Estimate form is three (3) pages long, contains an extensive amount of information for the borrower, including:

- (1) **“Loan Terms:”** This section, on the first page, requires disclosure of the loan amount, interest rate, monthly principal and interest payments, and whether these amounts can increase after closing. This section also requires disclosure of whether the loan has a prepayment penalty and balloon payment, and the amount of any such payments.
- (2) **“Projected Payments:”** Underneath the Loan Terms section, the form has a section listing the total monthly payment, divided into the expected principal and interest payments, mortgage insurance payments, and estimated escrow payments. There are two columns for these payments, one for years 1-7 of the loan, and one for years 8-30 of the loan. This section also includes a section for estimated taxes, insurance, and assessments, and whether those amounts are in escrow.
- (3) **“Costs at Closing:”** At the bottom of the first page, the form requires disclosure of the amount of closing costs and the cash to close, with references to the second and third pages of the form for details.
- (4) **“Closing Cost Details:”** The second page lists the components of the estimated closing costs, divided into “Loan Costs” and “Other Costs.” “Loan costs” include origination charges, services the borrower cannot shop for (such as an appraisal fee) and services the borrower can shop for (such as title insurance). “Other costs” include taxes and other government fees, prepaids (such as prepaid interest), the initial escrow payment at closing, and “other” (the sample form lists an owner’s title insurance policy as one of these charges.” The second page also includes a section “calculating cash to close” and the estimated cash needed to close.
- (5) **“Additional Information About this Loan:”** This section, on the third page, provides “additional information” intended to help consumers “compare this loan to other loans.”

This section also includes “other considerations” that may govern the loan. At the bottom of this page, the consumer is required to sign the form, but is advised that “you do not have to accept this loan because you have signed or received this form.”

(b) Closing Disclosures: Consumers will receive the Closing Disclosure form at least three business days before closing on a loan. It replaces the final Truth in Lending statement and the HUD-1 settlement statement, and provides a detailed accounting of the transaction. The creditor is responsible for delivering the Closing Disclosure form to the consumer, but creditors may use settlement agents to provide the Closing Disclosure, provided that they comply with the final rule’s requirements for the Closing Disclosure. The final rule acknowledges settlement agents’ longstanding involvement in the closing of real estate and mortgage loan transactions

The Closing Disclosure is five (5)-pages long. The first page is largely the same as on the Loan Estimate, but the remaining pages are significantly different. The “Closing Cost Details” section on the second page is broken into tabular format, contains up to 50 lines of information, and reads like a HUD-1 Settlement Statement. The third page includes a section for “Calculation Cash to Close” section, and a “summary of transactions” which again reads like a HUD-1, and contains up to 64 rows of information. The fourth page provides an extensive amount of “additional information” about the loan, such as assumption and demand features, late payments, whether the loan allows for negative amortization, and the escrow amount. The fifth page then contains the “loan calculations” including the total of payments, finance charge, amount financed, APR, and Total Interest Payment (TIP) and “Other disclosures,” such as that the consumer may not be able to refinance the loan. This page then lists the contact information for the lender, broker, real estate broker(s) and settlement agent, and concludes with a signature confirming the consumer’s receipt of the form.

Appearing as Exhibit 65A are two (2) summaries issued by the CFPB on November 20, 2013: “Final rule on simplified and improved mortgage disclosures” and the other “What the new simplified mortgage disclosures mean for consumers”. The forms required by the CFPB will apply to mortgage applications submitted on or after August 1, 2015. The significant period of time between the issuance of the rule on November 20, 2013, and the effective date of August 1, 2015, was intended to afford a reasonable implementation period in view of the significant changes to systems and procedures necessary to implement the rule.

#### **Section 4.6.2 Mansion Tax**

The so-called “Mansion Tax” or “grantee tax” at *N.J.S.A. 46:15-5 et seq.* applies to all deeds where the consideration paid is in excess of \$1,000,000. The amount of tax imposed is a flat one percent (1%) of the consideration stated in the deed. The Mansion Tax is imposed on the grantee (buyer). The law, as originally adopted, applied to all property “zoned for residential use.” Subsequently, the grantee tax became inapplicable to certain types of property and made the zone classification of the property no longer relevant.

The applicability of the grantee tax is based upon the property classification, as set forth on the official tax list of the municipality where the property is located in the year that the transfer is made. The official tax list is a public record. The grantee tax is imposed only on the following properties: Class 2 "residential" (one to four families) pursuant to the requirements of *N.J.A.C. 18:12-2.2*; Class 3A "farm property (regular)" but only if the property includes a building or structure intended or suited for residential use (this would exclude farmland qualified as such under the Farmland Assessment Act); any other real property, regardless of class, that is effectively transferred to the same grantee in conjunction with any Class 3A property described above, pursuant to *N.J.A.C. 18:12-2.2*; a cooperative unit as defined in *N.J.S.A. 46:8D-3*; and Class 4A "commercial properties" pursuant to the requirements of *N.J.A.C. 18:12-2.2* meaning any type of income-producing properties other than properties in Classes 1, 2, 3A, 3B and those properties in Class 4B and 4C as defined in *N.J.A.C. 18:12-2.2* (f) and (g). Excluded from the grantee tax is Class 1 property (vacant land). The grantee tax is not imposed on an organization determined by the federal Internal Revenue Service as exemption from taxation pursuant to the 26 U.S.C. § 501 (c)(3) that is the grantee in a deed for consideration in excess of \$1,000,000. The grantee tax also does not apply to a deed if the real property transfer is incidental to a corporate merger or acquisition and the equalized assessed value of the real property transferred is less than 20% of the total value of all assets exchanged in the merger or acquisition.

The grantee is to include the last three digits of its Social Security Number in the affidavit. If the grantee is not an individual, but rather a legal entity, the last three digits of the Taxpayer Identification Number of the legal entity should be entered.

The State of New Jersey requires submission of the Affidavit of Consideration for Use by Buyer (RTF-1EE) that appears as Exhibit 67. The form must be submitted in duplicate along with deed, in order for the deed to be recorded.

### **Section 4.6.3 Homestead Rebate Credit**

This discussion of the homestead rebate is solely to create an awareness that the benefit may be given by the municipality in the form of a credit against future real estate tax bills, rather than being received by the homeowner in the form of a rebate check. Hence, the homestead benefit will “run with title to the land.” Obviously, if the benefit were to be remitted in the form of a check to the homeowner who paid the real estate taxes, there would be no concerns. However, if the benefit is to be received by the homeowner in the form of a credit against future real estate taxes imposed against the property, the homeowner who paid the real estate taxes for which the homestead rebate is being given may have a problem gaining the benefit of the homestead rebate if the property is sold.

If the homestead rebate applicant sells the home after filing the application, the homestead benefit will reduce the tax bill of the person who owns the property on the date the benefit is paid. To insure that the seller of the home receives the homestead benefit, the seller must take credit for the benefit at the closing of the sale of the property. Otherwise, the benefit will not be received until after the closing has occurred and only in the form of a credit against the tax bill for the property, with the credit going to benefit the purchaser who is the owner of the property at the time the credit reduces the tax bill for the property. If the seller does not take credit for the benefit at the closing of the sale of the property, the seller may not have grounds to seek payment of the rebate from the purchaser after the closing when the tax bill for the property is credited by the amount of the homestead rebate.



**EXHIBIT 67 - AFFIDAVIT OF CONSIDERATION FOR USE BY BUYER**

MUST SUBMIT IN DUPLICATE  
 NC1646 - Affidavit of Consideration for Use by Buyer  
 RTP-1EE (Rev. 7/03) F9/06

STATE OF NEW JERSEY

Printed by ALL-STATE LEGAL®  
 A Division of ALL-STATE International, Inc.  
 www.aslegal.com 800.222.0510 Page 1

**AFFIDAVIT OF CONSIDERATION FOR USE BY BUYER**

(Chapter 49, P.L. 1968, as amended through Chapter 33, P.L. 2006) (N.J.S.A. 46:15-5 et seq.)

**BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM.**

STATE OF NEW JERSEY } SS.	County Municipal Code	<b>FOR RECORDER'S USE ONLY</b> Consideration \$ _____ RTF paid by buyer \$ _____ Date _____ By _____
COUNTY OF _____		
Municipality of Property Location: _____		

(1) **PARTY OR LEGAL REPRESENTATIVE** (See Instructions 3 and 4 on the reverse side.) **XXX-XX-X**  
(Last 3 digits is Grantee's Social Security No.)

Deponent, \_\_\_\_\_, being duly sworn according to law upon his/her oath, deposes and says that he/she is the \_\_\_\_\_ in a deed dated \_\_\_\_\_  
(State whether Grantee, Legal Representative, Condonee/Officer, Officer of Title Co., Lending Institution, etc.)  
 transferring real property identified as Block No. \_\_\_\_\_, Lot No. \_\_\_\_\_  
 located at \_\_\_\_\_ and annexed thereto.  
(Street Address, Town)

(2) **CONSIDERATION** \$ \_\_\_\_\_ (See Instructions 1, 5 and 11 on the reverse side.)

Entire consideration is in excess of \$1,000,000.

PROPERTY CLASSIFICATION CHECKED BELOW SHOULD BE TAKEN FROM THE OFFICIAL TAX LIST (A PUBLIC RECORD) OF THE MUNICIPALITY WHERE THE REAL PROPERTY IS LOCATED IN THE YEAR THAT THE TRANSFER IS MADE.

(A) When Grantee is required to remit the 1% fee, complete below:

- |  |  |
|--|--|
| <input type="checkbox"/> Class 2 - Residential   | <input type="checkbox"/> Class 4A - Commercial Properties<br>(if checked, calculation on (c) required below) |
| <input type="checkbox"/> Class 3A - Farm property (Regular) and any other real property transferred to same grantee in conjunction with transfer of Class 3A property. | <input type="checkbox"/> Class 4C - Residential Cooperative Unit<br>(4 Families or less)                     |

(B) When Grantee is not required to remit the 1% fee, complete below:

- ☐ Property class. Circle applicable class(es): 1 4B 4C 15  
Property classes: 1-Vacant Land, 4B-Industrial Properties, 4C-Apartments (other than cooperative unit), 15-Public Property
- ☐ Exempt Organization pursuant to federal Internal Revenue Code of 1986
- ☐ Incidental to corporate merger or acquisition and equalized assessed valuation less than 20% of total value of all assets exchanged in merger or acquisition. (If checked, calculation in (C) below required and **MUST ATTACH COMPLETED RTP-4.**)

(C) **REQUIRED CALCULATION OF EQUALIZED ASSESSED VALUATION FOR ALL CLASS 4A COMMERCIAL PROPERTY TRANSACTIONS** (See Instructions 6 and 7 on the reverse side.)

Total Assessed Valuation ÷ Director's Ratio = Equalized Valuation

\$ \_\_\_\_\_ ÷ \_\_\_\_\_ % = \$ \_\_\_\_\_

If Director's Ratio is less than 100%, the equalized valuation will be an amount greater than the assessed value. If Director's Ratio is equal to or in excess of 100%, the assessed value will be equal to the equalized value.

(3) **TOTAL EXEMPTION FROM FEE** (See Instruction 8 on the reverse side.)

Deponent states that this deed transaction is fully exempt from the Realty Transfer Fee imposed by C. 49, P.L. 1968, as amended through C. 66, P.L. 2004, for the following reason(s). Mere reference to the exemption symbol is insufficient. Explain in detail.

(4) Deponent makes this Affidavit of Consideration for Use by Buyer to induce the county clerk or register of deeds to record the deed and accept the fee submitted herewith pursuant to the provisions of Chapter 49, P.L. 1968, as amended through Chapter 33, P.L. 2006.

Subscribed and sworn to before me this _____ day of _____	Signature of Deponent _____	Grantee Name _____
Notary Public _____	Deponent Address _____	Grantee Address at Time of Sale _____
		Name/Company of Settlement Officer _____

This form is prescribed by the Director, Division of Taxation, in the Department of the Treasury, as required by law, and may not be altered or amended without the prior approval of the Director. For further information on the Realty Transfer Fee or to print a copy of this Affidavit, visit the Division of Taxation website at [www.state.nj.us/treasury/taxation/rpt/localtax.htm](http://www.state.nj.us/treasury/taxation/rpt/localtax.htm)

FOR OFFICIAL USE ONLY		
Instrument Number _____	County _____	
Deed Number _____	Book _____	Page _____
Deed Dated _____	Date Recorded _____	

County Recording Officers shall forward one copy of each Affidavit of Consideration for Use by Buyer recorded with deeds to:  
 State of New Jersey - Division of Taxation, P.O. Box 251, Trenton, NJ 08695-0251, Attention: Realty Transfer Fee Unit

## Exhibit 67 - Affidavit of Consideration for Use by Buyer - Continued

### INSTRUCTIONS FOR FILING FORM RTF-IEE, AFFIDAVIT OF CONSIDERATION FOR USE BY BUYER

#### 1. CONSIDERATION STATEMENT AND REALTY TRANSFER FEE PAYMENT ARE PREREQUISITES FOR DEED RECORDING

No county recording officer shall record any deed evidencing transfer of title to real property unless (a) the consideration is recited in the deed, or (b) an Affidavit for Use by Buyer by one or more of the parties named in the deed or by their legal representatives declaring the consideration is annexed for recording with the deed, and (c) for conveyances and transfers of property for which the total consideration recited in the deed is not in excess of \$350,000, a fee is remitted at the rate of \$2.00/\$500 of consideration or fractional part thereof not in excess of \$150,000; \$3.35/\$500 of consideration or fractional part thereof in excess of \$150,000 but not in excess of \$200,000; and \$3.90/\$500 of consideration or fractional part thereof in excess of \$200,000. For transfers of property for which the total consideration recited in the deed is in excess of \$350,000, a fee is remitted at the rate of \$2.90/\$500 of consideration or fractional part not in excess of \$150,000; \$4.25/\$500 of consideration or fractional part thereof in excess of \$150,000 but not in excess of \$200,000; \$4.80/\$500 of consideration or fractional part thereof in excess of \$200,000 but not in excess of \$350,000; \$5.25/\$500 of consideration or fractional part thereof in excess of \$350,000 but not in excess of \$500,000; \$6.25/\$500 of consideration or fractional part thereof in excess of \$500,000 but not in excess of \$1,000,000; and \$6.65/\$500 of consideration or fractional part thereof in excess of \$1,000,000, which fee shall be paid in addition to the recording fees imposed by Chapter 123, P.L. 1985, Section 2 (C. 22:4-4.4.1) as amended by Chapter 379, P.L. 2001, through Chapter 66, P.L. 2004 and Chapter 19, P.L. 2005, which fee shall be paid to the county recording officer at the time the deed is offered for recording/transfer. Of these fees, \$.75/\$500 of consideration or fractional part in excess of \$150,000 paid to the State Treasurer is credited to the New Jersey Affordable Housing Trust Fund.

In addition to all other fees imposed under Chapter 49, P.L. 1988 (C. 46:15-6 et seq.) as amended through Chapter 33, P.L. 2005, a fee is imposed upon the grantee of a deed for the transfer of real property for consideration in excess of \$1,000,000:

- that is classified pursuant to the requirements of N.J.A.C. 18:12-2.2 as Class 2 "residential";
- that includes property classified pursuant to N.J.A.C. 18:12-2.2 as Class 3A: "farm property (regular)" but only if the property includes a building or structure intended or suited for residential use, and; any other real property, regardless of class, that is effectively transferred to the same grantee in conjunction with farm property as described above; or
- that is a cooperative unit as defined in section 3 of P.L. 1987, c. 383 (C. 46:2D-3);
- that is classified pursuant to the requirements of N.J.A.C. 18:12-2.2 as Class 4A "commercial properties," meaning any type of income-producing properties other than properties in Classes 1, 2, 3A, 3B and those properties in Class 4B and Class 4C as defined in N.J.A.C. 18:12-2.2(f) and (g).

The 1% fee is not imposed on an organization determined by the federal Internal Revenue Service to be exempt from federal income taxation pursuant to paragraph (3) of subsection (c) of section 501 of the federal Internal Revenue Code of 1985, 26 U.S.C. s. 501, that is the grantee in a deed for consideration in excess of \$1,000,000. The 1% fee shall also not apply to a deed if the real property transfer is incidental to a corporate merger or acquisition and the equalized assessed value of the real property transferred is less than 20% of the total value of all assets exchanged in the merger or acquisition.

#### 2. WHEN AFFIDAVIT OF CONSIDERATION FOR USE BY BUYER MUST BE ANNEXED TO DEED

- Recorded with the deed when the entire consideration is in excess of \$1,000,000 or the equalized value of the Class 4A property is in excess of \$1,000,000; however, the Realty Transfer Fee is calculated on the consideration amount recited in the deed;
- When grantee claims an exemption from payment of the fee;
- When the entire consideration is not recited in the deed or the acknowledgment or proof of the execution.

Exemptions from the Realty Transfer Fee are found in N.J.S.A. 46:15-10.

#### 3. LEGAL REPRESENTATIVE

"Legal representative" is to be interpreted broadly to include any person actively and responsibly participating in the transaction, such as, but not limited to: an attorney representing one of the parties; a closing officer of a title company or lending institution participating in the transaction; a holder of power of attorney from grantor or grantee.

#### 4. OFFICER OF CORPORATE GRANTEE/OFFICER OF TITLE COMPANY OR LENDING INSTITUTION

Where a deponent is an officer of corporate grantee, state the name of the corporation and the officer's title or where a deponent is a closing officer of a title company or lending institution participating in the transaction, state the name of the company or institution and officer's title.

#### 5. CONSIDERATION

"Consideration" means in the case of any deed, the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid for the transfer of title to the lands, tenements or other realty, including the remaining amount of any prior mortgage to which the transfer is subject or which is assumed and agreed to be paid by the grantee and any other lien or encumbrance not paid, satisfied or removed in connection with the transfer of title.

#### 6. DIRECTOR'S RATIO

"Director's Ratio" means the average ratio of assessed to true value of real property for each taxing district as determined by the Director, Division of Taxation, in the Table of Equalized Valuations promulgated annually on or before October 1 in each year pursuant to N.J.S.A. 54:1-35.1. The table is used in the calculation and apportionment of distributions pursuant to the State School Aid Act of 1954.

#### 7. EQUALIZED VALUE

"Equalized Value" means the assessed value of the property in the year that the transfer is made, divided by the Director's Ratio. The Table of Equalized Valuations is promulgated annually on or before October 1 in each year pursuant to N.J.S.A. 54:1-35.1. Example: Assessed value = \$1,000,000; Director's Ratio = 80%; \$1,000,000 ÷ .80 = \$1,250,000. If Director's Ratio is less than 100%, the equalized value will be an amount greater than the assessed value. If Director's Ratio is in excess of 100%, the assessed value will be equal to the equalized value.

#### 8. TOTAL EXEMPTION FROM THE REALTY TRANSFER FEE (GRANTOR/GRAZTEE)

The fee imposed by this Act shall not apply to a deed:

- For consideration of less than \$100; (b) By or to the United States of America, this State, or any instrumentality, agency or subdivision; (c) Solely in order to provide or release security for a debt or obligation; (d) Which confirms or corrects a deed previously recorded; (e) On a sale for delinquent taxes or assessments; (f) On partition; (g) By a receiver, trustee in bankruptcy or liquidation, or assignee for the benefit of creditors; (h) Eligible to be recorded as an "ancient deed" pursuant to R.E. 46:16-7; (i) Acknowledged or proved on or before July 3, 1963; (j) Between husband and wife/civil union or registered domestic partners in a civil union or registered domestic couple, or parent and child; (k) Conveying a cemetery lot or plot; (l) In specific performance of a final judgment; (m) Releasing a right of reversion; (n) Previously recorded in another county and full Realty Transfer Fee paid or accounted for as evidenced by written instrument, attested to by the grantee and acknowledged by the county recording officer of the county of such prior recording, specifying the county, book, page, date of prior recording, and amount of Realty Transfer Fee previously paid; (o) By an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this State; (p) Recorded within 90 days following the entry of a divorce/dissolution decree which dissolves the marriage/civil union or registered domestic partnership between the grantor and grantee; (q) Issued by a cooperative corporation, as part of a conversion of all of the assets of the cooperative corporation into a condominium, to a shareholder upon the surrender by the shareholder of all of the shareholder's stock in the cooperative corporation and the proprietary lease entitling the shareholder to exclusive occupancy of a portion of the property owned by the corporation.

#### 9. REALTY TRANSFER FEE IS A FEE IN ADDITION TO OTHER RECORDING FEES

The county recording officer is required to collect the Realty Transfer Fee at the time the deed is offered for recording/transfer.

#### 10. AFFIDAVITS OF CONSIDERATION FOR USE BY BUYER FORWARDED TO DIRECTOR, DIVISION OF TAXATION

The county recording officers shall forward one copy of each Affidavit of Consideration for Use by Buyer filed and recorded with deeds to the Director of the Division of Taxation on the tenth day of the month next following the filing of the deed.

#### 11. PENALTY FOR WILLFUL FALSIFICATION OF CONSIDERATION AND TRANSFERS OF NEW CONSTRUCTION

Any person who knowingly falsifies the consideration recited in a deed or in the proof or acknowledgment of the execution of a deed or in an affidavit annexed to a deed declaring the consideration therefor or a declaration in an affidavit that a transfer is exempt from a recording fee is guilty of a crime of the fourth degree (Chapter 308, P.L. 1991, effective June 1, 1992). The Division of Taxation is entitled to review the fees collected pursuant to the State Uniform Procedure Law. The Director of the Division of Taxation is authorized to make deficiency assessments to taxpayers who have, intentionally or mistakenly, underestimated the consideration or sales price of properties on the Affidavit of Consideration for Use by Buyer attached to deeds and upon which the Realty Transfer Fee is based.

#### 12. COUNTY/MUNICIPAL CODES

County/Municipal codes may be found at <http://www.state.nj.us/treasury/taxation/pdf/p/countycode.pdf>.

## **CHAPTER V**

### **THE SELLER - BETWEEN CONTRACT AND CLOSING: PREPARING FOR CLOSING**

The seller and the seller's attorney have a lesser role to play in a real estate transaction than do the purchaser and the purchaser's attorney. The requirements imposed upon the seller under the contract are fewer in number; however, their proper performance are important in ensuring a successful closing. The seller's attorney's role, in part, involves confirming the accuracy of the efforts undertaken by the purchaser's attorney and preparing the documents of conveyance.

#### **Section 5.1     Certificate of Occupancy**

The municipality in which the property is located may require the property to be inspected prior to closing to ensure its compliance with applicable ordinances and laws when the subject of the transaction is the resale of an existing structure. That compliance is evidenced by a certificate of occupancy, which is commonly referred to as a "CO" or "C of O". It should be noted that not all municipalities require a certificate of occupancy to be obtained in connection with the resale of an existing residential dwelling. As discussed in Section 3.3.8(n), the contract will usually contain a contingency requiring the seller to secure the certificate and specify that if the seller does not secure the certificate at the seller's sole cost and expense, the purchaser may cancel the contract. A certificate of occupancy for the resale of an existing structure appears as Exhibit 28.

When the property which is the subject of the transaction is a newly constructed dwelling, all municipalities require the issuance of a certificate of occupancy prior to occupancy. The certificate may be referred to as a conditional or temporary certificate of occupancy if work that does not affect the habitability of the property remains to be completed. The property will be subject to the issuance of an unconditional or final certificate of occupancy upon the satisfaction of the conditions by the seller. See Section 7.1.3 for a discussion of certificates of occupancy in the context of newly constructed dwellings.

#### **Section 5.2     Smoke Detector Certificate**

The Uniform Fire Safety Act (*N.J.S.A. 52:27D-192 et seq.*) requires that all one- and two-family residences be equipped with smoke detectors on each level of the structure and in the vicinity of the bedrooms. *N.J.S.A. 52:27D-198.1*. All smoke detectors are to be installed in accordance with the National Fire Protection Association Standard No. 74-1984 and be tested and listed by a product certification agency recognized by the Bureau of Fire Safety.

Pursuant to *N.J.S.A. 52:27D-198.2(a)*, whenever a residence subject to *N.J.S.A. 52:27D-198.1* is sold or its occupancy is otherwise transferred in a municipality requiring the issuance of a certificate of occupancy, receipt of such certificate is to be conditioned upon compliance with *N.J.S.A. 52:27D-198.1*. In municipalities which do not require a certificate of occupancy, the Act requires that receipt of a certificate of compliance with the Act from the "relevant enforcement agency". *N.J.S.A. 52:27D-198.2(b)*. This agency may be either the municipality or the Department of Community Affairs.

Generally, the seller has the responsibility of providing the purchaser with the appropriate certificate at the closing and the contract will include a provision placing the responsibility upon the seller as discussed in Section 3.3.8(m). Inquiry as to compliance with the Act should be made to the municipality. Municipalities usually enforce the Act by municipal inspectors performing the inspection and certifying the results either separately or as part of the certificate of occupancy inspection, or by relying on a written statement submitted by the real estate broker or seller's attorney confirming the location of the detectors and their proper operation. It is important to keep in mind that the party is responsible for ensuring that the appropriate certificates are issued faces fines upon violation of the Act. *N.J.S.A. 52:27-198.3*.

Section 3.3.8 includes a discussion of smoke detector certificates. A smoke detector certificate application appears as Exhibit 25 and a smoke detector certificate (and carbon monoxide and fire extinguisher certificate) appears as Exhibit 26.

### **Section 5.2.1 Carbon Monoxide Alarm Certificate**

Municipalities are required under the regulations to the Uniform Fire Safety Act to certify at the change of occupancy that one-family and two-family homes contain at least one properly installed carbon monoxide alarm. The law provides for enforcement by inspection by the unit of the local government that is responsible for performing the inspections in furtherance of issuing the certificate of occupancy for the transfer.

In the absence of a municipal requirement for issuing a certificate of occupancy, the municipal agency responsible for enforcement of the Uniform Fire Code, for example, in issuing smoke detector certificates, is responsible for issuing the carbon monoxide alarm certificates. The State Fire Marshall's office has informed local fire officials that they are to incorporate into their inspection process the additional carbon monoxide alarm certification. The submitted application will be for a certificate of smoke detector and carbon monoxide alarm compliance. An application appears as Exhibit 25.

Section 3.3.8 includes a discussion of carbon monoxide alarm requirements. The requirements for carbon monoxide alarms are also discussed in the application appearing as Exhibit 25.

### **Section 5.2.2 Fire Extinguisher Certification**

Under the Uniform Fire Safety Act, a portable fire extinguisher is required to be installed in the kitchen/kitchen area of one- and two-family dwellings. The law defines portable fire extinguisher as "an operable portable device, carried and operated by hand, containing an extinguishing agent that can be expelled under pressure for the purpose of suppressing or extinguishing fire, and which is: (1) rated for residential use consisting of an ABC type; (2) no larger than a 10 pound rated extinguisher; and (3) mounted within 10 feet of the kitchen area, unless otherwise permitted by the enforcing agency".

New homes being sold for the first time do not need to be equipped with a fire extinguisher. New homes are inspected under the Uniform Construction Code (UCC) and existing housing is inspected under the Uniform Fire Code (UFC). New Jersey's fire extinguisher law made amendments to only the UFC and not to the UCC.

Section 3.3.8 includes a discussion of fire extinguisher requirements. The requirements for fire extinguishers are also discussed in the application for the fire extinguisher certification that appears as Exhibit 25.

### **Section 5.3     Real Estate Brokerage Commission**

Since the seller retained the services of the real estate broker by listing the property and agreeing to pay a commission, the seller should be certain the real estate brokers involved in the transaction are paid at closing and that a receipt confirming that payment is presented by each broker at closing. Typically, the commission owed by the seller is paid by means of the deduction of the amount due to the brokers from the proceeds due to the seller. In this way, both the seller and the purchaser can ensure that the broker was paid. While the seller is responsible for the commission costs, the purchaser should make certain that the commission is paid at closing since non-payment of a commission gives rise to an equitable lien against the property in favor of the broker.

More than one real estate broker may be involved in the transaction since the seller lists the property with one broker (the listing broker) and the purchaser may have been working with a different broker who introduced the purchaser to the property (the selling broker); however, nothing precludes the same broker from both listing and selling the property. Each broker is responsible for compensating the agent employed by the broker and involved in the transaction. Where more than one broker is involved, the manner in which the commission is to be apportioned should be confirmed and payment made in accordance with that apportionment at the closing. A discussion of the issues pertaining to real estate brokers appears in Section 2.5.

If one of the real estate brokers was holding the deposit monies in escrow, that broker should confirm with the purchaser's attorney the amount of the deposit, the distribution of any interest accrued on the deposit, the payee to appear on each check representing either the deposit or accrued interest, and the acceptable form of funds. Usually, the deposit monies will be in the form of a certified check and the interest in the form of one or more uncertified checks. Lastly, the broker should ensure that the deposit monies are brought or delivered to the closing.

### **Section 5.4     Review and Clearing of Title**

As discussed in Section 4.3.1, the purchaser's attorney will have obtained a title commitment reflecting the status of title as of the date of the commitment. The purchaser's attorney should forward a copy of the title commitment to the seller's attorney for the purpose of reviewing the title commitment and seeking assistance in clearing any exceptions which might be reflected in the title commitment. Even if there are no title exceptions which require the attention of the seller's attorney, the seller's attorney should receive a copy of the title commitment for the purpose of preparing the deed. The seller may not have made available to the attorney a copy of the deed by which the seller took title to the property and other information relevant to preparing the closing documents. Also, the title commitment may reflect a new legal description based upon the survey procured by the purchaser which is to be used by the seller's attorney in preparing the deed. See Section 5.5.1 on the preparation of the seller's deed.

When a title commitment is received, the seller's attorney should review the title work carefully. For some of the items, the attorney merely needs to confirm their accuracy with the information provided to the attorney by the seller. Some of the other items need to be addressed by the seller's attorney in consultation with the purchaser's attorney.

#### **Section 5.4.1 Grantor Information**

Review the portion of the title commitment identifying the record owner of the property. That portion will identify all of the individuals holding title to the property, in the event that title is vested in individuals. The title commitment will also set forth any other requirements which have to be met, such as the execution of the deed by the spouse, if any, of a record owner in order to relinquish any dower or curtesy interest.

If title is vested in a corporate entity, the title commitment should include a copy of the certificate of incorporation filed in the office of the Secretary of State and a certificate of good standing for the corporation which confirms that the charter of the corporation is in effect and that franchise taxes have been currently paid by the corporation. A corporate status report for a corporation appears as Exhibit 68. The title commitment will also specify other requirements which have to be addressed including the preparation and execution of a corporate resolution authorizing the transaction, and the production of the bylaws of the corporation in order to determine if any other requirements exist which have to be met, such as a shareholder vote, in order for real property of the corporation to be conveyed.

If title is held by a partnership, the title commitment will set forth additional requirements such as the preparation and execution of a partnership certificate and the representations which are to be made in that certificate, and the production of the partnership agreement. The title commitment will also dictate that party(ies) required to sign the closing documents on behalf of the partnership.

If title is held by a limited liability company, a copy of the certificate of formation filed in the office of the Secretary of State of the limited liability company should be included as part of the title commitment. The title commitment may also require a copy of the operating agreement of the company to be provided to ascertain the party(ies) with authority to sign on behalf of the company and resolution authorizing the transaction.

## EXHIBIT 68 - CORPORATE STATUS REPORT

STATE OF NEW JERSEY  
DEPARTMENT OF TREASURY  
LONG FORM STANDING WITH CHARTERED DOCUMENTS

~~XXXXXXXXXX~~ AVENUE REALTY, LLC  
0600157406

*I, the Treasurer of the State of New Jersey, do hereby certify that the above-named New Jersey Domestic Limited Liability Company was registered by this office on December 19, 2002.*

*As of the date of this certificate, said business continues as an active business in the State of New Jersey. Annual Reports are outstanding for the following year(s):*

2007  
2008

*I further certify that the registered agent and registered office are:*

~~XXXXXXXXXX~~ Associates  
~~XXXXXXXXXX~~ Associates  
Morristown, NJ 07960

*I further certify that as of the date of this certificate, the following amendments and changes are on file in this office:*

Change Of Agent And Office

03/30/2007



IN TESTIMONY WHEREOF, I have  
hereunto set my hand and affixed my  
Official Seal at Trenton, this  
3rd day of June, 2009

A handwritten signature of R. David Rousseau.

R. David Rousseau  
State Treasurer

Certification# 114523709

Verify this certificate at  
[https://www1.state.nj.us/TYTR\\_StandingCert/JSP/Verify\\_Cert.jsp](https://www1.state.nj.us/TYTR_StandingCert/JSP/Verify_Cert.jsp)

### **Section 5.4.2 Record Mortgage**

If the property is encumbered by one or more mortgages, the title commitment will reflect (a) the identity of each mortgagee (lender); (b) the face principal amount, date, and date of recording of the mortgage; and (c) the mortgage book and page at which the mortgage is recorded. Where a mortgage encumbers a property, as much information regarding the mortgage account as possible should be obtained from the seller. Specifically, the seller should be able to provide the attorney with the address to which a request should be submitted for a statement of the amount required to be paid to the lender in order for the mortgage to be satisfied, the account number, and any other requirements imposed by the lender, *e.g.* the request for the information is to be submitted in writing no less than a specified number of days before the anticipated date of the closing. That information should be submitted as early as possible to the purchaser's attorney in order to secure what is commonly known as the "payoff letter" in time for the closing. See Section 4.3.3(a) for a discussion. A payoff request appears as Exhibit 49 and a payoff letter appears as Exhibit 50.

### **Section 5.4.3 Judgments**

If the title commitment reflects any judgments retrieved from the county courts and the upper courts against the name(s) of the seller, those judgments should be reviewed with the seller in order to determine if they are, in fact, against the seller. In the event that they are against individuals of same or similar name, they may be disposed of by expressly citing to those judgments in the affidavit of title given by the seller along with a statement that they are not against the seller but against individuals of same or similar name. A discussion of the seller's affidavit of title appears in Section 5.5.3. If they are against the seller, the judgments will have to be satisfied and a warrant to satisfy judgment issued prior to or at the time of closing. A warrant to satisfy judgment appears as Exhibit 52.

## **Section 5.5 Seller's Closing Documents**

The seller will be required to prepare, execute and deliver at closing certain closing documents. Some of these documents are specified by and required under the contract for sale. Others are required in order for the parties to comply with the requirements of the title company in order to induce it to insure the transaction and with laws and regulations governing to the transaction.

### **Section 5.5.1 Deed**

The contract for sale should specify the form of deed to be delivered by the seller at closing. Most contracts will specify that the seller is to deliver a bargain and sale deed with a covenant against grantor's acts. A discussion of types of deeds appears in Section 3.3.9. The deed should be signed by the individuals in whom title is vested or by those parties having the authority to sign when the property is vested in an entity such as a corporation or a partnership. The deed must also be in recordable form. The requirements which have to be met in order for a document to be recorded in a county recording office appear in Section 4.3.8.

In order to prepare the deed, the seller's attorney should obtain from the purchaser's attorney a copy of the title commitment which will include a legal description of the property. At times, the legal description in the title commitment will not correspond precisely with the legal, metes and bounds, description in the deed by which the seller took title to the property. This might be attributable to slight deviations arising from a new survey of the property procured by the purchaser or may merely be an identical description of the property in different terms.

If the seller's attorney is asked to use the new description which appears in the title commitment, the attorney should make certain that the description does in fact describe the same property to which the seller holds title. The seller can only convey that property to which the seller took and holds title. In order to make clear that property described in the new description legal description is that to which the seller took title, the deed should set forth the description of the property in the deed by which the seller took title to the property followed by a statement to the effect that "[t]he foregoing property is and is intended to be the same as the following property:" Thereafter, the new property description would also be inserted into the deed.

### **Section 5.5.2 Affidavit of Consideration or Exemption**

If the seller qualifies for a partial or complete exemption from the realty transfer fee, an affidavit, appearing as Exhibit 69, must be submitted along with the deed for recording. No such affidavit is required if the transaction is not subject to an exemption and the seller pays the standard fee.

The Realty Transfer Tax Act, N.J.S.A. 46:15-1 adopts a multi-tier system based on total consideration for the calculation of the Realty Transfer Fee. The Realty Transfer Tax is to be calculated as follows for a transaction subject to the standard fee and for those involving new construction:

#### **Total Consideration Not in Excess of \$350,000**

1. \$2.00/\$500 of consideration not in excess of \$150,000;
2. \$3.35/\$500 of consideration in excess of \$150,000 but not in excess of \$200,000;
3. \$3.90/\$500 of consideration in excess of \$200,000 but not in excess of \$350,000.

#### **Total Consideration in Excess of \$350,000**

1. \$2.90/\$500 of consideration not in excess of \$150,000;
2. \$4.25/\$500 of consideration in excess of \$150,000 but not in excess of \$200,000;
3. \$4.80/\$500 of consideration in excess of \$200,000 but not in excess of \$550,000;
4. \$5.30/\$500 of consideration in excess of \$550,000 but not in excess of \$850,000;
5. \$5.80/\$500 of consideration in excess of \$850,000 but not in excess of \$1,000,000;
6. \$6.05/\$500 of consideration in excess of \$1,000,000.

Those transactions which traditionally have been exempt from the Realty Transfer Tax, e.g. for consideration less than \$100, continue to be completely exempt.

If a one- or two-family residence owned and occupied by a senior citizen, blind or disabled person is the subject of the transfer, or if low- or moderate-income housing is sold, the partial exemption is calculated as follows:

**Total Consideration Not in Excess of \$350,000**

1. \$.50/\$500 of consideration not in excess of \$150,000;
2. \$1.25/\$500 of consideration in excess of \$150,000 but not in excess of \$350,000.

**Total Consideration in Excess of \$350,000**

1. \$1.40/\$500 of consideration not in excess of \$150,000;
2. \$2.15/\$500 of consideration in excess of \$150,000 but not in excess of \$550,000;
3. \$2.65/\$500 of consideration in excess of \$550,000 but not in excess of \$850,000;
4. \$3.15/\$500 of consideration in excess of \$850,000 but not in excess of \$1,000,000;
5. \$3.40/\$500 of consideration in excess of \$1,000,000.

In determining if the grantor of the property qualifies for a partial exemption, all of the requirements imposed must be satisfied. For example, in order to qualify for the senior citizen partial exemption, (a) the grantor(s) must be 62 years of age or over; however, in the case of a husband and wife conveying property, only one grantor need qualify; (b) the property must be a one or two family residential premises; (c) the property must be owned and occupied by the grantor(s) at time of sale; and (d) there may be no joint owners other than a spouse or other qualified exempt owners.

Partial exemptions also apply in the instance where the property is being conveyed by blind or disabled grantors, or where the subject property is either low or moderate income housing or new construction. The statute under which the realty transfer tax is imposed is *N.J.S.A. 46:15-5 et seq.* and the requirements imposed by that statute should be reviewed to ensure that the transaction qualifies for a partial exemption from the fee.

The statute also provides that certain deeds are fully exempt from the fee. Examples of transactions which are exempt from the fee are those between a husband and wife, or parent and child; by an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of New Jersey; and those which confirm or correct a deed previously recorded.

The New Jersey Civil Union Act, *N.J.S.A. 37:1-31*, provides that "civil union couples shall have all of the same benefits, protections and responsibilities under law whether they derive from statute, administrative court rule, public policy, common law or any other source of civil law, as are granted to spouses in a marriage." This law requires language pertaining to partial and total exemptions to be included in the affidavit of consideration. The change in the affidavit gave partners in a civil union holding title as tenants by the entirety the same treatment in the payment of realty transfer fee as that of spouses.

On the affidavit of consideration, the grantor must include the last three digits of its Social Security Number in the affidavit. If the grantee is not an individual, but rather a legal entity, the last three digits of the Taxpayer Identification Number of the legal entity should be entered.

**EXHIBIT 69 - AFFIDAVIT OF CONSIDERATION FOR USE BY SELLER**

MUST SUBMIT IN DUPLICATE  
NC1545 - Affidavit of Consideration  
RTP-1 (Rev. 7/05) P9/05

Printed by ALL-STATE LEGAL®  
www.aslegal.com 800.222.0510 Page 1

**STATE OF NEW JERSEY**  
**AFFIDAVIT OF CONSIDERATION FOR USE BY SELLER**  
(Chapter 49, P.L. 1968, as amended through Chapter 33, P.L. 2006) (N.J.S.A. 45:15-6 et seq.)

BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM.

STATE OF NEW JERSEY } COUNTY OF _____ } SS. County Municipal Code _____ Municipality of Property Location: _____	<b>FOR RECORDER'S USE ONLY</b> Consideration \$ _____ RTF paid by seller \$ _____ † Date _____ By _____ <small>† Use symbol "C" to indicate that fee is exclusively for county use.</small>
--	---

(1) **PARTY OR LEGAL REPRESENTATIVE** (See Instructions 3 and 4 attached)  
 Deponent, \_\_\_\_\_, being duly sworn according to law upon his/her oath deposes and says that he/she is the \_\_\_\_\_ in a deed dated \_\_\_\_\_  
(Grantor, Grantor, Legal Representative, Corporate Officer, Officer of Title Co., Lending Institution, etc.)  
 transferring real property identified as Block No. \_\_\_\_\_ Lot No. \_\_\_\_\_ located at \_\_\_\_\_ and annexed thereto.  
(Street Address, Town)

(2) **CONSIDERATION:** \$ \_\_\_\_\_ (See Instructions 1 and 5)  
 (3) Property transferred is Class 4A 4B 4C (circle one). If Class 4A, calculation in Section 3A is required.

(3A) **REQUIRED CALCULATION OF EQUALIZED VALUATION FOR ALL CLASS 4A COMMERCIAL PROPERTY TRANSACTIONS:** (see Instructions 5A and 7)  

$$\text{Total Assessed Valuation} \div \text{Director's Ratio} = \text{Equalized Assessed Valuation}$$

$$\text{\$} \quad \div \quad \text{\%} = \text{\$}$$

If Director's Ratio is less than 100%, the equalized valuation will be an amount greater than the assessed value. If Director's Ratio is equal to or in excess of 100%, the assessed value will be equal to the equalized value.

(4) **FULL EXEMPTION FROM FEE:** (see Instruction 8)  
 Deponent states that this deed transaction is fully exempt from the Realty Transfer Fee imposed by C. 49, P.L. 1968, as amended through C. 66, P.L. 2004, for the following reason(s). More reference to the exemption symbol is insufficient. Explain in detail.  
 \_\_\_\_\_

(5) **PARTIAL EXEMPTION FROM FEE:** (see Instruction 9) **NOTE: All boxes below apply to grantor(s) only.**  
**ALL BOXES IN APPROPRIATE CATEGORY MUST BE CHECKED. Failure to do so will void claim for partial exemption.**  
 Deponent claims that this deed transaction is exempt from the State's portion of the Basic Fee, Supplemental Fee and General Purpose Fee, as applicable, imposed by C. 176, P.L. 1975, C. 113, P.L. 2004 and C. 66, P.L. 2004 for the following reason(s):  
 \_\_\_\_\_

<b>A. SENIOR CITIZEN</b> (see Instruction 9) <input type="checkbox"/> Grantor(s) 62 years of age or over.* <input type="checkbox"/> One- or two-family residential premises. <input type="checkbox"/> Resident of the State of New Jersey.	<input type="checkbox"/> Owned and occupied by grantor(s) at time of sale. <input type="checkbox"/> Owners as joint tenants must all qualify.
<b>B. BLIND</b> (see Instruction 9) <input type="checkbox"/> Grantor(s) legally blind.* <input type="checkbox"/> One- or two-family residential premises. <input type="checkbox"/> Owned and occupied by grantor(s) at time of sale. <input type="checkbox"/> Owners as joint tenants must all qualify. <input type="checkbox"/> Resident of the State of New Jersey.	<b>DISABLED</b> (see Instruction 9) <input type="checkbox"/> Grantor(s) permanently and totally disabled.* <input type="checkbox"/> Receiving disability payments.* <input type="checkbox"/> Not gainfully employed.* <input type="checkbox"/> One- or two-family residential premises. <input type="checkbox"/> Owned and occupied by grantor(s) at time of sale. <input type="checkbox"/> Owners as joint tenants must all qualify. <input type="checkbox"/> Resident of the State of New Jersey.

\* IN THE CASE OF HUSBAND AND WIFE, PARTNERS IN A CIVIL UNION OR REGISTERED DOMESTIC COUPLE, ONLY ONE GRANTOR NEEDS TO QUALIFY IF OWNED AS TENANTS BY THE ENTIRETY.

**C. LOW AND MODERATE INCOME HOUSING** (see Instruction 9)  
☐ Affordable according to HUD standards.  
☐ Meets income requirements of region.  
☐ Reserved for occupancy.  
☐ Subject to resale controls.

(6) **NEW CONSTRUCTION** (see Instructions 2, 10 and 12)  
☐ Entirely new improvement.  
☐ Not previously used for any purpose.  
☐ Not previously occupied.  
☐ "NEW CONSTRUCTION" printed clearly at the top of the first page of the deed.

(7) Deponent makes this Affidavit to induce the County Clerk or Register of Deeds to record the deed and accept the fee submitted herewith in accordance with the provisions of Chapter 49, P.L. 1968, as amended through Chapter 33, P.L. 2006.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public

Signature of Deponent \_\_\_\_\_ Grantor Name \_\_\_\_\_  
 Deponent Address \_\_\_\_\_ Grantor Address at Time of Sale \_\_\_\_\_  
 XXX-XX-X Last 3 digits in Grantor's Social Security No. \_\_\_\_\_ Name/Company of Settlement Officer \_\_\_\_\_

<b>FOR OFFICIAL USE ONLY</b>			
Instrument Number _____	County _____	Book _____	Page _____
Deed Number _____	Deed Dated _____	Date Recorded _____	

This form is prescribed by the Director, Division of Taxation in the Department of the Treasury, as required by law, and may not be altered or amended without the prior approval of the Director. For information on the Realty Transfer Fee or to print a copy of this Affidavit, visit the Division of Taxation website at [www.state.nj.us/treasury/taxation/pd/localtax.htm](http://www.state.nj.us/treasury/taxation/pd/localtax.htm).

County Recording Officers shall forward one copy of each Affidavit of Consideration for Use by Seller when Section 3A is completed  
**State of New Jersey - Division of Taxation, P.O. Box 251, Trenton, NJ 08646-0251, Attention: Realty Transfer Fee Unit**

## Exhibit 69 - Affidavit of Consideration for Use by Seller- Continued

### INSTRUCTIONS FOR FILING FORM RTF-1 AFFIDAVIT OF CONSIDERATION FOR USE BY SELLER

*NOTE: THE STATUTE ON WHICH THIS FORM IS BASED MAY BE CONFUSING. WE URGE YOU TO CAREFULLY READ N.J.S.A. 46:15-5 TO 46:15-10.1, WITH SPECIAL ATTENTION TO 7, 7.1 AND 10.1, BEFORE USING THIS FORM.*

#### 1. STATEMENT OF CONSIDERATION AND REALTY TRANSFER FEE PAYMENT ARE PREREQUISITES FOR DEED RECORDING

No county recording officer shall record any deed evidencing transfer of title to real property unless (a) the consideration is recited in the deed, or (b) an Affidavit by one or more of the parties named in the deed or by their legal representatives declaring the consideration is annexed for recording with the deed, and (c) for conveyances and transfers of property for which the total consideration recited in the deed is not in excess of \$350,000, a fee is remitted at the rate of \$2.00/\$500 of consideration or fractional part thereof not in excess of \$150,000; \$3.35/\$500 of consideration or fractional part thereof in excess of \$150,000 but not in excess of \$200,000; and \$3.90/\$500 of consideration or fractional part thereof in excess of \$200,000. For transfers of property for which the total consideration recited in the deed is in excess of \$350,000, a fee is remitted at the rate of \$2.90/\$500 of consideration or fractional part not in excess of \$150,000; \$4.25/\$500 of consideration or fractional part thereof in excess of \$150,000 but not in excess of \$200,000; \$4.50/\$500 of consideration or fractional part thereof in excess of \$200,000; \$5.30/\$500 of consideration or fractional part thereof in excess of \$550,000 but not in excess of \$850,000; \$5.80/\$500 of consideration or fractional part thereof in excess of \$850,000 but not in excess of \$1,000,000; and \$6.05/\$500 of consideration or fractional part thereof in excess of \$1,000,000, which fee shall be paid in addition to the recording fees imposed by Chapter 123, P.L. 1965, Section 2 (C. 22A:4-4.1) as amended by Chapter 370, P.L. 2001, through Chapter 66, P.L. 2004, which fee shall be paid to the county recording officer at the time the deed is offered for recording/transfer. Of these fees, \$.75/\$500 of consideration or fractional part in excess of \$150,000 paid to the State Treasurer is credited to the New Jersey Affordable Housing Trust Fund.

#### 2. WHEN AFFIDAVIT MUST BE ANNEXED TO DEED

This Affidavit must be annexed to and recorded with all deeds when the entire consideration is not recited in the deed or the acknowledgment or proof of the execution; when the grantor claims a total or partial exemption from the fee, Class 4 property that includes commercial, industrial, or apartment property, and for transfers of "new construction." (See Instructions 10 and 12 below.)

#### 3. LEGAL REPRESENTATIVE

"Legal representative" is to be interpreted broadly to include any person actively and responsibly participating in the transaction, such as, but not limited to: an attorney representing one of the parties; a closing officer of a title company or lending institution participating in the transaction; a holder of power of attorney from grantor or grantee.

#### 4. OFFICER OF CORPORATE GRANTOR/OFFICER OF TITLE COMPANY OR LENDING INSTITUTION

Where a deponent is an officer of corporate grantor, state the name of the corporation and the officer's title or where a deponent is a closing officer of a title company or lending institution participating in the transaction, state the name of the company or institution and the officer's title.

#### 5. CONSIDERATION

"Consideration" means in the case of any deed, the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid for the transfer of title to the lands, tenements or other realty, including the remaining amount of any prior mortgage to which the transfer is subject or which is assumed and agreed to be paid by the grantee and any other lien or encumbrance not paid, satisfied or removed in connection with the transfer of title. (C. 49, P.L. 1968, Section 1, as amended.)

#### 5A. CLASS 4A "COMMERCIAL PROPERTIES" DEFINED

Class 4A "Commercial properties" as defined in N.J.A.C. 18:12-2.2 means "*any other type of income-producing property other than property in classes 1, 2, 3A, 3B, and those properties included in classes 4B and 4C.*" A quarterly audit of all Class 4A sales submitted by the municipal assessor through the SR-1A/equalization process will determine whether a Class 4A transaction was recorded without proper documentation and the required Affidavits of Consideration.

#### 6. DIRECTOR'S RATIO

"Director's Ratio" means the average ratio of assessed to true value of real property for each taxing district as determined by the Director, Division of Taxation, in the Table of Equalized Valuations promulgated annually on or before October 1 in each year pursuant to N.J.S.A. 54:1-35.1. The table is used in the calculation and apportionment of distributions pursuant to the State School Aid Act of 1954.

#### 7. EQUALIZED VALUE

"Equalized Value" means the assessed value of the property in the year that the transfer is made, divided by the Director's Ratio. The Table of Equalized Valuations is promulgated annually on or before October 1 in each year pursuant to N.J.S.A. 54:1-35.1.

(Example: Assessed Value = \$1,000,000; Director's Ratio = 80%;  $\$1,000,000 \div 0.80 = \$1,250,000$ )

## Exhibit 69 - Affidavit of Consideration for Use by Seller- Continued

### 8. FULL EXEMPTION FROM THE REALTY TRANSFER FEE (GRANTOR/GRANTEE)

The fee imposed by this Act shall not apply to a deed:

(a) For consideration of less than \$100; (b) By or to the United States of America, this State, or any instrumentality, agency or subdivision; (c) Solely in order to provide or release security for a debt or obligation; (d) Which confirms or corrects a deed previously recorded; (e) On a sale for delinquent taxes or assessments; (f) On partition; (g) By a receiver, trustee in bankruptcy or liquidation, or assignee for the benefit of creditors; (h) Eligible to be recorded as an "ancient deed" pursuant to R.S. 46:16-7; (i) Acknowledged or proved on or before July 3, 1968; (j) Between husband and wife/civil union or registered domestic partners, or parent and child; (k) Conveying a cemetery lot or plot; (l) In specific performance of a final judgment; (m) Releasing a right of reversion; (n) Previously recorded in another county and full Realty Transfer Fee paid or accounted for as evidenced by written instrument, attested to by the grantee and acknowledged by the county recording officer of the county of such prior recording, specifying the county, book, page, date of prior recording, and amount of Realty Transfer Fee previously paid; (o) By an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this State; (p) Recorded within 90 days following the entry of a divorce/dissolution decree which dissolves the marriage /civil union or registered domestic partnership between the grantor and grantee; (q) Issued by a cooperative corporation, as part of a conversion of all of the assets of the cooperative corporation into a condominium, to a shareholder upon the surrender by the shareholder of all of the shareholder's stock in the cooperative corporation and the proprietary lease entitling the shareholder to exclusive occupancy of a portion of the property owned by the corporation.

### 9. PARTIAL EXEMPTION FROM THE REALTY TRANSFER FEE (C. 176, P.L. 1975; C. 113, P.L. 2003; C. 66, P.L. 2004)

The following transfers of title to real property shall be exempt from State portions of the Basic Fee, Supplemental Fee, and General Purpose Fee, as applicable: 1. The sale of any one- or two-family residential premises which are owned and occupied by a senior citizen, blind person, or disabled person who is the seller in such transaction; provided, however, that except in the instance of a husband and wife/civil union or registered domestic partners, no exemption shall be allowed if the property being sold is owned as joint tenants and one or more of the owners is not a senior citizen, blind person, or disabled person; 2. The sale of Low and Moderate Income Housing conforming to the requirements as established by this Act.

For the purposes of this Act, the following definitions shall apply:

"Blind person" means a person whose vision in his better eye with proper correction does not exceed 20/200 as measured by the Snellen chart or a person who has a field defect in his better eye with proper correction in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20°.

"Disabled person" means any resident of this State who is permanently and totally disabled, unable to engage in gainful employment, and receiving disability benefits or any other compensation under any federal or state law.

"Senior citizen" means any resident of this State of the age of 62 or over.

"Low and Moderate Income Housing" means any residential premises, or part thereof, affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs occupied or reserved for occupancy by households with a gross income equal to 80% or less of the median gross household income for households of the same size within the housing region in which the housing is located, but shall include only those residential premises subject to resale controls pursuant to contractual guarantees.

"Resident of the State of New Jersey" means any claimant who is legally domiciled in this State when the transfer of the subject property is made. Domicile is what the claimant regards as the permanent home to which he intends to return after a period of absence. Proofs of domicile include a New Jersey voter registration, motor vehicle registration and driver's license, and resident tax return filing.

### 10. TRANSFERS OF NEW CONSTRUCTION

"New construction" means any conveyance or transfer of property upon which there is an entirely new improvement not previously occupied or used for any purpose. On transfers of new construction, the words "NEW CONSTRUCTION" shall be printed clearly at the top of the first page of the deed, and an Affidavit by the grantor stating that the transfer is of property upon which there is new construction shall be appended to the deed.

### 11. REALTY TRANSFER FEE IS A FEE IN ADDITION TO OTHER RECORDING FEES

The county recording officer is required to collect the Realty Transfer Fee at the time the deed is offered for recording/transfer.

### 12. PENALTY FOR WILLFUL FALSIFICATION OF CONSIDERATION AND TRANSFERS OF NEW CONSTRUCTION

Any person who knowingly falsifies the consideration recited in a deed or in the proof or acknowledgment of the execution of a deed or in an affidavit annexed to a deed declaring the consideration therefor or a declaration in an affidavit that a transfer is exempt from a recording fee is guilty of a crime of the fourth degree (Chapter 308, P.L. 1991, effective June 1, 1992). Grantors conveying title of new construction who fail to subscribe and append to the deed an affidavit to that effect in accordance with the provisions of subsection c. of section 2 of Chapter 49, P.L. 1968 (C. 46:15-6) is guilty of a disorderly persons offense. The Division of Taxation is entitled to review the fees collected pursuant to the State Uniform Procedure Law. The Director of the Division of Taxation is authorized to make deficiency assessments to taxpayers who have, intentionally or mistakenly, underestimated the consideration or sales price of properties on the Affidavit of Consideration attached to deeds and upon which the Realty Transfer Fee is based.

### 13. COUNTY/MUNICIPAL CODES

County/Municipal codes may be found at <http://www.state.nj.us/treasury/taxation/pdt/lpt/cntycode.pdf>

## Exhibit 69 - Affidavit of Consideration for Use by Seller- Continued

### 8. FULL EXEMPTION FROM THE REALTY TRANSFER FEE (GRANTOR/GRANTEE)

The fee imposed by this Act shall not apply to a deed:

(a) For consideration of less than \$100; (b) By or to the United States of America, this State, or any instrumentality, agency or subdivision; (c) Solely in order to provide or release security for a debt or obligation; (d) Which confirms or corrects a deed previously recorded; (e) On a sale for delinquent taxes or assessments; (f) On partition; (g) By a receiver, trustee in bankruptcy or liquidation, or assignee for the benefit of creditors; (h) Eligible to be recorded as an "ancient deed" pursuant to R.S. 46:16-7; (i) Acknowledged or proved on or before July 3, 1968; (j) Between husband and wife/civil union or registered domestic partners, or parent and child; (k) Conveying a cemetery lot or plot; (l) In specific performance of a final judgment; (m) Releasing a right of reversion; (n) Previously recorded in another county and full Realty Transfer Fee paid or accounted for as evidenced by written instrument, attested to by the grantee and acknowledged by the county recording officer of the county of such prior recording, specifying the county, book, page, date of prior recording, and amount of Realty Transfer Fee previously paid; (o) By an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this State; (p) Recorded within 90 days following the entry of a divorce/dissolution decree which dissolves the marriage /civil union or registered domestic partnership between the grantor and grantee; (q) Issued by a cooperative corporation, as part of a conversion of all of the assets of the cooperative corporation into a condominium, to a shareholder upon the surrender by the shareholder of all of the shareholder's stock in the cooperative corporation and the proprietary lease entitling the shareholder to exclusive occupancy of a portion of the property owned by the corporation.

### 9. PARTIAL EXEMPTION FROM THE REALTY TRANSFER FEE (C. 176, P.L. 1975; C. 113, P.L. 2003; C. 66, P.L. 2004)

The following transfers of title to real property shall be exempt from State portions of the Basic Fee, Supplemental Fee, and General Purpose Fee, as applicable: 1. The sale of any one- or two-family residential premises which are owned and occupied by a senior citizen, blind person, or disabled person who is the seller in such transaction; provided, however, that except in the instance of a husband and wife/civil union or registered domestic partners, no exemption shall be allowed if the property being sold is owned as joint tenants and one or more of the owners is not a senior citizen, blind person, or disabled person; 2. The sale of Low and Moderate Income Housing conforming to the requirements as established by this Act.

For the purposes of this Act, the following definitions shall apply:

"Blind person" means a person whose vision in his better eye with proper correction does not exceed 20/200 as measured by the Snellen chart or a person who has a field defect in his better eye with proper correction in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20°.

"Disabled person" means any resident of this State who is permanently and totally disabled, unable to engage in gainful employment, and receiving disability benefits or any other compensation under any federal or state law.

"Senior citizen" means any resident of this State of the age of 62 or over.

"Low and Moderate Income Housing" means any residential premises, or part thereof, affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs occupied or reserved for occupancy by households with a gross income equal to 80% or less of the median gross household income for households of the same size within the housing region in which the housing is located, but shall include only those residential premises subject to resale controls pursuant to contractual guarantees.

"Resident of the State of New Jersey" means any claimant who is legally domiciled in this State when the transfer of the subject property is made. Domicile is what the claimant regards as the permanent home to which he intends to return after a period of absence. Proofs of domicile include a New Jersey voter registration, motor vehicle registration and driver's license, and resident tax return filing.

### 10. TRANSFERS OF NEW CONSTRUCTION

"New construction" means any conveyance or transfer of property upon which there is an entirely new improvement not previously occupied or used for any purpose. On transfers of new construction, the words "NEW CONSTRUCTION" shall be printed clearly at the top of the first page of the deed, and an Affidavit by the grantor stating that the transfer is of property upon which there is new construction shall be appended to the deed.

### 11. REALTY TRANSFER FEE IS A FEE IN ADDITION TO OTHER RECORDING FEES

The county recording officer is required to collect the Realty Transfer Fee at the time the deed is offered for recording/transfer.

### 12. PENALTY FOR WILLFUL FALSIFICATION OF CONSIDERATION AND TRANSFERS OF NEW CONSTRUCTION

Any person who knowingly falsifies the consideration recited in a deed or in the proof or acknowledgment of the execution of a deed or in an affidavit annexed to a deed declaring the consideration therefor or a declaration in an affidavit that a transfer is exempt from a recording fee is guilty of a crime of the fourth degree (Chapter 308, P.L. 1991, effective June 1, 1992). Grantors conveying title of new construction who fail to subscribe and append to the deed an affidavit to that effect in accordance with the provisions of subsection c. of section 2 of Chapter 49, P.L. 1968 (C. 46:15-6) is guilty of a disorderly persons offense. The Division of Taxation is entitled to review the fees collected pursuant to the State Uniform Procedure Law. The Director of the Division of Taxation is authorized to make deficiency assessments to taxpayers who have, intentionally or mistakenly, underestimated the consideration or sales price of properties on the Affidavit of Consideration attached to deeds and upon which the Realty Transfer Fee is based.

### 13. COUNTY/MUNICIPAL CODES

County/Municipal codes may be found at <http://www.state.nj.us/treasury/taxation/pdf/pt/entycode.pdf>

### **Section 5.5.3 Seller's Affidavit of Title**

As discussed in Section 3.3.10, the contract may require the seller to deliver an affidavit of title. The seller's form of affidavit of title appears as Exhibit 30.

The seller's affidavit of title is a sworn statement of the seller setting forth certain representations. Specifically, it states the names of the owners of the property and the fact that they are the sole owners of the property as of the date of the affidavit. It states that no one has any rights to the property by way of contract or lease. It also represents the date on which the seller acquired title to the property. The affidavit makes representations regarding the last date on which improvements were made to the property. Affidavits of title made by the seller usually state that no improvements were made within the past four months, and that representation is generally accepted by the buyer's attorney and the title insurance company. The reference to the four month period may have been the result of reliance on *N.J.S.A. 2A:44-91*, which permitted a mechanic's lien to be filed in the office of the county clerk within four months after the date when labor was last performed or materials were last furnished. However, since that statute was repealed in 1993, there is little statutory basis for the four month period.

The concerns which may arise due to construction performed by the seller are the potential for (a) an added assessment due to improvements which have been completed but where the municipality has not yet imposed the assessment, and (b) the filing of a lien on the property by an unpaid contractor. A statement is included in the affidavit that no work has been done to the property within the past 90 days in accordance with the Construction Lien Law, *N.J.S.A. 2A:44A-1 et seq.* Also, representations are made regarding the filing of a mechanic's lien against the property. As to any improvements which have been made by the seller, the seller makes representations regarding the compliance of those improvements with applicable laws. The representations made regarding the full payment of charges for municipal improvements are of significance to a purchaser so that the purchaser will not be responsible for any assessments which have been or may in the future be imposed by the municipality in connection with those improvements.

The affidavit includes representations regarding any legal interests which other parties may have in the property by virtue of lawsuits, judgments, security interests in the personalty or fixtures on the property. The affidavit of title also serves as a means of addressing any judgments which may have been retrieved by the title company against names that are the same as or similar to that of the seller, i.e. judgments not against the seller. In the event that such judgments are retrieved against the seller, those judgments should be attached to the affidavit of title and initialed by the seller in order to confirm that the seller has reviewed those judgments and makes the representation in the affidavit that the judgments are not against him or her. Most preprinted forms of affidavit of title include a representation in the affidavit of title that the judgments attached to the affidavit are not against the affiant.

The affidavit of title serves as a means to obtain marital information regarding the seller(s) and the related marital history. As discussed in Section 3.3.1(d), it is important at the outset to ascertain the marital history of the seller so that arrangements may be made to secure copies of relevant documents such as death certificates and divorce judgments. This information is important to determine that no

other party has an interest in the property that is not being conveyed to the purchaser as part of the transaction.

The affidavit of title should expressly state that the affidavit is true to the best of the affiant's knowledge, information and belief. Also, the affidavit should expressly state that the representations are being made based upon the title search obtained by the purchaser since the seller has made no independent inquiry regarding the status of title to the property. A typical clause might be that "the representations made in this affidavit of title are based upon that state of facts set forth in the Title Insurance Commitment issued by ABC Title Insurance Company, no. 123, dated \_\_\_\_\_ and continued through the date hereof."

#### **Section 5.5.4 1099-S**

Pursuant to the Tax Reform Act of 1986, I.R.C. §6045 *et seq.*, an information return must be filed with the Internal Revenue Service (IRS). [subsection e]. However, no filing is required for certain transactions including: refinances, gifts, foreclosures, apartment houses with more than 4 units, commercial property, and unimproved property. Corporations and governmental units are also exempt from the provisions of the Act. [Reg. §1.6045-3T(b)-(d)(2)]. Under the Act,

[T]he term 'real estate reporting person' means any of the following persons involved in a real estate transaction in the following order: (A) the person (including any attorney or title company) responsible for closing the transaction, (B) the mortgage broker, (C) the seller's broker, (D) the purchaser's broker, or (E) such other person designated in regulations prescribed by the Secretary.

§6045(e).

The "reporting person" must file the information return (Form 1099-S) with the IRS after September 30 of the year the transaction took place and on or before February 28 of the following year. [Reg. §1.6045-2(g)(3)]. The addresses of the Internal Revenue Services Centers can be found on the instructions for Form 1099-S. In addition to filing with the IRS, the reporting person is required to furnish the transferor with a copy of the completed Form 1099-S by not later than February 1 of the following year. Reg. [§1.6045-3T(m)(2)]. Note also that pursuant to I.R.C. §6045(e)(3), it is unlawful to separately impose a charge for complying with the Act's requirements.

The following information must be set forth on Form 1099-S: 1) the name, address, and taxpayer identification number (TIN) of the transferor; 2) a general description of the real estate transferred; 3) the date of closing; 4) the gross proceeds of the transaction; 5) the consideration received by the transferor and verification of its receipt; 6) the amount of any real estate tax credit received by the seller, representing the purchaser's portion of the real estate taxes; and 7) the real estate reporting person's name, address, and TIN. Read the form instructions carefully for additional required information. Reg. [§1.6045-3T(h)]. A 1099-S reporting form and certification appear as Exhibit 70.

Form 1099-S requires the seller's TIN, which for an individual seller is the person's social security number. Additionally, the reporting person is responsible for soliciting the TIN and requesting that the transferor certify it under penalty of perjury. Reg. §1.6045-3T(l).

While a husband and wife may be reported as one seller, in all other cases multiple sellers must be separately reported. In such cases, the multiple sellers must either agree on a particular allocation of the gross proceeds or accept that the total proceeds of the sale will appear on each seller's individual 1099-S.



## Exhibit 70 - 1099-S Reporting Form – Continued

### CERTIFICATION FOR NO INFORMATION REPORTING (1099-S) ON PRINCIPAL RESIDENCE

This form may be completed by the seller of a principal residence. This information is necessary to determine whether the sale or exchange should be reported to the seller, and to the Internal Revenue Service on Form 1099-S, Proceeds From Real Estate Transactions. If the seller properly completes Parts I and III, and makes a "yes" response to assurances (1) through (4) in Part II, no information reporting to the seller or to the Service will be required for that seller. The term "seller" includes each owner of the residence that is sold or exchanged. Thus, if a residence has more than one owner, a real estate reporting person must either obtain a certification form each owner (whether married or not) or file an information return and furnish a payee statement for any owner that does not make the certification.

#### Part I. Seller Information

1. Name (All sellers if more than 1 seller) **INSERT**
2. Street (or legal description) **INSERT**  
  
City, State, ZIP **INSERT**
3. Taxpayer Identification Number (TIN): **INSERT**

#### Part II. Seller Assurances

Check "true" or "false" for assurances (1) through (5), and "true", "false", or "not applicable" for assurance (6)

**True      False**

- |     |     |   |
|-----|-----|---|
| [ ] | [ ] | (1) I owned and used the residence as my principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence.  |
| [ ] | [ ] | (2) I have not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the residence   |
| [ ] | [ ] | (3) I (or my spouse or former spouse, if I was married at any time during the period beginning after May 6, 1997, and ending today) have not used any portion of the residence for business or rental purposes after May 6, 1997. |
| [ ] | [ ] | (4) At least one of the following three statements applies:   |

The sale or exchange is of the entire residence for \$250,000 or less.

OR

I am married, the sale or exchange is of the entire residence for \$500,000 or less, and the gain on the sale or exchange of the entire residence is \$250,000 or less.

OR

**Exhibit 70 - 1099-S Reporting Form - Continued**

I am married, the sale or exchange is of the entire residence for \$500,000 or less, and (a) I intend to file a joint return for the year of the sale or exchange, (b) my spouse also used the residence as his or her principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence, and (c) my spouse also has not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the residence.

☐ ☐ (5) During the 5-year period ending on the date of the sale or exchange of the residence, I did not acquire the residence in an exchange to which section 1031 of the Internal Revenue Code applied.

☐ ☐ ☐ N/A  
(6) If my basis in the residence is determined by reference to the basis in the hands of a person who acquired the residence in an exchange to which section 1031 of the Internal Revenue Code applied, the exchange to which section 1031 applied occurred more than 5 years prior to the date I sold or exchanged the residence.

**Part III. Seller Certification (All sellers must sign)**

Under penalties of perjury, I certify that all the above information is true as of the end of the day of the sale or exchange.

\_\_\_\_\_  
DATED:

Forwarding address : \_\_\_\_\_.

### **Section 5.5.5 Certificate of Nonforeign Status**

The Foreign Investment in Real Property Tax Act in Section 1445 of the Internal Revenue Code provides in pertinent part that "in the case of any disposition of a United States real property interest...by a foreign person, the [purchaser] shall be required to deduct and withhold a tax equal to 10 percent of the amount realized on the disposition." There are exceptions to this general rule including circumstances in which: a) the property was "acquired by the [seller] for use by him as a residence, and the amount realized for the property does not exceed \$300,000." I.R.C. §1445(b)(5)(A)-(B); b) the seller furnishes the purchaser with a "non-foreign affidavit" by such seller stating, under penalty of perjury, the seller's taxpayer identification number (which, for an individual, is the social security number) and that the seller is not a foreign person. I.R.C. §1445(b)(2).

The term "foreign person" as covered by these provisions generally refers to nonresident alien individuals as well as foreign corporations, partnerships, trusts, and estates. It will not always be apparent whether a seller is a foreign person, particularly when there are multiple sellers in the subject transaction. Where the purchase price of the property is in excess of \$300,000, the purchaser's attorney should include a clause in the contract requiring the seller(s) to sign a certificate of non-foreign status pursuant to I.R.C. §1445. It is also important to note that the purchaser is responsible for retaining this affidavit for at least five taxable years following the year in which the purchase took place, making such affidavit available to the I.R.S. upon request. A certificate of nonforeign status for completion and execution by an individual appears as Exhibit 71 and a certificate of nonforeign status for completion and execution by an entity appears as Exhibit 72. These certificates are commonly referred to as FIRPTA certificates.

**EXHIBIT 71 - CERTIFICATE OF NON-FOREIGN STATUS (INDIVIDUAL)**

**CERTIFICATE OF NON-FOREIGN STATUS  
(Individual)**

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon my transfer of a U.S. real property interest to the transferee, I, \_\_\_\_\_, hereby certify the following:

1. I am not a nonresident alien for purposes of U.S. income taxation;
2. My U.S. taxpayer identifying number (Social Security number) is \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_; and
3. My home address is \_\_\_\_\_.

I understand that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement I have made herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and it is true, correct and complete.

\_\_\_\_\_  
(Sign above)  
Print Name:

Date: \_\_\_\_\_

**EXHIBIT 72 - CERTIFICATE OF NON-FOREIGN STATUS (ENTITY)**

**CERTIFICATE OF NO-FOREIGN STATUS  
(Entity)**

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the transfer of a U.S. real property interest by \_\_\_\_\_ to the transferee, the undersigned hereby certifies the following on behalf of \_\_\_\_\_:

i) \_\_\_\_\_ is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

ii) The U.S. employer identification number of \_\_\_\_\_ is \_\_\_\_\_.

iii) The office address of \_\_\_\_\_ is \_\_\_\_\_.

\_\_\_\_\_ understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of \_\_\_\_\_.

\_\_\_\_\_  
Sign above

Print name:

Print Title:

Date: \_\_\_\_\_

### **Section 5.5.6 Survey Affidavit**

If the seller agreed either in the contract or, subsequently, at the request of the purchaser to give a survey affidavit, that document should be prepared and signed by the seller. It is common for a contract to provide that the purchaser is to obtain a current survey of the property and most lenders will also require that a current survey or a survey prepared within a certain timeframe, e.g. within six months before closing, be submitted as part of the loan documentation. However, in the event that the purchaser and the lender, if applicable, wish to rely on a survey affidavit of the seller rather than to procure a new survey, the seller is able and wishes to give such an affidavit, and the title company is willing to affirmatively insure title based upon the survey affidavit of the seller, the purchaser will then not be required to incur the cost associated with obtaining a new survey.

In giving a survey affidavit, the seller should understand the representations being made by the seller in this sworn statement. The affidavit will specifically make reference to an existing survey for the property which, most likely, will be the survey prepared for the seller at the time the seller took title to the property. The seller will make certain representations to the effect that, on the specific date set forth in the affidavit, the seller examined the property and that there have been no changes to the property or the improvements constructed thereon as reflected on the survey. In the event that there are any exceptions to that statement, e.g. the erection of a fence at a point in time after the preparation of the survey, a description of that exception should be inserted into the affidavit and the approval of the lender and the title company obtained. If changes to the property or improvements constructed since the last survey of the property may affect the title to the property, e.g. a fence constructed by the adjoining homeowner encroaches upon the subject property, the lender and title company may not accept the affidavit and may require a new survey of the property depicting the location of all improvements so that any adverse impact of the improvements may be determined before the lender will fund the mortgage loan and the title company will remove the title exception. A survey affidavit appears as Exhibit 73.

At times, the seller may be reluctant or unwilling to give a survey affidavit for reasons unrelated to the ability of the seller to confirm the statements made in the affidavit. Inquiry might be made to the title company and the lender as to their willingness to accept an affidavit from the purchaser, rather than from the seller. Even if an affidavit from the purchaser is acceptable and the purchaser wishes to give the affidavit, extreme caution should be exercised since the purchaser will not be familiar with the property and the history of any changes which might have been made to the property since the last survey was performed. The purchaser may also have limited opportunity to inspect the property. Due to the disadvantage which the purchaser has as to knowledge of the depicted improvements on the survey and any modifications which might have been made, the ability of the purchaser to make the representations required in the affidavit may be limited. As a result, the purchaser should be counseled against making the affidavit.

EXHIBIT 73 - SURVEY AFFIDAVIT

# Survey Affidavit

STATE OF NEW JERSEY  
COUNTY OF

} ss:

say(s) under oath:

**1. Representations.** If only one person signs this Affidavit, the word "we" shall mean "I." The statements in this Affidavit are true to the best of our knowledge, information and belief.

**2. Property.** We are the present owners (or duly authorized officers, partners, or members of the present owner), of Property located at

which we now to (called this "Property")

**3. Survey.** We have examined the attached survey of this Property dated made by

**4. No change.** The survey shows this Property in its present condition. There have been no changes in the boundary lines of this Property or in the buildings, fences or other improvements as shown on the survey. No buildings, fences or other improvements have been constructed on or next to this Property since the date of the survey, except as follows:

**5. Easements.** No other persons have any right to use this Property, except for the rights of utility companies to use this Property along the road or for the purpose of serving the Property. No other persons have the right of joint or separate use of any driveway, stairway, walk or path on or across the Property.

**6. Reliance.** We are aware that the Buyer(s), the Mortgage Lender and Title Insurer (if any) rely on our truthfulness and the statements made in this Affidavit.

Signed and sworn to before me on (date)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### **Section 5.5.7 Home Equity Line Termination**

If one of the mortgages encumbering the property is securing a home equity line against which the seller may draw funds, the seller will be required, at a minimum, to prove and document at or prior to closing that the account has been suspended and that the payoff letter issued by the lender is valid. A discussion of the payoff of a home equity credit line appears in Section 4.3.3(a).

### **Section 5.5.8 Settlement/Closing Statement**

The closing statement generated by the purchaser will have to be signed by either the seller or the seller's authorized agent. The closing statement may be in the form of either a RESPA settlement statement pursuant to the Real Estate Settlement Procedures Act (RESPA) or a separate title closing statement reflecting the financial terms between the seller and purchaser which may be prepared by either the purchaser's attorney or by the seller's attorney as a means of confirming the figures which apply to the transaction and advising the seller of those figures which apply to the transaction between the seller and the purchaser and with which the seller should be concerned. A copy of the RESPA settlement statement appears as Exhibit 63. A form of title closing statement which only reflects the financial terms of the transaction between the seller and the purchaser appears as Exhibit 65.

### **Section 5.5.9 Mortgage Transaction Related Documents**

At the closing, the lender providing financing to the purchaser may include as part of the mortgage package certain documents which require the signature of the seller or the authorized agent of the seller. Examples of these documents are discussed at Section 4.5.3 and appear as part of Exhibit 62. In the event that the seller may not attend the closing, it is important to anticipate the possibility that the purchaser's lender may require the signature of the seller on one or more documents. The attendance by the seller of the closing is discussed in Section 6.4.2.

### **Section 5.5.10 Notice to Attorn**

If the property being conveyed is subject to the continued occupancy of the tenant after closing, the seller must serve upon the tenant a notice to attorn upon closing. The notice advises the tenant of the transfer of the property, the identify of the new landlord and the address to which the rent should be sent, and confirms the transfer of the security deposit to the banking institution designated by the new owner for the retention of the security deposit. A form of notice to attorn appears as Exhibit 74. Discussion of other issues related to tenant-occupied properties appears in Section 7.4.

## **Section 5.6 Closing Figures**

Customarily, the purchaser's attorney will prepare the RESPA settlement statement for review by the seller's attorney prior to closing. The closing statement should be accompanied by a copy of the payoff statement in the event a copy of the payoff statement has not already been received by the seller's attorney. After a review of the RESPA settlement statement in conjunction with the title commitment received from the purchaser's attorney, the seller's attorney will be able to confirm the accuracy of the closing figures. All closing figures, including the payoff amount, should be confirmed

by the seller's attorney with the seller before advice of the agreement with the figures is given to the purchaser's attorney.

While it is important to review all of the figures, special attention should be paid to some of those figures which are either the financial obligation of the seller or about which the seller may have information unknown to the purchaser's attorney.

### **Section 5.6.1 Real Estate Brokerage Commission**

Since the responsibility for the payment of the broker's commission is typically that of the seller, the amount of the fee and the broker(s) to whom that amount is to be paid should be confirmed. If there is a listing broker involved in the transaction who listed the property on behalf of the seller, and a selling broker who showed the purchaser the home and provided services in placing the purchaser under contract with the seller, the payment of the commission should reflect the amount owed to each broker. Also, there may be a minor adjustment in the fee by approximately \$100.00 in order for there to be an equal allocation of the listing fee which may previously have been paid entirely by the listing broker. See Section 5.3 for a related discussion regarding real estate brokerage commissions.

### **Section 5.6.2 Realty Transfer Fee**

As discussed in Section 5.5.2, the seller is usually responsible for the realty transfer fee and the payment of the fee by the seller is effectuated by means of a credit to the purchaser in the amount due from the seller. The amount of the fee should be confirmed and, in the event a partial exemption from the fee applies, the fee should reflect the reduction in the fee arising from the partial exemption. See Section 5.5.2 for a discussion of partial and full exemptions and the accompanying affidavit of consideration or exemption.

### **Section 5.6.3 Deposit Monies**

If the attorney for the seller has been acting as escrow agent and holding the deposit monies in an attorney trust account, the funds should be drawn for delivery and payment to the seller at the time of closing. Also, if the contract provides for the payment of interest, the check(s) drawn payable to the proper payee(s) (seller, purchaser or a portion of the interest to both) should be delivered at closing as well. See the discussion at Section 5.3 if the deposit monies were held by a real estate broker involved in the transaction.

### **Section 5.6.4 Payoff Amount**

In response to the request for a payoff statement, the lender to which the seller had given a mortgage should have submitted a written payoff statement from which the full amount due to satisfy the mortgage encumbering the property can be calculated. A copy of the payoff statement should be submitted to the seller's attorney for review and approval as soon as the statement is received by the purchaser's attorney.

**EXHIBIT 74 - NOTICE TO ATTORN**

**NOTICE TO ATTORN**

[Name and Address of Seller]

[Date]

[Name and Address of Tenant]

**Re: Change in Ownership of [Property Address]**

Dear \_\_\_\_\_:

We are writing to inform you that on \_\_\_\_\_, the property in which you are a tenant was sold to \_\_\_\_\_, who is your new landlord. The address of your new landlord is \_\_\_\_\_.

Your security deposit, if any, and interest were delivered to your new landlord at the closing. Your security deposit will be held at [Name and address of banking institution].

You are hereby notified that, effective immediately, all payments required of you as tenant under your lease (including, without limitation, the payment of rent and other charges) are to be mailed to \_\_\_\_\_.

Very truly yours,

[Name of Seller]

The amount of the payoff must include interest through the date of receipt by the lender of the payoff check. In order to ensure receipt of the check by the date through which interest is calculated, it is common for interest to be calculated through the first business day after the date of closing (or the second business day after the date of closing in the event that the closing is being conducted late in the day and the purchaser's attorney will not be able to dispatch the check until the day after closing). The cost of the overnight delivery service of the check should also appear on the closing statement as a cost to be borne by the seller.

The financial obligation for the satisfaction of the mortgage is that of the seller. However, the purchaser's attorney will arrange for the dispatch of the payoff amount to the lender since the purchaser's attorney has the obligation to ensure that the purchaser receives clear title to the property.

The payoff the existing mortgages is discussed in Section 4.3.3(a).

### **Section 5.6.5 Final Readings**

The seller should ensure that final readings are performed relative to all utility service to the property including, but not limited to, sewer, water, gas, and electric service, to ensure that the responsibility of the seller for the charges for the service ceases as of the final reading. Typically, the final readings will be performed a day or two before the closing and, at times, as late as the day of closing itself. The need for final readings should be anticipated and requested in adequate time for the inspections to be performed and the readings rendered in writing.

In the case of gas and electric service and any other services which do not give rise to a municipal lien against the property in the event charges are not paid, the seller should arrange for final reading and for the final bill to be forwarded to the seller's new address. As a matter of courtesy, the seller should coordinate with the purchaser the termination or continuation of the utility service. If the purchaser wishes for the service to be continued and not terminated, the purchaser will be required to contact the utility service prior to the reading date in order to advise the company of the purchaser's identity, provide the necessary information to establish an account for service, and transfer service.

If fuel oil services the property, a final reading of the tank will have to be performed prior to closing. The fuel oil company will also provide a calculation of the value of the remaining fuel oil in the tank and, at the time of closing, the seller should seek from the purchaser the value of the remaining fuel oil in the tank in the form of either a credit to the seller or, if the reading is not available until after the adjustments have been completed, a check drawn by the purchaser directly to the seller in the amount of the statement issued by the fuel oil company. In the latter case, the fuel oil adjustment on the closing statement would be reflected as paid outside of closing (P.O.C.).

Where the service may give rise to a lien upon the property by virtue of the fact that it is provided by the municipality, e.g. sewer or water service, the purchaser's attorney will have to ensure that payment of any amounts due the municipality as the result of the seller's usage is made at the time of closing in order to clear title to the property at that time. If a final reading bill has issued or the amount is available from the municipality, the purchaser's attorney will give the purchaser a credit and pay the final bill at the time of closing. If the final reading is not available at the time of closing, the title company should be consulted in establishing an escrow in order to be certain that funds are

available to pay the bill when it is issued. Depending upon the circumstances, a title company may require the amount placed in escrow to be one and one half times to two times the estimated amount of the expense. A form of escrow agreement for use pending the results of a final utility reading appears as Exhibit 75. The use of escrow agreements is further discussed in Section 6.5.

### **Section 5.6.6 Nonresident Income Tax**

In accordance with *N.J.S.A. 54A:1-1 et seq.*, a portion of the proceeds of sale is to be withheld to pay the Gross Income Tax on the seller's gain if the seller is a non-resident individual, estate or trust. The amount withheld must be paid at the time of recording of the deed executed in connection with the sale of such real estate. The amount of the payment is based on the taxable income received by the seller from the sale of the property, and is calculated by multiplying the seller's gain from the sale by 8.97%, the highest rate imposed by the Gross Income Tax. However, the estimate tax payment may never be less than 2% of the consideration stated in the deed. This payment must be accompanied by a "Nonresident Seller's Tax Declaration," which states the amount of the tax payment, and is given to the buyer or the buyer's attorney at the time of closing. The buyer or buyer's attorney must submit the original form to the County Recording Office, which will attach the top portion of the form and record it along with the deed. The County Recording Office will forward the bottom portion, NJ-1040-ES, along with the remitted payment to the State of New Jersey. A form of Nonresident Seller's Tax Declaration (GIT/REP-1) appears as Exhibit 76.

A nonresident seller that wishes to prepay the Gross Income Tax would complete the Nonresident Seller's Tax Prepayment Receipt (GIT/REP-2) and remit the form, along with the form the appropriate payment and NJ-1040-ES, to the New Jersey Division of Taxation. A form of Nonresident Seller's Tax Payment Receipt (GIT/REP-2) appears as Exhibit 77. A receipted original of the form will be given to the seller by the Division of Taxation for presentation to the buyer or the buyer's attorney at the closing. The original payment receipt is to be recorded along with the deed.

If the Seller is either a resident taxpayer or otherwise exempt from payment of the Gross Income Tax payment, the seller is required to complete and record, along with the deed in a transfer, a Seller's Residency Certification/Exemption (GIT/REP-3), a form of which appears as Exhibit 78. The form sets forth the assurances which the seller must make in order to be deemed exempt from payment of the Gross Income Tax.

A form of Waiver of Seller's Filing Requirement of GIT/REP Forms and Payment to be submitted to the Division of Taxation (GIT/REP-4), along with documentation supporting the request for exemption from the Gross Income Tax appears as Exhibit 79. When the request for an exemption has been granted by the Division of Taxation, the Division will affix its seal to the form as evidence of the authorization of the waiver. The form must be recorded along with the deed in the county recording office.

Beginning May 1, 2012, the Waiver of Seller's Filing Requirement of GIT/REP Forms and Payment (GIT/REP-4) is not required to be filed with the Division of Taxation where the property is being sold pursuant to a short sale. Instead, in short sale situations, the Seller's Residency Certification/Exemption (GIT/REP-3) must be completed with Box 9 checked. By checking Box 9, the seller gives its assurance that the property is being sold subject to a short sale instituted by the

mortgagee, whereby the seller has agreed not to receive any proceeds for the sale and the mortgagee will receive all proceeds paying off any agreed amount of the mortgage.

Also, the Waiver of Seller's Filing Requirement of GIT/REP Forms and Payment (GIT/REP-4)) is not required in situations where a deed dated prior to August 1, 2004 (an ancient deed") was not recorded. If a deed dated prior to August 1, 2004 was not recorded, Form GIT/REP-3 must be completed with Box 20 checked.

In the event the deed being recorded or re-recorded is a corrective or confirmatory deed for no consideration, the Waiver of Seller's Filing Requirement of GIT/REP Forms and Payment for Corrected Deed with No Consideration (GIT/REP-4a) must be completed by the record title owner and submitted along with the deed. A copy of the form appears as Exhibit 80.

The New Jersey Division of Taxation has determined that nonresident taxpayers claiming an exemption under Internal Revenue Code Section 1031 are exempt from making a payment for the like kind property received, but must pay an estimated tax payment of the Fair Market Value of the consideration received for the non-like kind property. Therefore, the taxpayer must submit both GIT/REP-1 and GIT/REP-3 to the County Recording Office in such circumstances. Form GIT/REP-3 was revised to reflect the change.

#### **Section 5.6.7. Bulk Sales Notification**

N.J.S.A. 54:50-38 was enacted for the protection of purchasers and the State of New Jersey. The law provides that the purchaser of any business assets must notify the State ten (10) days in advance of the pending closing. The law requires the establishment of an escrow if there is the potential that the seller has tax liability of the State Division of Taxation of the New Jersey Department of the Treasury (the "Division"). By doing so, the purchaser can ensure that it will not inherit any potential New Jersey tax liability from the seller. After all final payments of State tax debts are made, the Division will authorize the release of the remaining portion of escrow to the seller by issuing the Division's clearance letter.

N.J.S.A. 54:50-38 imposes the requirement of notification to the director of the Division of the proposed sale, transfer, or assignment of business assets. The notification to the director is intended to give the State the ability to prescribe that a possible claim for State taxes exists and the amount of the State's claim. N.J.S.A. 54:50-38.1.a.(1) provides that:

Whenever a person shall make a sale, transfer, or assignment in bulk of any part or the whole of the person's business assets except as provided in paragraph (2) of this subsection, otherwise than in the ordinary course of business, the purchaser, transferee or assignee shall, at least 10 days before taking possession of the subject of the sale, transfer or assignment, or paying therefore, notify the director by registered mail, or other such method as the director may prescribe, of the proposed sale and the price, terms and conditions thereof...(emphasis added)

The law exempts transactions "in the ordinary course of business," which is interpreted to mean any transfer of assets considered to be in the ordinary course of the specific business of the seller. A

common example of an exempt transaction is the case where a developer buys tracts of land and builds houses to sell. This is what the developer does on a regular day-to-day basis. If the developer sells a house it built, the transfer is not subject to the bulk sales law.

Furthermore, the law was amended effective September 14, 2011, with such amendment applying retroactively to sales, transfers and assignments on or after August 1, 2007. Under the amendment, sales of one or two family homes, condominium units or cooperative apartments are exempt, provided the seller is an “individual”, “estate” or “trust” as those terms are used under the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1 et seq.* The exemption includes “seasonal rental properties”, which are defined as (a) timeshares, or (b) property rented for less than 125 consecutive days for residential purposes by a person having a permanent place of residence other than at the property. The exemption does not include properties owned by business entities (including limited liability companies) or properties with more than two residential units or any commercial space.

For notification to be properly made under the law, the “Notification of Sale, Transfer, or Assignment in Bulk”, referred to as Form C-9600, must be completed and submitted to the Bulk Sale Section of the Division by the purchaser. The completed form must include valid taxpayer identification numbers for both the seller and purchaser, a specific date of closing, and must be signed. A copy of the executed contract of sale, court order or assignment agreement clearly showing the sales price and all the terms and conditions of the transfer must be submitted with Form C-9600. Form C-9600, and the contract or other document, must be received by the Division of Taxation at least ten (10) days prior to the date of closing. Form C-9600 appears as Exhibit 81.

The seller may also complete and submit to the Division an Asset Transfer Tax Declaration (Form TTD) before or after the closing date. A Form TTD Appears as Exhibit 82.

The Division will inform the purchaser of the amount of the sales proceeds (if any) to be held in escrow for the seller’s outstanding tax liabilities before the closing may occur. If the Division requires the purchaser to escrow any amounts at closing, then the purchaser must notify the Division when the closing occurs, or if the closing does not occur. A sample letter from the Division of Taxation instructing the establishment of an escrow appears as Exhibit 83.

If the seller has no outstanding tax liabilities, then the Division will notify the purchaser that the seller has no outstanding tax liabilities and will permit the purchaser to release the escrowed amount to the seller. If the seller may have outstanding tax liabilities, the Division will require that the seller’s final returns have been filed and the seller’s final tax liabilities have been determined. The Division will issue a letter to the purchaser demanding the purchaser to remit all or a portion of the escrowed amount to the Division for the seller’s outstanding tax liabilities. If the seller has outstanding tax liabilities, after the seller’s final returns have been filed and the seller’s final tax liabilities have been paid, then the Division will issue a letter to the purchaser demanding the purchaser to remit all or a portion of the escrowed amount to the Division for the seller’s outstanding tax liabilities, and authorize the purchaser to release the balance of the escrowed amount to the seller. The Division will issue a “clearance letter” which authorizes the release of the funds held in escrow. A sample clearance letter from the Division appears as Exhibit 84.

### **Section 5.7      Foreclosure Properties and Deeds in Lieu of Foreclosure**

In representing either a seller who took title to property by a sheriff's deed as the result of a foreclosure action brought against a mortgagor or a seller of a property in whom title vested by virtue of a deed from the mortgagor in lieu of foreclosure, the title commitment prepared for the purchaser's attorney may reflect certain exceptions due to the vesting of the property by a sheriff's deed or deed in lieu of foreclosure, respectively. The title commitment may expressly reflect as an exception the requirement that the chancery abstracts for the foreclosure proceeding be examined prior to the omission of that exception from the title commitment. The examination of the chancery abstracts will assure the title company that all of the requirements for a successful foreclosure action, such as notice to the appropriate parties, have been met thereby reducing the possibility of a claim against the property by a party whose rights were not legally extinguished as part of the foreclosure proceeding.

If the review of the chancery abstracts discloses a defect in the foreclosure proceedings, the attorney for the seller who handled the foreclosure may be required to reopen the proceedings in order to cure the defect which exists. If the attorney who represented the seller in the foreclosure proceeding differs from the attorney handling the sale of the property, the lack of familiarity with the foreclosure proceedings may have a substantial impact on the ability of the attorney representing the seller in the sale of the property to assess with the seller and the purchaser's attorney the timeframe within which the defect may be cured.

**EXHIBIT 75 - ESCROW AGREEMENT (FINAL READING)**

ESCROW AGREEMENT

ESCROW AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, by and among:  
\_\_\_\_\_, about to reside at \_\_\_\_\_  
(hereinafter referred to as "Seller") and \_\_\_\_\_, about to reside at \_\_\_\_\_  
\_\_\_\_\_ (hereinafter referred to as "Buyer") and \_\_\_\_\_  
\_\_\_\_\_ having an office located at \_\_\_\_\_  
\_\_\_\_\_ (hereinafter referred to as "Escrow Agent").

WITNESSETH:

WHEREAS, Buyer and Seller have entered into an Agreement for the sale of real property situated in \_\_\_\_\_ known as \_\_\_\_\_ (the "Property"); and

WHEREAS, closing of title in accordance with the Agreement occurred on \_\_\_\_\_; and

WHEREAS, water charges due to \_\_\_\_\_ Water Company (the "Water Company") for the period from \_\_\_\_\_ to \_\_\_\_\_ remain open and unpaid; and

WHEREAS, a final reading of all charges imposed for water usage through the date of closing had not been secured by the date of closing; and

WHEREAS, Seller and Buyer have agreed to place \$\_\_\_\_\_ of the purchase price in escrow to ensure payment for the foregoing;

NOW, THEREFORE, in consideration of the closing of this transaction, the mutual promises and covenants, and other good and valuable consideration, the parties hereto agree as follows:

iv) The Buyer and Seller hereby appoint and designate the Escrow Agent to serve as Escrow Agent pursuant to the terms of this Escrow Agreement and the Escrow Agent hereby accepts his appointment and designation. The Escrow Agent hereby acknowledges receipt from the Buyer of \$\_\_\_\_\_ (the "Escrow Funds").

v) The parties hereto agree that the Escrow Agent shall deposit the Escrow Funds in a trust account entitled "\_\_\_\_\_, Attorney Trust Account. Notwithstanding the foregoing designation, said sums are held in escrow to be disbursed as provided in this Escrow Agreement.

vi) Buyer has requested a final reading of the water meter to be performed by the Water Company and a final bill to be sent to the Escrow Agent. Upon the Escrow Agent's receipt of same, the Escrow Agent will forward payment to the Water Company of all amounts due through the date of closing. The Escrow Agent will forward to the Seller's attorney, \_\_\_\_\_, a copy of the final bill and any amounts remaining in escrow upon payment of the final bill.

vii) In the event said amount being held in escrow is not sufficient to satisfy all of the outstanding charges as of the date of closing, Seller hereby guarantees to pay all such additional amounts upon receipt of a copy of the final bill and indemnifies and holds Buyer harmless against any loss or claim arising from same.

**Exhibit 75 - Escrow Agreement (Final Agreement) - Continued**

viii) The Escrow Agreement shall be terminated upon disbursement by the Escrow Agent of all Escrow Funds in the manner required by the Escrow Agreement or upon the mutual agreement of the parties hereto.

ix) Seller and Buyer, by execution hereof, indemnify and agree to hold the Escrow Agent harmless from any and all claims or causes of action, damages or injuries arising out of or in any way related to the performance of its duties in connection herewith, except for those matters arising out of the Escrow Agent's gross negligence.

x) Seller acknowledges that the Escrow Agent is the attorney for the Buyer and that in the event of a dispute between Seller and Buyer arising out of this Escrow Agreement or the closing of title on \_\_\_\_\_, said Escrow Agent shall not be disqualified from representing Buyer by reason of its role as Escrow Agent. Notwithstanding the foregoing, in the event of any dispute between the Buyer and Seller concerning the Escrow Funds, the Escrow Agent shall retain the Escrow Funds until resolution of the dispute, or in the discretion of the Escrow Agent, may arrange for arbitration in the County of \_\_\_\_\_, New Jersey before a single arbitrator designated by the American Arbitration Association in accordance with the Laws or Rules of the American Arbitration Association, with the costs of said arbitration to be divided equally between Seller and Buyer.

xi) This Escrow Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective heirs, successors and Assigns. This Escrow Agreement may be amended, modified, superseded, waived or cancelled only by a written instrument executed by all parties hereto.

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Seller

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Escrow Agent

By: \_\_\_\_\_

AMOUNT OF THIS PAYMENT \$ 1,100

## Exhibit 76 - Nonresident Seller's Tax Declaration - Continued

GIT/REP-1  
(7-07)

### Tax Declaration Instructions

This form is only to be completed by nonresident individuals, estates or trusts selling property in New Jersey on or after August 1, 2004.

**Name(s):** Name of seller(s). If more than one owner, separate forms must be used except for husband & wife/civil union couples/registered domestic partnership who file jointly.

**Address:** Seller(s) primary residence or place of business. Do not use the address of the property being sold if a new residence has been established.

**Property Information:** Information as listed on deed of property being sold.

**Percentage of Ownership:** If there is more than one owner, list seller's percentage of ownership.

**Consideration:** "Consideration" means in the case of any deed, the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid for the transfer of title to the lands, tenements or other realty, including the remaining amount of any prior mortgage to which the transfer is subject or which is assumed and agreed to be paid by the grantee and any other lien or encumbrance not paid, satisfied or removed in connection with the transfer of title. If there is more than one owner, indicate seller's portion of total consideration received. If the total consideration for the property is \$1,000 or less complete the Seller's Residency Certification/Exemption form GIT/REP-3 (ALL-STATE LEGAL's form #1647) and check box 6 under Seller's Assurances.

**Signature:** Seller(s) must sign and date the declaration. If the seller's representative is signing the declaration, a copy of the power of attorney form or letter signed by the seller granting this authority must be attached.

The NJ-1040-ES must be completed in its entirety. The seller must include his/her social security number or federal tax identification number.

Payment in the form of check or money order should be made payable to the State of New Jersey — Division of Taxation. Cash is not acceptable. Tax payment is determined by multiplying the gain on the sale of the property by the highest Gross Income Tax rate of 8.97%. Gain is to be determined without taking into consideration any distributions during the taxable year to beneficiaries by estates or trusts. In no case can the payment be less than 2% of the consideration received.

All information requested on this form must be completed. Failure to complete the form in its entirety will result in the deed not being recorded.

This form and associated payment must be completed at the time of closing and given to the buyer or the buyer's attorney.

The buyer or buyer's attorney must submit the original Seller's Declaration of Tax to the county clerk at the time of recording the deed. Failure to submit the Seller's Declaration of Tax or the Seller's Residency Certification or a Tax Prepayment Receipt will result in the deed not being recorded.

The county clerk will attach the top portion of the form to the deed when recorded. The bottom portion, NJ-1040-ES, along with remittance will be forwarded by the County Clerk to the State of New Jersey, Revenue Processing Center, PO Box 222, Trenton, New Jersey 08646-0222.

Additional information regarding the Gross Income Tax estimated payment requirements on the sale of real estate can be found on the Division of Taxation's web page at [www.state.nj.us/treasury/taxation](http://www.state.nj.us/treasury/taxation).

**EXHIBIT 77 - NONRESIDENT SELLER'S TAX PREPAYMENT RECEIPT**

State of New Jersey  
**NONRESIDENT SELLER'S TAX  
 PREPAYMENT RECEIPT**  
 (C.55, P.L. 2004)

GIT/REP-2  
 (2-07)

(Please Print or Type)

**SELLER(S) INFORMATION:**

Name(s)

Street Address:

City, Town, Post Office

State

Zip Code

**PROPERTY INFORMATION (Brief Property Description):**

Block(s)

Lot(s)

Qualifier

Street Address:

City, Town, Post Office

State

Zip Code

Seller's Percentage of Ownership

Consideration

Closing Date

**SELLER(S) DECLARATION:**

The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein could be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete.

Date

Signature

(Seller) Please indicate if Power of Attorney or Attorney in Fact

Date

Signature

(Seller) Please indicate if Power of Attorney or Attorney in Fact

I hereby certify by affixing the Seal of the Director,  
 Division of Taxation, that on

(date)

payment was received from the seller(s) listed above,  
 in an amount as required under C.55, P.L. 2004 but  
 not less than 2% of the consideration price stated  
 above.

**ORIGINAL FORM MUST BE SUBMITTED TO COUNTY CLERK. PHOTOCOPIES ARE NOT ACCEPTABLE.**

## Exhibit 77 - Nonresident Seller's Tax Prepayment Receipt - Continued

### Prepayment Receipt Instructions

This form is only to be completed by nonresident individuals, estates or trusts selling or transferring property in New Jersey.

Name(s):	Name of seller(s). If more than one owner separate forms must be used except for husband & wife/civil union couples/registered domestic partnership who file jointly
Address:	Seller(s) primary residence or place of business. Do not use the address of the property being sold if a new residence has been established.
Property Information:	Information as listed on deed of property being sold.
Percentage of Ownership:	If there is more than one owner, list seller's percentage of ownership.
Consideration:	"Consideration" means in the case of any deed, the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid for the transfer of title to the lands, tenements or other realty, including the remaining amount of any prior mortgage to which the transfer is subject or which is assumed and agreed to be paid by the grantee and any other lien or encumbrance not paid, satisfied or removed in connection with the transfer of title. If there is more than one owner, indicate seller's portion of total consideration received. If the total consideration for the property is \$1,000 or less, complete the Seller's Residency Certification/Exemption form GIT/REP-3 (ALL-STATE LEGAL's form #1647) and check box 6 under Seller's Assurances.
Signature:	Seller(s) must sign and date the declaration. If the seller's representative is signing the declaration, a copy of the power of attorney form or letter signed by the seller granting this authority must be attached.

Payment in the form of check or money order should be made payable to the State of New Jersey – Division of Taxation. Cash is not acceptable. Tax payment is determined by multiplying the gain on the sale of the property by the highest Gross Income Tax rate of 8.97%. Gain is to be determined without taking into consideration any distributions during the taxable year to beneficiaries by estates or trusts. In no case can the payment be less than 2% of the consideration received.

All information requested on this form must be completed. Failure to complete the form in its entirety will result in the deed not being recorded.

This form, associated payment and form NJ-1040-ES must be completed prior to time of closing and submitted to the Division of Taxation in person at one of the Division's offices. A receipted original will be given to seller at that time.

The seller must give the receipted original to the buyer or the buyer's attorney at closing. The seller should keep a copy for his or her own records.

The buyer or buyer's attorney must submit the original Prepayment Receipt to the county clerk at the time of recording the deed. Failure to submit this form or a Nonresident Seller's Tax Declaration (GIT/REP-1) or a Seller's Residency Certification (GIT/REP-3) will result in the deed not being recorded.

The county clerk will attach this form to the deed when recording the deed.

# EXHIBIT 78 - SELLER'S RESIDENCY CERTIFICATION/EXEMPTION



State of New Jersey

## Seller's Residency Certification/Exemption

(C.55, P.L. 2004)

GIT/REP-3  
(5-12)

(Please Print or Type)

### SELLER(S) INFORMATION (see Instructions, page 2):

Name(s) \_\_\_\_\_

Current Resident Address \_\_\_\_\_

City, Town, Post Office \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

### PROPERTY INFORMATION (Brief Property Description):

Block(s) \_\_\_\_\_ Lot(s) \_\_\_\_\_ Qualifier \_\_\_\_\_

Street Address \_\_\_\_\_

City, Town, Post Office \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Seller's Percentage of Ownership \_\_\_\_\_ Consideration \_\_\_\_\_ Closing Date \_\_\_\_\_

### SELLER'S ASSURANCES (Check the Appropriate Box) (Boxes 2 through 10 apply to Residents and NON-residents):

1. ☐ I am a resident taxpayer (individual, estate or trust) of the State of New Jersey pursuant to N.J.S.A. 54A:1-1 et seq. and will file a resident gross income tax return and pay any applicable taxes on any gain or income from the disposition of this property.
2. ☐ The real property being sold or transferred is used exclusively as my principal residence within the meaning of section 121 of the federal Internal Revenue Code of 1986, 26 U.S.C. s. 121.
3. ☐ I am a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4. ☐ Seller, transferor or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5. ☐ Seller is not an individual, estate or trust and as such not required to make an estimated payment pursuant to N.J.S.A. 54A:1-1 et seq.
6. ☐ The total consideration for the property is \$1,000 or less and as such, the seller is not required to make an estimated payment pursuant to N.J.S.A. 54A:5-1-1 et seq.
7. ☐ The gain from the sale will not be recognized for Federal income tax purposes under I.R.C. Section 721, 1031, 1033 or is a cemetery plot. (CIRCLE THE APPLICABLE SECTION.) If such section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale (see instructions).  
☐ No non-like kind property received.
8. ☐ Transfer by an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this state.
9. ☐ The property being sold is subject to a short sale instituted by the mortgagee, whereby the seller has agreed not to receive any proceeds from the sale and the mortgagee will receive all proceeds paying off an agreed amount of the mortgage.
10. ☐ The deed being recorded is a deed dated prior to the effective date of P.L. 2004, c. 55 (August 1, 2004), and was previously unrecorded.

### SELLER(S) DECLARATION:

The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein could be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete. By checking this box ☐, I certify that the Power of Attorney to represent the seller(s) has been previously recorded or is being recorded simultaneously with the deed to which this form is attached.

\_\_\_\_\_  
Date Signature (Seller) Please indicate if Power of Attorney or Attorney in Fact

\_\_\_\_\_  
Date Signature (Seller) Please indicate if Power of Attorney or Attorney in Fact

**Exhibit 78 - Seller's Residency Certification/Exemption - Continued**GIT/REP-3  
(5-12)**Seller's Residency Certification/Exemption Instructions**

This form is to be completed by individuals, estates, trusts or any other entity selling or transferring property in New Jersey not subject to the Gross Income Tax estimated payment requirements under C55, P.L. 2004.

**Name(s):** Name of seller(s). If more than one owner, separate forms must be used except for husband & wife/civil union couples who file their income tax returns jointly.

**Address:** Seller(s) primary residence or place of business. Do not use the address of the property being sold. Unless a new residence (permanent place of abode, domicile) has been established in New Jersey and said new residence is listed under seller(s) information, the seller(s) is considered a nonresident. Part-year residents will be considered nonresidents.

Nonresident seller(s) will be required to make an estimated Gross Income Tax payment if they do not meet any of the seller(s) assurances.

**Property Information:** Information as listed on deed of property being sold.

**Percentage of Ownership:** If there is more than one owner, list seller's percentage of ownership.

**Consideration:** "Consideration" means in the case of any deed, the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid for the transfer of title to the lands, tenements or other realty, including the remaining amount of any prior mortgage to which the transfer is subject or which is assumed and agreed to be paid by the grantee and any other lien or encumbrance not paid, satisfied or removed in connection with the transfer of title. If there is more than one owner, indicate seller's portion of total consideration received. If the total consideration for the property is \$1,000 or less, complete the Seller's Residency Certification/Exemption form GIT/REP-3 and check box 6 under Seller's Assurances.

**Seller's Assurances:** If you meet one of the eight criteria listed, you are not required to make a tax payment at this time. Check which box is appropriate to your situation. Note that boxes 2 through 10 apply to residents and non-residents.

Persons claiming an exemption under block #2 must be claiming an income/gain exclusion on their federal return for the property being sold within the meaning of § 121 of the Internal Revenue Code of 1986.

Non-resident taxpayers claiming an exemption under box #7 for IRC section 1031 and receiving non-like kind property (i.e. money, stocks, etc.) as well as like kind property (i.e., real estate) with the exchange, must fill out the GIT/REP-1, NON-RESIDENT SELLER'S TAX DECLARATION form showing the non-like kind amount, and remit an estimated tax payment on the Fair Market Value of the consideration received for the non-like kind property. If no non-like property was received please check the block indicating such.

A third party (the accommodation party) for a deferred like-kind exchange must remit an estimated tax payment of 2% of the fair market value of the consideration received for the non-like kind property on behalf of the taxpayer if non-like property is received when the 1031 transaction is completed or remit 2% of the total consideration if the 1031 transaction is voided. Payment must be sent directly to the State of New Jersey, Revenue Processing Center, P.O. Box 222, Trenton, NJ 08646-0222. Please fill out GIT/REP-1 and NJ-1040-ES Voucher.

Complete a GIT/REP-3 AND GIT/REP-1. The GIT/REP-3 should show the value of the like kind exchange. The GIT/REP-1 should show the Fair Market Value of or consideration received for the non-like kind property (whichever is more).

**Example:** Mr. Smith exchanges rental property A with a fair market value of \$1.2 million for rental property B with a fair market value of \$1.0 million and receives \$200,000 in cash (non-like kind property). An estimated tax payment is required to be withheld on the \$200,000 in consideration of non-like kind property for non-residents.

PROPERTY A	\$ 1,200,000
PROPERTY B	\$ 1,000,000
CASH	\$ 200,000
Consideration for estimated tax payment for GIT/REP-1	\$ 200,000

**Signature:** Seller(s) must sign and date the declaration. If the seller's representative is signing the declaration, either (1) a Power of Attorney executed by the seller(s) to the representative must be previously recorded or recorded simultaneously with the deed to which this form is attached, or (2) a letter signed by the seller(s) granting authority to the representative to sign this form must be attached.

All information requested on this form must be completed. Failure to complete the form in its entirety will result in the deed not being recorded.

This form must be completed at the time of closing and given to the buyer or the buyer's attorney.

The buyer or buyer's attorney must submit the original Seller's Residency Certification/Exemption (GIT/REP-3) to the county clerk at the time of recording the deed. Failure to submit the Seller's Residency Certification/Exemption (GIT/REP-3) or Nonresident Seller's Tax Declaration (GIT/REP-1) or a Nonresident Seller's Tax Prepayment Receipt (GIT/REP-2) will result in the deed not being recorded.

The county clerk will attach this form to the deed when recording the deed.

Additional information regarding the Gross Income Tax estimated payment requirements on the sale of real estate can be found on the Division of Taxation's web page at [www.state.nj.us/treasury/taxation](http://www.state.nj.us/treasury/taxation).

**EXHIBIT 79 - WAIVER OF SELLER'S FILING REQUIREMENT  
OF GIT/REP FORMS AND PAYMENT**

GIT/REP-4  
(11-04)

State of New Jersey

**Waiver of Seller's Filing Requirement**  
of GIT/REP Forms and Payment  
(C.55, P.L. 2004)

(Please Print or Type)

**OWNER(S) INFORMATION:**

Name(s) \_\_\_\_\_

Street Address \_\_\_\_\_

City, Town, Post Office \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**PROPERTY INFORMATION (Brief Property Description):**

Block(s) \_\_\_\_\_ Lot(s) \_\_\_\_\_ Qualifier \_\_\_\_\_

Street Address \_\_\_\_\_

City, Town, Post Office \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**DIVISION OF TAXATION WAIVER DECLARATION:**

This waiver form with the raised seal of the New Jersey Division of Taxation at the bottom right-hand corner may be presented to the appropriate county recording officer for recording along with the deed of the owner as identified in the information above. This form represents that the Division of Taxation has granted a waiver of the requirement that the grantor/seller/transferor of the subject real property named herein need not file a GIT/REP-1, GIT/REP-2 or GIT/REP-3 form or pay any tax on estimated gain from the transfer pursuant to P.L. 2004, c. 55, and that the county recording officer is hereby authorized to accept this waiver form in lieu of any other GIT/REP form without payment of any tax on estimated income gain.

By affixing the Seal of the Director,  
Division of Taxation, this date

\_\_\_\_\_  
(date)

the Division of Taxation has authorized this waiver.

(affix seal here)

**ORIGINAL FORM MUST BE SUBMITTED TO COUNTY CLERK. PHOTOCOPIES ARE NOT ACCEPTABLE.**

## Exhibit 79 - Waiver of Seller's Filing Requirement - Continued

GIT/REP-4  
(11-04)

### Waiver of Seller's Filing Requirement Instructions

This form is only to be completed by individuals, estates, trusts or any other entity recording a deed not subject to the Gross Income Tax estimated payment requirements under C.55, P.L. 2004 and not covered by one of the other GIT/REP forms.

Name(s):	Name of owner(s).
Address:	Owner(s) primary residence or place of business.
Property Information:	Information as listed on deed being recorded.

All information requested on this form must be completed. Failure to complete the form in its entirety will result in the deed not being recorded.

This form, along with documentation supporting the request for exemption, must be completed and submitted to the Division of Taxation, Regulatory Services Branch, PO Box 269, Trenton, New Jersey, 08695 for approval prior to the deed being presented to the County Clerk for recording. Documentation supporting the request should include:

1. Detailed reasons why the exemption is being requested.
2. Copy of the RESPA/HUD-1 form or other documentation, other than the deed, showing the date the transaction closed or the deed was conveyed.
3. Copy of deed or deeds to be recorded or rerecorded.

The Division of Taxation may request additional documentation or information as it deems necessary to make a determination.

The Division of Taxation will either approve the request by affixing the raised seal of the Director, Division of Taxation, to the form or send a rejection notice.

The owner or owner's attorney must submit the original Waiver of Seller's Filing Requirement of GIT/REP Forms and Payment to the County Clerk at the time of recording the deed. Failure to submit this form or a Nonresident Seller's Tax Declaration (GIT/REP-1) or a Nonresident Seller's Tax Prepayment Receipt (GIT/REP-2) or a Seller's Residency Certification (GIT/REP-3) will result in the deed not being recorded.

The county clerk will attach this form to the deed when recording the deed.

# EXHIBIT 80 - WAIVER OF SELLER'S FILING REQUIREMENT OF GIT/REP FORMS AND PAYMENT FOR CORRECTED DEED WITH NO CONSIDERATION

GIT/REP-4a  
(12-04)

State of New Jersey

## Waiver of Seller's Filing Requirement of GIT/REP Forms and Payment for Corrected Deed with No Consideration (C.55, P.L. 2004)

(Please Print or Type)

### OWNER(S) INFORMATION:

Name(s) \_\_\_\_\_

Current Resident Address \_\_\_\_\_

City, Town, Post Office \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

### PROPERTY INFORMATION (Brief Property Description):

Block(s) \_\_\_\_\_ Lot(s) \_\_\_\_\_ Qualifier \_\_\_\_\_

Street Address \_\_\_\_\_

City, Town, Post Office \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

### OWNER(S) DECLARATION:

The undersigned is (are) the title owner(s) of the real property identified under the "Property Information" section above. By presenting this declaration fully completed and signed by me (us), I (we) represent that the deed to which this form is attached is for corrective or confirmatory purposes only. In other words, the deed needs to be recorded or re-recorded solely due to a typographical, clerical, property description or other scrivener error or omission and there is no consideration for the corrective or confirmatory deed. The county recording officer will accept this form for recording along with such deed. The recording officer may also, however, continue to accept the GIT/REP-4 form with the Division's raised seal in lieu of the GIT/REP-4A.

This waiver form may be presented to the appropriate county recording officer for recording along with the deed of the owner as identified in the information above. Accordingly, the county recording officer is hereby authorized to accept this waiver form in lieu of any other GIT/REP form without any further payment of any tax on estimated income gain pursuant to P.L. 2004, c. 55.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature  
(Owner) Please indicate if Power of Attorney or Attorney in Fact

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature  
(Owner) Please indicate if Power of Attorney or Attorney in Fact

## Exhibit 80 - Waiver of Seller's Filing Requirement of GIT/REP Forms and Payment for Corrected Deed with No Consideration - Continued

GIT/REP-4a  
(12-04)

### Waiver of Seller's Filing Requirement Instructions

This form is only to be completed by a title owner recording a deed to which this form is attached for corrective or confirmatory purposes only which needs to be recorded or re-recorded due to a typographical, clerical, property description or other scrivener error or omission and there is no consideration for the corrective or confirmatory deed that is subject to the Gross Income Tax estimated payment requirements under C.55, P.L. 2004 and is not covered by one of the other GIT/REP forms. The information to be put on the form includes:

Name(s): Name of owner(s) listed on the deed as the grantee(s).

Address: Owner(s) primary residence or place of business.

Property Information: Information as listed on the corrective or confirmatory deed being recorded.

All information requested on this form must be completed. Failure to complete the form in its entirety will result in the deed not being recorded.

The owner or owner's attorney must submit the original Waiver of Seller's Filing Requirement of GIT/REP-4A form to the County Clerk at the time of recording the corrective or confirmatory deed. Failure to submit this form or a Nonresident Seller's Tax Declaration (GIT/REP-1) or a Nonresident Seller's Tax Prepayment Receipt (GIT/REP-2) or a Seller's Residency Certification (GIT/REP-3) or other waiver form (GIT/REP-4) will result in the deed not being recorded.

The county clerk will attach this form to the deed when recording the deed.

## **Section 5.8      Deceased Record Owners and Estates**

If the subject property of a transaction is either being conveyed by the estate of the decedent or the surviving record owner(s) where one or more of the record owners is deceased, the situation gives rise to a special set of concerns. Where the property is being conveyed by the estate of the deceased record owner, the contract will specify that the property is owned by the estate of the decedent. In order to contract for the sale of and convey title to the property, representatives of the estate should be prepared to provide evidence that: the will of the decedent provides for the disposition of the property, the will has been probated, the estate does not owe New Jersey Transfer Inheritance Tax by means of providing a waiver from the tax, and the estate does not owe U.S. Federal Estate Tax. The title company will also require a copy of the death certificate. Furthermore, the title company may require the completion of a questionnaire by a representative of the estate and the posting of a bond since the real property of the decedent may be liable for the debts of the decedent for a period of one year after death. *N.J.S.A. 3B:22-22*. Where the property is being conveyed by the remaining surviving record owner(s), the same requirements may apply.

*N.J.S.A. 54:38-6* imposes a lien for unpaid estate tax obligations on the decedent's realty, and establishes an exemption for the New Jersey estate tax for estates having a gross value of less than \$675,000. New Jersey estate taxes are considered a lien against real property and, if not paid, would be raised as exception to title by the title company. In pertinent part, the law provides that "no property owned by the decedent as of the date of the decedent's death may be transferred without the written consent of the Director of the Division of Taxation in the Department of Treasury or pursuant to such rules as the Director may prescribe."

## **CHAPTER VI THE CLOSING**

The discussion regarding the closing has been divided into two sections. The first section has been captioned the "Mortgage Closing" and the second has been captioned the "Title Closing."

The two captions may not be exactly precise; however, the intention is to differentiate between the functions which will occur on the closing day which involve the participation of only the purchaser and the purchaser's attorney and those which require not only the participation of the purchaser and the purchaser's attorney, but the seller and the seller's attorney as well. As a matter of professional courtesy to the seller and the seller's attorney, every effort should be made by the purchaser's attorney to schedule the closing functions so that those efforts that do not require the seller or the seller's attorney, such as satisfying the requirements of the lender providing financing to the purchaser or ensuring that the purchaser has brought sufficient and proper funds to the closing, are completed prior to the arrival of the seller and the seller's attorney for the title closing.

To the extent possible, the following will be a chronological discussion of the closing. The section on the Mortgage Closing will encompass all of the efforts which should be completed by the purchaser and the purchaser's attorney prior to the arrival by the seller and the seller's attorney at the closing. The Title Closing will include that which transpires between the purchaser and seller and their respective attorneys at the closing.

### **Section 6.1 Time and Place of Closing**

As discussed in Section 3.3.7, the closing is commonly held at the purchaser's attorney's office since the purchaser's attorney should be able to call upon the resources of the attorney's own office in closing the mortgage transaction and coordinating all of the parties and efforts in closing title to the property. Typically, the purchaser's attorney will schedule a title closing with the seller and the seller's attorney approximately one-half to one hour after the time scheduled with the purchaser to close the mortgage and to perform the other functions described as part of the mortgage closing. In reality, the mortgage closing may take more or less time depending on the number of mortgage documents and the disposition of the purchaser. The purchaser's attorney should attempt to take into consideration both factors in estimating the amount of time required to close the mortgage.

It should be noted that a representative from the title company usually does not attend closing. Title company representatives routinely are asked to attend closings of matters involving complex titles, expensive properties or large mortgage amounts, or where required by the lender. However, a title company representative will attend the closing for a residential property if requested to do so. A sample schedule of attendance fees imposed by a title company appears as part of Exhibit 43. If a representative from the title company does attend the closing, the performance of many of the services which follow, such as the delivery of the title continuation, the marking-up of the title commitment, and the recordation of documents that would otherwise be performed by the purchaser's attorney will be undertaken by the representative of the title company at closing.

### **Section 6.2 Title Continuation**

As discussed in Section 4.3.5, approximately twenty-four (24) to forty-eight (48) hours prior to the closing (depending on the requirements of the title company which issued the title commitment),

the purchaser's attorney should order a continuation of the title searches reflected in the title commitment. The title continuation will reflect all changes in the title commitment since its issuance and any endorsements thereafter made to the title commitment by the title company.

Prior to closing, the purchaser's attorney should receive a telephone call from the title company advising of the results of the rundown. Title should not be closed until the rundown has been received. On a best case basis, the title company will advise that there is "no change" in the status of title reflected in the title commitment other than confirmation of the filing of the notices of settlement. A discussion of the notice of settlement requirement appears at Section 4.3.4.

In the event that there has been a change in the status of title, such as the retrieval of additional judgments against either the seller or the purchaser, or the recording of a mortgage against the property subsequent to the issuance of the title commitment, the title company should transmit by telecopy to the purchaser's attorney a copy of the pertinent documents to attend to the disposition of the item if it affects the purchaser's interests. If the additional items retrieved by the title company affect the seller or have arisen due to actions taken by the seller, such as the recording of a mortgage instrument, the seller's attorney should be contacted immediately to discuss the disposition of the items prior to or at the closing.

### **Section 6.2.1 Marking-Up the Title Commitment**

The "marking-up" of the title commitment consists of the purchaser's attorney systematically addressing each item on the title commitment and the status of each item reflected in the title commitment or in subsequent endorsements to the title commitment. As reflected in the sample marked-up title commitment which appears as Exhibit 85, the attorney should note the date through which the title continuation was performed and, adjacent to each item reflected on the commitment and any amendments, the disposition of each of the items.

Items may be marked with the word "omit" where the requirements of the title company have been satisfied to eliminate the item, such as the payoff an existing mortgage, or by the word "except" as to those items which will remain of record. Such items might include utility easements and other existing easements and restrictions of record which do not render title unmarketable. When an item has been marked "omit", it is good practice to also note the manner in which the item was disposed of, e.g. "Payoff mailed 1/21/10", "First quarter real estate taxes paid 1/21/10". Where the title company has agreed to provide affirmative insurance as to any item, the title commitment should be marked to reflect the affirmative insurance given by the title company. By way of example, when a restrictive covenant has been recorded, the lender may seek affirmative insurance to the effect that restrictive covenant has not been violated and that a violation of the restrictive covenant in the future will not result in a forfeiture of title. Also, where the title company amended or removed title exceptions and has issued endorsements to its title commitment, the title commitment should be marked to reflect those endorsements. If the status of any item in the title commitment has changed, such as the payment of real estate taxes beyond that reflected in the title commitment, the quarter through which the real estate taxes are being paid should be marked on the title commitment. Similarly, if a municipal charge such as that for sewer or water service is being paid at the time of closing, the payment of those charges should be marked on the title commitment as well. The purchaser's attorney should sign each page of the title commitment or adjacent to each notation as confirmation of the accuracy of the disposition of each item marked on the title commitment.

## EXHIBIT 81 - NOTIFICATION OF SALE, TRANSFER, OR ASSIGNMENT IN BULK FORM (C-9600)

C-9600  
10-07, R-7

### STATE OF NEW JERSEY DEPARTMENT OF THE TREASURY DIVISION OF TAXATION

OVERNIGHT DELIVERY:  
Bulk Sale Section  
50 Barrack Street  
Trenton, NJ 08695

MAILING ADDRESS:  
Bulk Sale Section  
PO Box 245  
Trenton, NJ 08695-0245

### NOTIFICATION OF SALE, TRANSFER, OR ASSIGNMENT IN BULK

#### ATTACH COPY OF PENDING CONTRACT OF SALE OR TRANSFER

This form is to be used by the purchaser/transferee to notify the Director of the Division of Taxation, of any bulk transfer in accordance with P.L. 2007, Chapter 100 (A5002). **See Reverse Side.**

By statute the following information is required to be submitted by registered mail ten (10) days before taking possession of, or paying for, the property. **CERTIFIED MAIL OR OVERNIGHT DELIVERY IS ALSO ACCEPTABLE.**

Name of Purchaser(s) \_\_\_\_\_

Trade Name of Purchaser(s) \_\_\_\_\_

Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Federal Identification No. \_\_\_\_\_ Social Security No. \_\_\_\_\_

Name and Address of Attorney  
or Escrow Agent for Purchaser \_\_\_\_\_

Telephone Number (\_\_\_\_\_) \_\_\_\_\_

Seller's N.J. Tax Identification No. \_\_\_\_\_

Name of Seller(s) \_\_\_\_\_

Trade Name of Seller(s) \_\_\_\_\_

Seller's Liquor License No. (If Applicable) \_\_\_\_\_

Name of Officer, Partner, or Individual Owner \_\_\_\_\_

Home Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Home Phone Number (\_\_\_\_\_) \_\_\_\_\_ Business Phone Number (\_\_\_\_\_) \_\_\_\_\_

Federal Identification No. \_\_\_\_\_ Social Security No. \_\_\_\_\_

Name and Address of Attorney  
or Agent for Seller \_\_\_\_\_ Phone Number (\_\_\_\_\_) \_\_\_\_\_

Date Seller Acquired Business: Month \_\_\_\_\_ Year \_\_\_\_\_

SCHEDULED DATE OF SALE \_\_\_\_\_

Sales Price of Furniture, Fixtures & Equipment ..... \$ \_\_\_\_\_

Sales Price of Land and Building ..... \$ \_\_\_\_\_

Sales Price of Other Assets (attach schedule) ..... \$ \_\_\_\_\_

Total Sales Price ..... \$ \_\_\_\_\_

TERMS AND CONDITIONS OF SALE \_\_\_\_\_

LOCATION OF BUSINESS OR PROPERTY \_\_\_\_\_

TYPE OF BUSINESS \_\_\_\_\_

Signature \_\_\_\_\_

Title - If other than purchaser, please identify \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT 81 - Notification Of Sale, Transfer, Or Assignment In Bulk  
(Form C-9600) - Continued**

In accordance with P.L. 2007, Chapter 100 (A5002), whenever a person required to collect any state tax, or whenever a person subject to any state tax, shall make a sale, transfer, or assignment in bulk of any part or the whole of his business assets, otherwise than in the ordinary course of business, the purchaser, transferee, or assignee shall at least 10 days before taking possession of the subject of said sale, transfer, or assignment, or paying therefor, notify the Director by Registered Mail of the proposed sale and of the price terms and conditions thereof whether or not the seller, transferrer, or assignor has represented to, or informed the purchaser, transferrer, or assignee that he owes any tax pursuant to this act, and whether or not the purchaser, transferee, or assignee has knowledge that such taxes are owing and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the Director as required, by the preceding paragraph, or whenever the Director shall inform the purchaser, transferee, or assignee that a possible claim for such tax or taxes exists, any sums of money, property, or choses in action, or other consideration, which the purchaser, transferee, or assignee is required to transfer over to the seller, transferrer, or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferrer, or assignor to the State, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferrer or assignor any such sums of money, property, or choses in action to the extent of the amount of the State's claim. For failure to comply with the provisions for this section, the purchaser, transferee, or assignee, shall be personally liable for the payment to the State of any such taxes theretofore or thereafter determined to be due to the State from the seller, transferrer, or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this act.

**Title 54 of the New Jersey Statutes Annotated also provides the following:**

**54:49-1 Tax a debt and lien; preference; proceeds paid to Director**

The taxes, fees, interest and penalties imposed by any such State tax law, or by this subtitle, from the time the same shall be due, shall be a personal debt of the taxpayer to the State, recoverable in any court of competent jurisdiction in an action in debt in the name of the State. Such debt, whether sued upon or not, shall be a lien on all the property of the debtor except as against an innocent purchaser for value in the usual course of business and without notice thereof, and except as may be provided to the contrary in any other law, and shall have preference in any distribution of the assets of the taxpayer, whether in bankruptcy, insolvency, or otherwise. The proceeds of the judgment or order obtained hereunder, shall be paid to the Director.

(L. 1936, c.263, § 302, p. 808, as amended L.1952, c.169, § 1, p.44.)

**(Not an Official Reprint)**

## EXHIBIT 82 - ASSET TRANSFER TAX DECLARATION (FORM TTD)



# ASSET TRANSFER TAX DECLARATION

P.L. 2007, Chapter 100 (A5002)  
N.J.S.A. 54:50-38

New Jersey Division of Taxation  
Bulk Transfers  
Box 245  
Trenton NJ 08695-0245

Form TTD  
This form may be reproduced  
(Please print or type)

**Party Information**

Seller's Name: \_\_\_\_\_

Seller's FID/EIN: \_\_\_\_\_

Purchaser's Name: \_\_\_\_\_

**Business Type (check one)**S-Corporation \* ☐ Partnership \* ☐ LLC \* ☐ Corporation ☐ Proprietor ☐ State of Formation \_\_\_\_\_Return type filed to report gain: CBT ☐ PART ☐ NJ1040 ☐ NJ1040NR ☐ SS# \_\_\_\_\_\* If a gain is declared (Line 9), each intended K-1 recipient must complete a declaration. Number of K-1s: ☐**Realty Location**Block(s)  Lot(s) Street Address City  State  Zip **Calculation of Estimated Tax (to nearest dollar) See reverse side for specific line instructions.**

1. Consideration / Purchase Price	1. \$	_____	,	_____	,	_____	.
2. Settlement Charges (Not to include Mortgage/Loan payoffs)	2. \$	_____	,	_____	,	_____	.
3. Cost After Depreciation	3. \$	_____	,	_____	,	_____	.
4. Current Year Loss	4. \$	_____	,	_____	,	_____	.
5. NOL Carryover (if allowable)	5. \$	_____	,	_____	,	_____	.
6. IRC Section 1031 Exchange (if applicable)	6. \$	_____	,	_____	,	_____	.
7. Gain (subtract lines 2 through 6 from line 1)	7. \$	_____	,	_____	,	_____	.
❖ 8. Amount of Gain Deferred (if applicable)	8. \$	_____	,	_____	,	_____	.
9. Current Year Gain (subtract line 8 from line 7)	9. \$	_____	,	_____	,	_____	.
10. _____ % Share of Gain if K-1 (multiply line 9 by percentage)	10. \$	_____	,	_____	,	_____	.
11. Tax Rate from NJ-1040 Schedule ( <u>not effective rate</u> )	11.			%		_____	.
12. Estimated Tax on Gain Due (line 10 multiplied by line 11)	12. \$	_____	,	_____	,	_____	.
❖ Will there be installment proceeds? Yes <input type="checkbox"/> No <input type="checkbox"/> (if yes, give details on reverse side.)							

**Taxpayer's Declaration**

I declare that all the information on this declaration is correct. I am aware that if any of the foregoing information provided by me is knowingly false, I am subject to punishment.

Date: \_\_\_\_\_

Owner/Partner/Member Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT 82 - Asset Transfer Tax Declaration (Form TTD) - Continued**

**N.J.S.A. 54:50-38** instructs the Director, Division of Taxation, to notify the purchaser, transferee or assignee of business assets of any possible claim for State taxes. This directive includes all final business tax returns and payment.

**Procedure**

The estimated tax on the gain portion of the escrow to be held at closing is *initially calculated* by multiplying the gross consideration by the tax rate of the taxpayer.

- ❖ Upon completion of this declaration, submission to and review by the Division, the estimated tax on the gain portion of the escrow *may be reduced* appropriately.

Upon closing of the transaction, the escrow will be held by the **transferee's attorney** and the estimated tax on the gain portion of the escrow will be demanded by the Division to be applied to the appropriate tax type and year. A confirmation of receipt and the application of the estimated tax payment will be sent to the transferor's attorney.

The taxpayer files their year end business tax return, claims credit for the payment and pays any additional tax due. They may request a refund or credit if an overpayment exists.

**Specific Line Instructions for Estimated Tax Calculation**

**Special Note:** Lines 1 through 9 establish gain. Line 10 assigns share.

**Line 1:** Total price or consideration of all assets being transferred.

**Line 2:** Total amount of settlement charges to transferor associated with this transaction.

**Line 3:** If fully depreciated enter zero.

**Line 8:** Calculate amount deferred based on installment or short term notes.

**Line 9:** For NJ1065 filers: If any member/partner is not an *individual* or if the number of nonresident member/partners exceeds five (5) **stop here** and attach the most current membership directory. The Division will calculate and communicate the estimated tax for resident filers and/or withholding amount for nonresident filers.

**Line 11:** Individual tax rates may be found in the most current NJ-1040 in instructions. Corporate tax rate 6.5% (\$1-\$50,000), 7.5% (\$50,001-\$100,000) or 9% (above \$100,000).

- ❖ **Line 12:**
  - C-Corporation - use the *greater* of declared tax or minimum tax. (\$500, \$750, \$1,000, \$1,500 or \$2,000 based on NJ Gross Receipts.)
  - S-Corporation - minimum tax applies in addition to any tax on gain.
- ❖ This is the declared amount that the Division will demand from escrow to be applied to the taxpayer's account(s).

**Details of Installment proceeds:**


EXHIBIT 83 - BULK TRANSFER ESCROW LETTER



State of New Jersey  
DEPARTMENT OF THE TREASURY  
DIVISION OF TAXATION

June 5, 20

C/O CHRISTINE F LI, ESQ.  
POB 5600  
WOODBRIIDGE NJ 07095

RE: FIRST , LLC  
TAXPAYER ID NO: xxx-xxx-  
CASE NO : 1  
BULK SALE NO : DP

Dear Taxpayer:

Please be advised that with respect to the bulk transfer of the business assets of FIRST LLC, the records of the Division of Taxation indicate that all tax returns required to be filed, pursuant to Title 54 and 54A of the Revised Statutes of New Jersey, have been filed and the taxes reported to be due thereon have been paid by, or on behalf of, the seller.

Accordingly, the Division will not assert liability against the transferee pursuant to the bulk transfer provisions of the New Jersey tax statutes, and there is no further requirement that the purchaser withhold any amount from the purchase price to be paid to the seller.

This clearance is given solely for the purpose of authorizing the release of monies held in escrow. The filing of the required returns and the payment of the tax reported to be due does not release the seller from any liabilities that may be determined to be due as a result of an audit of the books and records at some future date.

Very truly yours,

A handwritten signature in cursive script that reads "Teresa A. Wandling".

Teresa A. Wandling  
Division of Taxation

CC: FIRST

LLC

IN REPLY REFER TO:

DAVID PERRONE  
NJ DIVISION OF TAXATION  
BULK SALES SECTION  
P O BOX 245  
TRENTON NJ 08695-0245  
609-984-6751

2230D05845205956805000001001 040C

New Jersey is an Equal Opportunity Employer

EXHIBIT 84 - BULK TRANSFER ESCROW RELEASE LETTER



State of New Jersey  
DEPARTMENT OF THE TREASURY  
DIVISION OF TAXATION

May 4, 20

C/O CHRISTINE F LI, ESQ.  
POB 5600  
WOODBRIIDGE NJ 07095

RE: FIRST :  
TAXPAYER ID NO: XXX-XXX-  
CASE NO : 1  
BULK SALE NO : DP#5/12

LLC

Dear Taxpayer:

This office has received information with respect to the sale, transfer, or assignment in bulk of the business assets of FIRST : LLC.

Following the receipt of the tax returns required to be filed by the seller, an office examination will be made to determine whether a complete audit will be required.

In the event that title to the assets is transferred prior to our examination of the transferor's records, you are hereby advised that \$85,000.00 be placed in escrow to protect the interests of the purchaser and the State of New Jersey for any unpaid tax liabilities.

**WARNING:** The escrow monies should not be released to the seller until such time as you have a clearance letter, *issued by this office for that purpose*, in your possession.

Persons commencing business or opening additional places of business must register at least 15 business days prior to commencement or opening. Registration may be completed on line at [www.state.nj.us/njbgs](http://www.state.nj.us/njbgs) or the Client Registration Bureau may be contacted at (609)292-1730.

Furthermore, once the closing has occurred or if the sale does not take place, written notification is requested.

FIRST

LLC

IN REPLY REFER TO:

DAVID PERRONE  
NJ DIVISION OF TAXATION  
BULK SALES SECTION  
P O BOX 245  
TRENTON NJ 08695-0245  
609-984-6751

2230D05845205956805000001011 020H

New Jersey is an Equal Opportunity Employer

## EXHIBIT 85 - MARKED-UP TITLE COMMITMENT

## COMMITMENT FOR TITLE INSURANCE

*"Marked-Up"*Issued by **Chicago Title Insurance Company**

CHICAGO TITLE INSURANCE COMPANY

Chicago Title Insurance Company, a Nebraska corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six (6) months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

IN WITNESS WHEREOF, Chicago Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

Issued by:  
Chicago Title Company, LLC  
2 University Plaza, Suite 206  
Hackensack, NJ 07601

Countersigned:



CHICAGO TITLE INSURANCE COMPANY

By:

*(Signature)*  
Raymond R. Quirk  
President

By:

*(Signature)*  
Michael L. Gravelle  
Secretary

By: *(Signature)*  
Authorized Officer or Agent

## CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed insured and such parties included under the definition of insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <<http://www.alta.org>>.

Alta Commitment - 2005

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



## Exhibit 85 - Marked-Up Title Commitment - Continued

*"marked-Up"*

## COMMITMENT FOR TITLE INSURANCE

Issued By:



CHICAGO TITLE INSURANCE COMPANY

2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK, NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336

## SCHEDULE A

Your Ref: HARI / FELDMAN

Title No.

2013-00326

This Commitment expires six (6) months after the Commitment Date.

Title Officer: Renee Pulsifer (Direct Dial: 732-504-0421)

Escrow Officer:

Escrow No.:

Loan No: 246994188

File No. 2013-00326

Address Reference: 22 RED COAT DRIVE,  
EAST BRUNSWICK, NJ 08816

1. Effective Date: February 08, 2013 Revised: 04/23/2013 at

2. Policy or Policies to be issued:

ALTA OWNERS POLICY (6/17/06)

Amount: \$333,837.00

Proposed Insured:

ALTA LOAN POLICY (6/17/06)

Amount: \$243,837.00

Proposed Insured: Bank of America, N.A., it's affiliates and subsidiaries

3. The estate or interest in the land described or referred to in this Commitment is Fee Simple

4. Title to the FEESIMPLE estate or interest in the land is at the Effective Date vested in:

WILLIAM FELDMAN and PEARL FELDMAN, HUSBAND AND WIFE

Under Deed From: JANROB CONSTRUCTION CO., A CORPORATION OF THE STATE OF  
NEW JERSEY

Dated: DECEMBER 20, 1968 Recorded: DECEMBER 31, 1968

Deed Book: 2646 Page: 759

Records of Middlesex County, New Jersey

*\* Recertify by Deed + M/Lge dated 5/24/13  
rec 8/08/13*

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association

Print date: September 30, 2013 10:31:17 AM

**Exhibit 85 - Marked-Up Title Commitment - Continued**

**COMMITMENT FOR TITLE INSURANCE**

Issued By:



CHICAGO TITLE INSURANCE COMPANY

2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK, NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336

**SCHEDULE A (Continued)**

Your Ref: HARI / FELDMAN

Title No.

2013-00326

5. The land referred to in this Commitment is described as follows:

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF**

*See page  
following...*

ALTA Commitment - Schedule A-66 Continued

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association

Print date: September 30, 2013 at 9:50/2013

**Exhibit 85 - Marked-Up Title Commitment - Continued**

**COMMITMENT FOR TITLE INSURANCE**

Issued By:



CHICAGO TITLE INSURANCE COMPANY

2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336

**SCHEDULE A (Continued)**

Your Ref: HARI / FELDMAN

Title No.

2013-00326

**EXHIBIT "A"**

**Legal Description**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE TOWNSHIP OF EAST BRUNSWICK, COUNTY OF MIDDLESEX, AND STATE OF NEW JERSEY, AND IS DESCRIBED AS FOLLOWS:

BEING KNOWN AND DESIGNATED AS LOT 24 IN BLOCK 317-H, AS SHOWN ON A CERTAIN FILED MAP ENTITLED "MAP OF DEERFIELD ESTATES, SITUATE IN THE TOWNSHIP OF EAST BRUNSWICK, MIDDLESEX COUNTY, NEW JERSEY" DULY FILED IN THE OFFICE OF THE CLERK/REGISTER OF MIDDLESEX COUNTY, ON NOVEMBER 3, 1967 AS MAP 3137, FILE 955.

BEING FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF REDCOAT DRIVE, 50.00 FEET WIDE, SAID POINT BEING DISTANT 105.30 FEET EASTERLY FROM THE EASTERLY TERMINUS OF A 15.00 FOOT RADIUS ARC CONNECTING THE EASTERLY LINE OF COLONIAL DRIVE, 50.00 FEET WIDE, WITH THE SOUTHERLY LINE OF REDCOAT DRIVE, AND RUNNING; THENCE

(1) ALONG THE SOUTHERLY LINE OF REDCOAT DRIVE, AND ALONG AN ARC HAVING A RADIUS OF 525.00 FEET AND CURVING TO THE LEFT, A DISTANCE OF 100.00 FEET TO A POINT; THENCE

(2) SOUTH 02 DEGREES 39 MINUTES 05 SECONDS EAST, A DISTANCE OF 180.65 FEET TO A POINT; THENCE

(3) NORTH 75 DEGREES 42 MINUTES 10 SECONDS WEST, A DISTANCE OF 134.34 FEET TO A POINT; THENCE

(4) NORTH 08 DEGREES 15 MINUTES 45 SECONDS EAST, A DISTANCE OF 153.76 FEET TO THE POINT AND PLACE OF BEGINNING.

BEING IN ACCORDANCE WITH A SURVEY PREPARED BY A-1 LAND SURVEYS, INC., PROFESSIONAL LAND SURVEYORS, DATED MAY 16, 2013.

BEING ALSO KNOWN AS (REPORTED FOR INFORMATIONAL PURPOSES ONLY):

Block 317.08, Lot 24 on the official tax map of the TOWNSHIP OF EAST BRUNSWICK, County of Middlesex, State of New Jersey

Print date: September 30, 2013 10:33:19 AM

## Exhibit 85 - Marked-Up Title Commitment - Continued

### COMMITMENT FOR TITLE INSURANCE

Issued By:



CHICAGO TITLE INSURANCE COMPANY

2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336

### SCHEDULE B - Section I

Your Ref: HARI / FELDMAN

Title No.

2013-00326

### SCHEDULE B - SECTION I REQUIREMENTS

Commitment No: 2013-00326

The following are the requirements to be complied with:

1. Instrument(s) creating the estate or interest to be insured must be approved, executed, delivered, recorded and properly indexed in the land records.
2. Payment of the full consideration to, or for the account of, the grantors and/or mortgagor(s).
3. Payment of all applicable rates and charges to the Company.
4. If the present transaction is an assignment of a mortgage or lease, an estoppel certificate executed by the owner of the fee must be obtained.
5. If the present transaction consists in whole or in part of a conveyance, mortgage or lease by a corporation, a certified copy of the Resolution of the Board of Directors authorizing the transaction together with a certificate that the corporation is solvent and the By-Laws have been complied with must be obtained.
6. An affidavit of title executed by the seller(s) and/or mortgagor(s) must be obtained and the facts set forth therein must be considered.
7. The Company requires that you order a title continuation search ("Run-Down" or "Bring-Down") at least 24 hours prior to the scheduled closing or settlement. If the date of closing or settlement is postponed, you must order a new title continuation search.
8. The Company requires that a Notice of Settlement in connection with this transaction be filed, pursuant to N.J.S.A. 46:26A-11, as nearly as possible to, but not more sixty (60) days before, the anticipated date of recording of the closing documents. If the closing is postponed, a second Notice must be filed before the expiration of the first. If both a deed and mortgage are to be insured, two (2) Notices must be filed: one for the deed, and the other for the mortgage.
9. If the present transaction involves a mortgage to be insured and in the event the proceeds of the loan to be secured by the mortgage to be insured are not to be fully disbursed at closing (or if any of the proceeds of the loan are to be deposited into a construction disbursement or similar account), the Company must be notified prior to closing and this Commitment will be modified accordingly.

ALTA Commitment - Schedule B-06

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association

Print date: September 30, 2013 10:33:20 AM

## Exhibit 85 - Marked-Up Title Commitment - Continued

## COMMITMENT FOR TITLE INSURANCE

Issued By:



CHICAGO TITLE INSURANCE COMPANY

2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336

## SCHEDULE B - Section I (Continued)

Your Ref: HARI / FELDMAN

Title No. 2013-00326

This Commitment expires six (6) months after the Commitment Date.

10. *insure*  
 Deed from WILLIAM FELDMAN and PEARL FELDMAN, husband and wife to

Mortgage from  
 affiliates & subsidiaries.

, husband and wife to Bank of America, N.A., its

12. *insure*  
 Mortgage Policy insures that the mortgage set forth under Schedule A is a valid first mortgage lien on the premises in question.

13. *omit*  
 In accordance with requests from certain lenders, the company has been asked to include in the loan policy the loan number assigned by the lender to the mortgage to be insured. Please provide the company with any information you may have received from the lender reflecting the loan number as soon as possible. The loan number will be used for reference only.

14. *omit*  
 Note: United States Patriot Search dated March 8, 2013, see attached.

Mortgage Book 2134, page 663, between WILLIAM FELDMAN and PEARL FELDMAN, husband and wife (mortgagor/borrower) and NINTH FEDERAL SAVINGS AND LOAN ASSOCIATION OF NEW YORK CITY (mortgage/lender) dated December 20, 1968, recorded December 31, 1968 in the Office of the County Clerk/Register of Middlesex; in the initial amount of \$17,900.00.

SAID MORTGAGE MUST BE CANCELLED OR DISCHARGED OF RECORD.

15. *omit*  
 Note: Results of Flood Hazard Search attached.

This service has been ordered on your behalf as an accommodation only, no liability for same is assumed.

Results of Tidelands Search dated MARCH 5, 2013 reveals no tidelands claim.

17. *omit*  
 Informational note: Pursuant to the provisions of P.L. 2009, C. 123 (the "County Homelessness Trust Fund Act"), N.J.S.A. 22a:4-17 is amended to permit counties to impose a recording surcharge of \$3.00 per document for any instrument submitted for recording (except assignments of mortgages).

As of January 1, 2010, Middlesex and Passaic Counties will impose this surcharge.


ALTA Commitment - Schedule B1 (Continued)

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association

Print date: September 30, 2013 10:33:19 AM

**Exhibit 85 - Marked-Up Title Commitment - Continued**

**COMMITMENT FOR TITLE INSURANCE**

Issued By:		<b>SCHEDULE B - Section I (Continued)</b>
CHICAGO TITLE INSURANCE COMPANY 2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336		

Your Ref: HARI / FELDMAN

Title No. 2013-00326

This Commitment expires six (6) months after the Commitment Date.

As of February 1, 2010, Bergen County will impose this surcharge.

As of March 1, 2010, Hudson County will impose this surcharge.

As of June 1, 2010, Somerset County will impose this surcharge.

As of July 1, 2010, Mercer County will impose this surcharge.

As of June 1, 2011, Camden County will impose this surcharge.

Please be guided accordingly when collecting funds at closing for recordings.

**(END OF SCHEDULE B - SECTION I)**

ALTA Commitment - Schedule B (Continued)

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association

Printdate: September 30, 2013 10:33:19 AM

**Exhibit 85 - Marked-Up Title Commitment - Continued****COMMITMENT FOR TITLE INSURANCE**

Issued By:

CHICAGO TITLE INSURANCE COMPANY  
2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601**SCHEDULE B - Section II**

PHONE: 201-489-5000 FAX: 201-489-5336

Your Ref: HARI / FELDMAN

Title No. 2013-00326

This Commitment expires six (6) months after the Commitment Date

**SCHEDULE B - SECTION II  
EXCEPTIONS**

Taxes become a lien on land on January 1<sup>st</sup> of each year and are payable in quarterly installments on February 1<sup>st</sup>, May 1<sup>st</sup>, August 1<sup>st</sup> and November 1<sup>st</sup>.

Our policy will not insure against taxes, water rates, assessments and other matters relating to taxes which have not become a lien up to the date of the policy or installments due after the date of the policy. Neither the tax search nor our policy covers any part of the streets on which the premises to be insured abut.

This Commitment does not purport to show all the terms and provisions of the mortgage(s) contained herein, if any. Interested parties should communicate with the holder(s) thereof to consider the terms thereof, the obligation(s) secured and the effect of any unrecorded agreements in modification thereof.

For Information Only: If the instrument to be insured is a purchase money mortgage covering a 1 to 4 family dwelling and owner's insurance is not desired, written notice declining right to purchase same is required from mortgagor pursuant to statutory requirement. (Notice and Waiver form enclosed)

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof, but prior to the date the Proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Rights or claims of parties in possession not shown by the Public Records.
3. Notwithstanding any provision of the policy to the contrary, the following matters are expressly excepted from the coverage of the policy, and the Company will not pay loss or damage, costs, attorney's fees or expense that arise by reason of any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the land.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law, and not shown by the Public Records.
5. Liability for any additional assessment for taxes in connection with new construction pursuant to N.J.S.A. 54:4-63.1.

Taxes, charges and assessments

*Then of Taxes for the year 2013.  
Taxes paid through 2<sup>nd</sup> Quarter.*

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



Print date: September 30, 2013 10:33:21 AM

**Exhibit 85 - Marked-Up Title Commitment - Continued****COMMITMENT FOR TITLE INSURANCE**

Issued By:

CHICAGO TITLE INSURANCE COMPANY  
2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601**SCHEDULE B - Section II (Continued)**

PHONE: 201-489-5000 FAX: 201-489-5336

Your Ref: HARI / FELDMAN

Title No.

2013-00326

This Commitment expires six (6) months after the Commitment Date

Municipal Department Searches attached.

Municipal Liens, if any, for utility services due and payable at or prior to the policy effective date are hereby excepted from coverage.

Subsurface conditions and/or encroachments not disclosed by an instrument of record. (Fee policy only)

The exact quantity of land in number of acres or square feet contained within the premises described herein is not insured. (If street address or acreage is reported, report same for informational purposes only)

11. SUBJECT TO SET BACK LINES, EASEMENTS AND RESTRICTIONS, AS SHOWN ON FILED MAP ENTITLED "MAP OF DEERFIELD ESTATES, SITUATE IN THE TOWNSHIP OF EAST BRUNSWICK, MIDDLESEX COUNTY, NEW JERSEY" DULY FILED IN THE OFFICE OF THE CLERK/REGISTER OF MIDDLESEX COUNTY, ON NOVEMBER 3, 1967 AS MAP 3137, FILE 955.

12. UTILITY EASEMENT AS SET FORTH IN DEED BOOK 2585, PAGE 878 AND DEED BOOK 2588, PAGE 965 TO PUBLIC SERVICE ELECTRIC AND GAS COMPANY.

13. UTILITY EASEMENT AS SET FORTH IN DEED BOOK 3015, PAGE 97 TO PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND NEW JERSEY BELL TELEPHONE COMPANY.

14. EXCEPTION NO. 3 OF SCHEDULE B - 2 IS REMOVED. NOTWITHSTANDING ANY PROVISION IN THE POLICY TO THE CONTRARY UNLESS AN EXCEPTION IS TAKEN IN SCHEDULE B, THE POLICY INSURES AGAINST LOSS ARISING FROM ANY ENCROACHMENT, ENCUMBRANCE, VIOLATION, VARIATION, OR ADVERSE CIRCUMSTANCE AFFECTING THE TITLE. THE FOLLOWING MATTERS SHOWN ON A SURVEY MADE BY A-1 LAND SURVEYS, INC., PROFESSIONAL LAND SURVEYORS, DATED MAY 16, 2013, ARE ADDED TO SCHEDULE B:

A. 10 FOOT WIDE DRAINAGE EASEMENT THROUGH PREMISES;

B. OVERHEAD WIRES CROSSING PREMISES;

C. POSSIBLE MISLOCATION OF FENCES

D. SETBACK LINE HAS BEEN VIOLATED.

MORTGAGE POLICY INSURES THAT SAID VIOLATION WILL NOT RESULT IN A FORFEITURE OR REVERSION OF TITLE.

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



Print date: September 30, 2013 10:33:20 AM

**Exhibit 85 - Marked-Up Title Commitment - Continued**

**COMMITMENT FOR TITLE INSURANCE**

Issued By:



CHICAGO TITLE INSURANCE COMPANY

2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336

**SCHEDULE B - Section II (Continued)**

Your Ref: HARI / FELDMAN

Title No.

2013-00326

This Commitment expires six (6) months after the Commitment Date

*[Signature]* OWNER'S POLICY INSURES THAT THE VIOLATION OF FRONT YARD SETBACK LINE AS SHOWN ON THE AFOREMENTIONED SURVEY WILL NOT RESULT IN A FORFEITURE OR REVERSION OF TITLE.

THIS POLICY DOES NOT INSURE AGAINST ERRORS OR INACCURACIES IN THE SURVEY WITH RESPECT TO MATTERS WHICH DO NOT AFFECT TITLE.

**END OF SCHEDULE B - SECTION II**

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association

Print date: September 30, 2013 10:33:20 AM



## Exhibit 85 - Marked-Up Title Commitment - Continued

### COMMITMENT FOR TITLE INSURANCE

Issued By:



CHICAGO TITLE INSURANCE COMPANY

2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336

NOTES

Your Ref: HARI / FELDMAN

Title No.

2013-00326

This Commitment expires six (6) months after the Commitment Date

NOTES

For your information:

This Title Commitment was examined and prepared by:

Print date: September 30, 2013 10:33:21 AM

**Exhibit 85 - Marked-Up Title Commitment - Continued**



**CHICAGO TITLE INSURANCE COMPANY**  
(hereinafter the "Company")

**IMPORTANT NOTICE AND DISCLOSURE**

1. By law the Company is required to advise you that the title insurance commitment issued by us may contain conditions, exceptions, exclusions, limitations and requirements governing our liability and the coverage you may receive.

REAL ESTATE TITLE TRANSACTIONS ARE COMPLEX. THE COMPANY DOES NOT REPRESENT YOU AND CANNOT GIVE YOU LEGAL ADVICE. YOU ARE ENTITLED TO REVIEW THE TITLE INSURANCE COMMITMENT WITH AN ATTORNEY AT LAW OF YOUR OWN CHOOSING AT YOUR EXPENSE, PRIOR TO THE TRANSFER OF TITLE. WE STRONGLY ADVISE THAT YOU DO SO.

2. THE ATTORNEY RETAINED BY YOU, OR BY YOUR LENDER, CLOSING OR SETTLING THIS TITLE IS NOT AN AGENT FOR AND DOES NOT ACT ON BEHALF OF THE COMPANY. THE COMPANY ASSUMES NO LIABILITY FOR ANY LOSS, COST OR EXPENSE INCURRED BY YOU BECAUSE YOUR ATTORNEY OR YOUR LENDER'S ATTORNEY HAS MADE A MISTAKE OR MISAPPLIED YOUR FUNDS.

Because the attorney is not our agent, we assume no responsibility for any information, advice or title insurance promises the attorney may give or make. Our only liability to you is under the terms of the Commitment, Policy and Closing Service Letter, if you choose to obtain one.

3. By law we are also required to advise you that we have been asked to issue a mortgage policy to the lender in the amount shown on Schedule A for the enclosed title insurance commitment. If you have not already requested it, you will have the right and opportunity to obtain title insurance in your own favor for an additional premium, which we will quote on request.

## Exhibit 85 - Marked-Up Title Commitment - Continued

Effective Date: 5/1/2008

### Fidelity National Financial, Inc. Privacy Statement

Fidelity National Financial, Inc. and its subsidiaries ("FNF") respect the privacy and security of your non-public personal information ("Personal Information") and protecting your Personal Information is one of our top priorities. This Privacy Statement explains FNF's privacy practices, including how we use the Personal Information we receive from you and from other specified sources, and to whom it may be disclosed. FNF follows the privacy practices described in this Privacy Statement and, depending on the business performed, FNF companies may share information as described herein.

#### Personal Information Collected

We may collect Personal Information about you from the following sources:

- Information we receive from you on applications or other forms, such as your name, address, social security number, tax identification number, asset information, and income information;
- Information we receive from you through our Internet websites, such as your name, address, email address, Internet Protocol address, the website links you used to get to our websites, and your activity while using or reviewing our websites;
- Information about your transactions with or services performed by us, our affiliates, or others, such as information concerning your policy, premiums, payment history, information about your home or other real property, information from lenders and other third parties involved in such transaction, account balances, and credit card information; and
- Information we receive from consumer or other reporting agencies and publicly recorded documents.

#### Disclosure of Personal Information

We may provide your Personal Information (excluding information we receive from consumer or other credit reporting agencies) to various individuals and companies, as permitted by law, without obtaining your prior authorization. Such laws do not allow consumers to restrict these disclosures.

Disclosures may include, without limitation, the following:

- To insurance agents, brokers, representatives, support organizations, or others to provide you with services you have requested, and to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure in connection with an insurance transaction;
- To third-party contractors or service providers for the purpose of determining your eligibility for an insurance benefit or payment and/or providing you with services you have requested;
- To an insurance regulatory authority, or a law enforcement or other governmental authority, in a civil action, in connection with a subpoena or a governmental investigation;
- To companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements and/or
- To lenders, lien holders, judgment creditors, or other parties claiming an encumbrance or an interest in title whose claim or interest must be determined, settled, paid or released prior to a title or escrow closing.

We may also disclose your Personal Information to others when we believe, in good faith, that such disclosure is reasonably necessary to comply with the law or to protect the safety of our customers, employees, or property and/or to comply with a judicial proceeding, court order or legal process.

CLS-Privacy Policy Notice

## Exhibit 85 - Marked-Up Title Commitment - Continued

Effective Date: 5/1/2008

Disclosure to Affiliated Companies - We are permitted by law to share your name, address and facts about your transaction with other FNF companies, such as insurance companies, agents, and other real estate service providers to provide you with services you have requested, for marketing or product development research, or to market products or services to you. We do not, however, disclose information we collect from consumer or credit reporting agencies with our affiliates or others without your consent, in conformity with applicable law, unless such disclosure is otherwise permitted by law.

Disclosure to Nonaffiliated Third Parties - We do not disclose Personal Information about our customers or former customers to nonaffiliated third parties, except as outlined herein or as otherwise permitted by law.

### **Confidentiality and Security of Personal Information**

We restrict access to Personal Information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard Personal Information.

### **Access to Personal Information/**

#### **Requests for Correction, Amendment, or Deletion of Personal Information**

As required by applicable law, we will afford you the right to access your Personal Information, under certain circumstances to find out to whom your Personal Information has been disclosed, and request correction or deletion of your Personal Information. However, FNF's current policy is to maintain customers' Personal Information for no less than your state's required record retention requirements for the purpose of handling future coverage claims.

For your protection, all requests made under this section must be in writing and must include your notarized signature to establish your identity. Where permitted by law, we may charge a reasonable fee to cover the costs incurred in responding to such requests. Please send requests to:

Chief Privacy Officer  
Fidelity National Financial, Inc.  
601 Riverside Avenue  
Jacksonville, FL 32204

### **Changes to this Privacy Statement**

This Privacy Statement may be amended from time to time consistent with applicable privacy laws. When we amend this Privacy Statement, we will post a notice of such changes on our website. The effective date of this Privacy Statement, as stated above, indicates the last time this Privacy Statement was revised or materially changed.

Print date: September 30, 2013 10:33:21 AM

## **Section 6.3     Mortgage Closing**

### **Section 6.3.1   Lender's Requirements**

As a condition of scheduling the closing, the purchaser's attorney will have first confirmed with the lender that the lender has approved the mortgage package and has agreed to schedule the closing on the date requested. As discussed in Section 4.5.1, a lender may require approximately seven (7) days notice of the requested closing date and, once it has received the mortgage package, may impose additional requirements which further delay the scheduling of a closing date.

Once the lender has confirmed a firm closing date, the purchaser's attorney should receive on the day of closing the mortgage package and mortgage proceeds check in the manner discussed with the lender previously. In some instances, the lender may dispatch the package to the purchaser's attorney by overnight delivery for receipt on the morning of the closing. In other instances, the purchaser's attorney may have been called upon to arrange for a messenger to obtain the package on the morning of the closing.

The amount of the check and the amounts which the lender has deducted from the check for amounts owed to the Lender should be confirmed once the purchaser's attorney receives the closing package from the lender. These figures should correspond to the figures obtained by the purchaser's attorney from the lender the day before the closing and should be consistent with the requirements imposed by the lender as part of its loan commitment and lending requirements. A discussion of the lender's mortgage closing figures appears in Section 4.5.2.

The final closing instructions of the lender should be reviewed. The final closing instructions will specify those items which the lender is requiring to be omitted from the title commitment as a condition of closing title. The items which the lender is requiring to have omitted from the title commitment should correspond with those items which had been anticipated as requiring omission and which you addressed as part of your review of the title commitment. As to items which the lender is allowing to remain as exceptions in the title policy, the lender may require in its final closing instructions affirmative insurance as to some of those items. Affirmative insurance is discussed in Section 6.2.1. If such items are reflected in the final closing instructions, the title company should confirm its ability to provide that insurance prior to closing. Final mortgage closing instructions, which are often referred to as settlement instructions, issued by a mortgage lender appear as Exhibit 86. The settlement instructions relate to the mortgage loan documents discussed in Section 4.5.3.

The lender may require that the title commitment be "marked-up" at closing. This means that the lender is requiring that the purchaser's attorney reflect in writing the status of the title which will be delivered to the lender in the form of the mortgage policy of title insurance once it has issued after the closing. The marked-up title commitment also serves as a means for the purchaser's attorney to confirm the disposition of each item and to advise the title company, by forwarding a copy of the marked-up title commitment to the title company, of the manner in which the purchaser's attorney disposed of each item. A detailed discussion of marking-up the title commitment appears in Section 6.2.1.

## EXHIBIT 86 - FINAL MORTGAGE CLOSING INSTRUCTIONS

Loan Number: 8009005

### CLOSING INSTRUCTIONS FOR AMBER SKY HOME MORTGAGE, LLC

THIS LOAN MUST CLOSE AND DISBURSE BY THE EARLIER OF: (A) 10 DAYS FROM THE DATE OF THE CLOSING INSTRUCTIONS OR (B) PRIOR TO LOCK EXPIRATION. SHOULD DISBURSEMENT NOT BE EFFECTED WITHIN THIS PERIOD OF TIME, YOU ARE INSTRUCTED TO CONTACT THE LENDER'S OFFICE AS INTEREST RATE, DISCOUNT, AND OTHER FEES ARE SUBJECT TO CHANGE.

#### TITLE POLICY

1. Policy must be written on a ALTA 2006 Policy (if available), through the same company that issued the Commitment.
2. If Policy will not be in accordance with your Commitment, you must obtain Lender's written approval of any changes PRIOR to your request for disbursement.
3. Your Title Policy must insure a first and superior Deed of Trust/Mortgage Lien. Liens subordinate to the insured lien must be approved in writing by Lender. If approved by Lender, provide appropriate affirmative insurance. Liens not subordinate to the insured lien must be waived or released or, if approved in writing by Lender, must be subordinated to the insured lien with appropriate insurance provided.
4. Right of access must be insured.
5. No portion of the title to the Property may be subject to any forfeiture or reversion provision.
6. Notify Lender as to any defect in title; no exception for such defect may be taken unless approved in writing by Lender. If approved by Lender, provide appropriate insurance.
7. Borrower's and Lender's names must conform to Closing Instructions.
8. Schedule B of the Commitment for Title Insurance and Title Policy requires the following:
  - a. Any exception to restrictions, easements, etc., must include reference by volume and page number and the policy must provide affirmative coverage acceptable to Lender. If none exist delete this exception.
  - b. Survey coverage must be provided in policy or by endorsement.
  - c. If due and payable, taxes must be collected and paid in full. Your Title Policy must insure that taxes for the year the Title Policy is issued are not yet due and payable.
  - d. The Title Policy must provide GAP and Mechanics' lien coverage.
9. For all purchase transactions, an Owner's Title Policy should be issued for an additional premium cost, unless rejected by Borrower. If rejected, Borrower must sign a rejection statement acknowledging that Lender's Title Policy does not provide Title Insurance to Borrower in the event of a defect in the title.
10. The Mortgage Clause should read: "AMBER SKY HOME MORTGAGE, LLC, ITS SUCCESSORS AND/OR ASSIGNS".
11. TITLE COMPANY TO CLEAR ALL EXCEPTIONS TO THE POLICY, EXCEPT ITEMS REMITTED IN SECTION 8 ABOVE.
12. The following Endorsements, or to the extent authorized, their state equivalent, are required: Environmental Protection Endorsement ALTA 8.1; ALTA 3 Zoning; ALTA 18 or 18.1 Tax Parcel; ALTA 6, 6.1 or 6.2 Endorsements are required on all ARM loans. ALTA 4 and 5 are required on all PUDS and Condos, without deletion. ALTA 9 is required on all Residential properties without deletion. On all loans in which the collateral includes a Manufactured home ALTA 7.1 (if available) endorsement is required without deletion. On all Balloon Loans, a Balloon endorsement is required.
13. An insured closing service letter is required which covers this loan.
14. Item 13 of the Conditions and Stipulations regarding arbitration must be deleted in its entirety.

#### DISCLOSURE STATEMENT

1. Truth in Lending Disclosure Statement must be delivered to Borrower PRIOR to signing any loan closing documents.
2. Borrower is to be instructed to read the disclosure statement and acknowledge understanding thereof. Any questions should be directed to Lender.

#### SALES CONTRACT

1. All conditions of the Sales Contract must be met prior to disbursement.
2. Seller on the Sales Contract and Seller listed in title on the Title Commitment must be identical.
3. Our Closing Instructions take precedence over Contract terms.
4. Earnest money credited on the HUD-1 Settlement Statement and earnest money reflected on the Sales Contract must not vary.
5. No cash allowances may be provided for Borrower on the Sales Contract or HUD-1.

#### NOTE AND SECURITY INSTRUMENT

1. All documents must be signed as names appear on our closing documents. If you have information that names are incorrect or a Power of Attorney will be used for Borrower, please contact our office immediately.
2. All corrections or changes MUST be authorized by our disbursing office and initialed by Borrower.
3. All copies of items required by us MUST conform as to signatures, acknowledgment date, name of notary, and be certified to be true and correct copies of the original instruments.

## Exhibit 86 - Final Mortgage Closing Instructions - Continued

Loan Number: **8009005**

### CLOSING INSTRUCTIONS FOR AMBER SKY HOME MORTGAGE, LLC

#### HAZARD INSURANCE/FLOOD INSURANCE

1. Lender must be furnished the original policy signed in ink by the issuing agent with all applicable forms and endorsements attached.
2. Binders are not acceptable, unless Lender has received satisfactory evidence of compliance with all provisions of Article 21.48A(f) of the Insurance Code and you have received specific written approval of the binder from Lender.
3. Property insurance for one-to-four family first lien mortgages (including those secured by PUD units) must protect against loss or damage from fire and other hazards covered by the standard extended coverage endorsement. The coverage must be of the type that provides for claims to be settled on a replacement cost basis. You are not authorized to accept hazard insurance policies that limit or exclude from coverage (in whole or in part) windstorm, hurricane, hail damage or any other perils that are normally included under an extended coverage endorsement.
4. Insurance must be in the amount of the loan or 85% of the appraisal amount, whichever is greater. The maximum deductible is the lesser of \$1,000.00 or 1% of the coverage on the face of the policy.
5. Invoice must be marked "paid" for the first year's premium and a copy of the letter indicating notice of premium must be mailed to mortgagee.
6. Names, address, and legal description must match legal papers **exactly**. Any necessary endorsements must be obtained and received by your office prior to funding. **The effective date must be the same as the note date.**
7. Mortgagee clause: **AMBER SKY HOME MORTGAGE, LLC, IT'S SUCCESSORS AND/OR ASSIGNS - LOAN NUMBER 8009005 - 1 ROUTE 46 WEST, SUITE 1, ELMWOOD PARK, NJ 07407.**
8. If the property is located in a special flood hazard area, you must ensure that the required notices to and acknowledgment by Borrower are in file. A flood insurance application, together with the original flood insurance policy and paid receipt for the first year's premium is required from the insurance agent prior to disbursement. Flood insurance must be in the form of the standard policy issued by members of the National Flood Insurers Association and must also be in an amount equal to the lesser of the maximum insurance available for the property under the appropriate National Flood Insurance Administration Program or the loan amount if the subject property is participating in the emergency flood program, or for the loan amount or more if the community is participating in the regular flood program. The maximum deductible is the same as that allowed for hazard insurance. The property's legal description, street address, city, county, state, zip code, and Borrower's name indicated on the flood insurance policy must be identical to that contained within the loan documents. The mortgagee clause of the flood insurance policy must exactly match the name and address of Lender indicated in the Deed of Trust.
9. All policies or evidence of insurance must be in effect on or before the date of closing, and the policy term must be one (1) year or longer with no insurer company change permitted until the anniversary date.
10. If a refinance loan, we require the endorsement to **AMBER SKY HOME MORTGAGE, LLC** as mortgagee, certified copy of hazard or flood policy and also the one-year paid premium receipt.
11. In addition to the hazard insurance on the security property, prior to closing, you must provide evidence that the owner's association has current adequate coverage for hazard and liability on the common areas. Fidelity insurance on the owner's association is required in addition to the hazard insurance on the security property.  
Condominiums - Prior to closing, you must verify that the following coverages exist, with copies forwarded to Lender prior to closing:  
 A current "master" or "blanket" policy of property insurance equal to full replacement value of the condominium project affording coverage for loss or damage by fire and other hazards to general and limited property. A current comprehensive policy of public liability insurance covering all of the common areas and commercial spaces owned by the owner's association.  
 Adequate current fidelity coverage on the owner's association to protect against dishonest acts by its officers, directors, trustees, employees and all others who are responsible for handling funds of the association. The named insured must be the owner's association of the condominium project. In the event the master policy does not specifically cover the limited common elements (interior walls, ceilings, etc.), you should verify that Borrower has purchased additional coverage to protect the mortgagee. Evidence of additional coverage and payments of premium for at least one (1) year must be provided at closing.

#### SURVEY REQUIREMENTS

1. Survey must be certified as true and correct, on the ground by a registered surveyor or engineer.
2. Survey must show all corners of the property and such corners must be marked with monuments (stakes, rods or pins) and include all fences, out-buildings, pits and so forth.
3. Survey must show North directional arrow and scale.
4. Survey must be certified as to the flood zone in which the property lies and whether or not the property lies within the 100 year flood plain according to the most recent maps.
5. Survey cannot be dated more than sixty (60) days prior to the date of the Mortgagee's Title Policy unless this is a refinance loan, then survey must be dated not more than seven (7) years prior to the date of the Mortgagee's Title Policy and have been performed in connection with (1) the transaction when the Borrower acquired title to the residential real property or (2) a prior loan transaction by Borrower involving the residential real property. Use of existing survey must be approved by Lender and Borrower must sign an Affidavit in Lieu of Updated Survey.
6. Survey must indicate property has access to a dedicated public street and show location of access, distance to nearest intersection, street address, legal description, lot dimension and location, dimensions and location of all improvements, distance of improvements from the boundaries, building set-back lines, all encroachments or violations, dimensions and location of all drainage and utility easements, rights-of-way, pipeline and electrical easements, and any other easements of record that will appear on the Mortgagee's Title Policy.
7. Survey must have original signature, seal and registration number of surveyor or engineer and be acceptable to modify the survey exception in the Mortgagee's Policy to read only "shortages in area."
8. A survey is not required for loans where the collateral is a condominium.
9. If the survey shows any encroachments, Lender must be consulted before the loan is closed.
10. An original survey must be in Lender's office for review and approval prior to any request for funding or disbursement of loan proceeds.

**Exhibit 86 - Final Mortgage Closing Instructions - Continued**Loan Number: **8009005****CLOSING INSTRUCTIONS FOR AMBER SKY HOME MORTGAGE, LLC****FURNISH BORROWER(S) WITH THE FOLLOWING ITEMS AT CLOSING:**

1. One copy of Note, Mortgage/Deed of Trust, Rider(s) and Conveyance Deed, HUD-1, Truth in Lending Disclosure, Builder Warranty (if applicable) and survey (if applicable). See Additional Requirements below for any additional instructions.

**REQUEST FOR DISBURSEMENT:**

1. Do not request authorization to fund until the closing documents are totally complete and ready to transmit. Call Funding Contact before releasing any loan proceeds or depositing check.
2. The Lender must receive the closed documents within 24 hours of disbursement authorization.

**WE REQUIRE THE FOLLOWING ITEMS WITHIN 5 DAYS FROM DATE OF DISBURSEMENT:**

1. Original Title Policy (Lender's Loan Number must appear on Policy).
2. Recorder's Receipt for Deed of Trust and Assignment and/or Transfer of Lien.
3. Any items required but not furnished prior to disbursement.

**ADDITIONAL REQUIREMENTS**

**DO NOT CLOSE THIS LOAN IF LEGAL DESCRIPTION ON SECURITY INSTRUMENT (DEED OF TRUST, MORTGAGE, ETC.) IS NOT THE SAME AS REFLECTED ON YOUR TITLE WORK!!!**

**\*ENCLOSED ARE INSTRUCTIONS AND DOCUMENTS IN CONNECTION WITH THE CAPTIONED LOAN. STRICT COMPLIANCE WITH THESE INSTRUCTIONS IS REQUIRED. DOCUMENTS MAY NOT BE ALTERED WITHOUT OUR APPROVAL.**

**-LOAN DISBURSEMENT WILL BE SUBJECT TO COMPLIANCE WITH REQUIREMENTS SET FORTH HEREIN.**

**-PRIOR TO CLOSING, SETTLEMENT AGENT MUST PROVIDE LENDER WITH A COPY OF THE CURRENT COMMITMENT FOR TITLE INSURANCE CONTAINING THE COUNTERSIGNATURE OF THE TITLE AGENT. THE COMMITMENT FOR TITLE INSURANCE CONTAINING AN ORIGINAL COUNTERSIGNATURE MUST BE INCLUDED IN THE LOAN PACKAGE FORWARDED POST-FUNDING BY THE SETTLEMENT AGENT TO THE PARTY DESIGNATED IN THE LENDER'S CLOSING INSTRUCTIONS.**

**-THE FEES REPRESENTED BY THIS INVOICE MAY NOT BE WAIVED OR ALLOCATED AS A POC ITEM EXCEPT BY THE PRIOR WRITTEN INSTRUCTION OF A SHAREHOLDER IN GOLDFORM, INC.**

**-IMPORTANT NOTICE EFFECTIVE JULY 30, 2009 - This loan MAY NOT CLOSE PRIOR to the third business day after the borrower/spouse has received the Truth in Lending. YOU MUST OBTAIN LENDER APPROVAL TO CHANGE OR ADD ANY FEE OR OTHER AMOUNT to the HUD Settlement Statement after the borrower/spouse has received the Truth in Lending OR THIS LOAN MAY NOT FUND AND MAY NEED TO BE RESCHEDULED FOR CLOSING.**

**-Settlement Agent to confirm there is no Transfer Fee or Developer Fee which can be assessed by any developer of the property and collected in the event of a sale or transfer of one or more lots from one party to another. If such fee or charge exists, such circumstance shall be reflected on the title commitment issued in connection herewith.**

**-DOC PREP/ATTORNEY FEE/CLOSING COORDINATION FEE CHARGED TO THE BORROWER TO BE SHOWN ON A BLANK LINE IN THE 800 SERIES OF THE HUD-1 TO THE LEFT OF THE COLUMN. DOC PREP/ATTORNEY FEE CHARGED TO THE SELLER TO BE SHOWN ON A BLANK LINE IN THE 1100 SERIES OF THE HUD-1 IN THE SELLER COLUMN. ALL FEES ARE TO BE PAID DIRECTLY TO:**

MARK J. TOLSTOI

CO BLACK, MANN &amp; GRAHAM, L.L.P.

**\* LOAN DOCUMENTS ARE TO BE RETURNED TO:**

BLACK, MANN & GRAHAM, L.L.P.

ATTN: FUNDING DEPARTMENT

9575 KATY FREEWAY, SUITE 300

HOUSTON, TEXAS 77024

**\* FINAL TITLE POLICY & RECORDED SECURITY INSTRUMENTS ARE TO BE RETURNED TO:**

BLACK, MANN & GRAHAM, L.L.P.

ATTN: FUNDING DEPARTMENT

9575 KATY FREEWAY, SUITE 300

HOUSTON, TEXAS 77024

**FINAL DOCUMENTS: FORWARD THE ORIGINAL SIGNED MORTGAGEE'S TITLE POLICY AND ORIGINAL RECORDED DEED OF TRUST TO:**

BLACK, MANN & GRAHAM, L.L.P.

9575 KATY FREEWAY, SUITE 300

HOUSTON, TX 77024

1. **\*\*BLACK, MANN & GRAHAM MUST REVIEW AND APPROVE HUD PRIOR TO CLOSING. PLEASE EMAIL TO TEAMB@BMANDG.COM, ATTN: TIFANY. TITLE COMPANY TO ITEMIZE ALL ENDORSEMENTS INCLUDED IN THE TITLE PREMIUM. ALL CREDITS MUST BE ITEMIZED.\*\***

3. **\*\*\*EMAIL THE FOLLOWING DOCUMENTS FOR FUNDING TO BLACK, MANN & GRAHAM: EXECUTED HUD-1, PROOF OF FUNDS TO CLOSE, NOTE, ENTIRE MORTGAGE, WARRANTY DEED, 4506T, FINAL TIL, FINAL 1003, APPRAISAL NOTIFICATION ACKNOWLEDGEMENT, OCCUPANCY AFFIDAVIT, INITIAL ESCROW ACCT ST, OR ESCROW WAIVER, NAME AFFIDAVIT, NOTICE OF ASSIGN, SALE OR TRANSFER OF SERVICE RIGHTS, PATRIOT ACT DISCLOSURE WITH ID'S. EMAIL TEAMB@BMANDG.COM ATTN: FUNDING\*\*\***

5. **- TITLE COMPANY TO CLEAR ALL TITLE POLICY ISSUES.**
6. **-HAZARD PREMIUM IS TO BE COLLECTED AT CLOSING AND SHOWN ON HUD-1. IF ALREADY PAID, IT MUST BE SHOWN AS POC AND A PAID RECEIPT IS REQUIRED.**
7. **SCHEDULE A ITEM 1A - PROPOSED INSURED TO BE UPDATED AS REFLECTED ON THE ATTACHED CLOSING DOCUMENTS AND CLOSING INSTRUCTIONS. PROVIDE UPDATED TITLE COMMITMENT WITH CLOSING PACKAGE.**
8. **TITLE COMPANY TO CONFIRM LEGAL DESCRIPTION ON TITLE COMMITMENT IS CORRECT AND ATTACH MATCHING LEGAL DESCRIPTION TO ALL APPLICABLE LOAN DOCUMENTS.**
9. **TITLE COMPANY TO GUARANTY TAXES ARE PAID CURRENT AT TIME OF CLOSING.**
10. **LENDER/INVESTOR TO PROVIDE ADDITIONAL CLOSING REQUIREMENTS.**

The mortgage package will also include either the mortgage documents prepared by the lender or the documents prepared by and submitted by the purchaser's attorney to the lender for review, accompanied by the changes which the lender is requiring the purchaser's attorney to make to the documents prior to the closing. The package is also likely to include numerous other documents related to the mortgage transaction and protective of the interests of the lender. These documents are discussed in Section 4.5.3 and appear as part of Exhibit 62.

Some of the documents may require completion and duplication prior to execution by the purchaser and the purchaser's attorney may be required to arrange for multiple copies to be made and originally executed. The purchaser's attorney should try to allocate sufficient time between the receipt of the mortgage package and the arrival of the purchaser in order to prepare the documents for closing and to comply with the instructions of the lender.

### **Section 6.3.2 Mortgage Closing**

By the time the purchaser arrives at the attorney's office, the mortgage documentation should be completed and duplicated, if necessary, for execution. The attorney for the purchaser should be fully familiar with the terms of each of the instruments and be able to explain the significance of each document to the purchaser. A discussion of mortgage loan documentation appears in Section 4.5.3. The documents should be reviewed to confirm that each has been prepared in accordance with the terms of the mortgage loan commitment issued to and accepted by the purchaser.

### **Section 6.3.3 Closing Proceeds**

By no later than the day before the closing, the purchaser's attorney should have discussed with the purchaser the amount and form of funds which the purchaser must bring to closing. The purchaser's attorney may be required to provide the purchaser with an estimate of the amount of funds the purchaser will be required to produce as early as a week or two before closing in the event the purchaser must make special arrangements to obtain those funds in time for the closing. Certified, bank, and cashier's checks and wire transferred funds may be disbursed immediately upon deposit into an attorney's trust account. If any of these forms of funds and/or the mortgage proceeds check are to be disbursed through the attorney's trust account, arrangements must be made for the deposit of these funds into the attorney's trust account prior to closing so that they may be drawn upon and disbursed at the closing.

The mortgage proceeds check may be drawn payable to both the purchaser's attorney and the purchaser, or only to the purchaser's attorney. If that check must be disbursed through an attorney trust account, arrangements should be made immediately for the check to be properly endorsed and deposited prior to disbursement. A discussion of the form of funds acceptable for deposit and restrictions on the disbursement of funds deposited into an attorney's trust account appears in Section 8.3.

### **Section 6.3.4 Closing Figures**

As part of the mortgage closing, the purchaser's attorney should review the figures on the typed RESPA settlement statement form which were previously discussed with the purchaser by telephone. By reviewing the figures which now appear in writing, the purchaser will be able to confirm the

disbursements being made at the closing. Also, the purchaser's attorney will be able to confirm that the funds tendered by the purchaser for disbursement with the mortgage proceeds are sufficient to pay all amounts reflected on the closing statement. Lastly, in the event that funds are being deposited into the attorney's trust account and disbursed at closing, these checks should be drawn and made available for delivery or dispatch as part of the title closing. The manner in which the purchaser's attorney will determine that all funds, from either the lender or the purchaser, have been accounted for and all required payments have been made is by preparing a receipts and disbursements statement, which is sometimes also referred to as a reconciliation statement. A receipts and disbursements statement appears as Exhibit 87.

## **Section 6.4 Title Closing**

### **Section 6.4.1 Time**

The scheduling of the title closing should correspond with the completion of the efforts reflected under the mortgage closing described above. This would mean that the seller will be arrive at the purchaser's attorney's office at a point in time when the participation of the seller and the seller's attorney is needed, and not earlier. The real estate broker(s) should also be told to arrive at the time of the title closing in order to deliver the deposit monies, in the event that the contract provided that the deposit was to be held by the broker, and/or to accept payment of the real estate commission and to tender receipted invoice(s) evidencing the receipt of payment.

### **Section 6.4.2 Attendance by Seller**

At times, the seller may not wish or may not be able to attend the closing. If the seller will not be attending the closing, the documents required to be delivered by the seller at the closing should be submitted to the purchaser's attorney prior to the closing for review and approval and the seller should execute those documents prior to closing for delivery at the closing by the attorney. Since the seller will be unavailable at the closing, it is crucial that the documents be in proper form and properly executed, witnessed and acknowledged so that the absence of the seller will not be an impediment to the acceptance of the documents and the consummation of the closing. The purchaser's attorney should be informed prior to the closing that the seller will not be attending the closing so that any issues which the purchaser or the purchaser's attorney may have been planning to have discussed at the closing may be addressed prior to the closing.

## EXHIBIT 87 - RECEIPTS AND DISBURSEMENTS STATEMENT

### RECEIPTS AND DISBURSEMENTS STATEMENT

Lender: American Bank

Borrower/Buyer: Bart and Barbara Buyer

Seller: Steven and Susan Seller

Property: 1 Property Way, Municipality, New Jersey

Date: [Date of Closing]

File No.: 3839-001

RECEIVED:

a.	American Bank (mortgage proceeds)	\$262,923.59
b.	Due from Buyer (certified check)	<u>19,624.89</u>
<b>Total Received</b>		<b><u>\$282,548.58</u></b>

DISBURSED:

1.	Steven and Susan Seller (balance due seller)	4,349.23
2.	Best Savings Bank (mortgage payoff)	253,292.84
3.	MGIC (PMI premium - 2 mos.)	140.80
4.	ABC Realtors (real estate commission)	9,550.00
5.	XYZ Realtors (real estate commission)	9,650.00
6.	Trident Abstract Company (title report)	1,380.00
7.	Union County Register (realty transfer fee)	1,375.00
8.	Borough of Municipality (____ 4th qtr. taxes)	1,687.71

**Exhibit 87 - Receipts and Disbursements Statements - Continued**

9. Buyer's Attorney, Esq.	1,123.00
(legal fee plus mtge.	
cancell. fee, misc.	
filing/recording fees)	
<b>Total Disbursed</b>	<b><u>\$282,548.58</u></b>

Approved: \_\_\_\_\_  
Buyer's Attorney, Esq.

If the seller will not be available to sign any of the closing documents, they may be signed pursuant to a power of attorney designating another individual as the seller's attorney-in-fact. A discussion of powers of attorney appears in Section 3.3.1(f). The power of attorney should be approved by the purchaser's title company prior to its use and, since it must be recorded together with the deed, it must be in recordable form. A power of attorney for the purpose of executing closing documents, such as the deed and affidavit of title, of conveyance appears as Exhibit 88.

Even if the seller has signed all of the documents conveying title prior to closing, the purchaser's lender may have documents which require the seller's signature at the closing which could not have been anticipated or provided earlier by the purchaser's attorney. It is prudent for the seller's attorney to appear at the closing with a limited or restricted power of attorney designating either the seller who will be attending (where the absence is of one of multiple sellers), another party designated by the seller, or the seller's attorney to sign certain customary and usual documents at the closing. Such a power of attorney will also serve to provide assurance to the purchaser's attorney of the authority vested in a party attending closing or the seller's attorney to act on behalf of the seller at the closing. A form of power of attorney for use in this instance appears as Exhibit 84. The seller's attorney should also be provided with the other documents or items which are required to be delivered by the seller at closing, e.g. certificate of occupancy, smoke detector certificate, keys. A discussion of the use of powers of attorney appears at Section 3.3.1(f).

If the seller does not intend to attend the closing and the seller's absence has been anticipated, the seller should be available by telephone during the time the closing is being conducted. The seller's attorney will then be able to contact the seller should any problems arise which may impede or prevent the consummation of the closing and obtain the appropriate authorization to proceed.

### **Section 6.4.3 Title Closing**

A successful title closing should be completed in the amount of time it takes the seller's attorney to deliver the closing documents which the seller is required to deliver (as discussed more fully under Section 5.5) to the purchaser, the purchaser's attorney to deliver the balance due to the seller under the closing statement, the real estate brokers to receive commission checks and deliver receipts, and the parties to sign the closing statement. An efficient title closing can only be accomplished by the submission prior to closing of the closing documents to the purchaser's attorney for review and comment, and the submission by the purchaser's attorney of the closing statement for review by the seller's attorney prior to closing. A broker's receipt setting forth the manner in which the fee was allocated between the listing broker and the selling broker and the adjustment of the commission amounts for the multiple listing fee appears as Exhibit 90. A receipt of payment should be received from each broker involved in the transaction. Discussions of real estate brokerage commissions appear at Sections 5.3 and 5.6.1.

### **Section 6.4.4 Closing Checklist**

Prior to closing, the preparation of a checklist setting forth the documents to be executed and either delivered or received ensures that all requirements are satisfied by the attorney in the role of representing the seller or the purchaser. Appearing as Exhibit 91 is a sample form of closing checklist for the seller's transaction and appearing as Exhibit 92 is a form for the purchaser's transaction.

**EXHIBIT 88 - SELLER'S POWER OF ATTORNEY (BROAD POWERS)**

Prepared by:

\_\_\_\_\_

**POWER OF ATTORNEY**

This Power of Attorney is made on \_\_\_\_\_, \_\_\_\_\_,

**Between:**

the Principal,

**Peter Principal**, residing at \_\_\_\_\_, referred to as "I",

**And:**

the Agent,

**Ann Agent**, residing at \_\_\_\_\_, referred to as "You".

**Grant of Authority.** I appoint You to act as my Agent (called an attorney in fact) to do each and every act which I could personally do for the following uses and purposes:

In connection with the sale of premises known as 123 Main Street, Municipality, New Jersey, you are authorized (i) execute any deed, affidavit of title, 1099 reporting form, certificate of non-foreign status, any other instrument required by the purchaser's title insurance company, attorney or mortgagee for the purchase of the property, or any document you may consider necessary or desirable in order for me to convey title to the property; (ii) to attend the closing of title for the sale of said property and are authorized to deliver to the purchaser the aforesaid documents; (ii) to execute at closing all documents necessary to consummate this transaction including, but not limited to, a title closing statement, mortgage closing statement, HUD-1 Uniform Settlement Statement, FNMA affidavit of purchaser and vendor, any other affidavit or document required by purchaser's attorney or mortgagee; (iii) to agree to all customary adjustments between purchaser and seller and (iv) to receive the proceeds of sale.

**Powers.** I give You all the power and authority which I may legally give to You. You may revoke this Power of Attorney or appoint a new Agent in your place. I approve and confirm all that You or your substitute may lawfully do on my behalf.

**Signatures.** By signing below, I acknowledge that I have received a copy of this Power of Attorney and that I understand its terms.

Witness:

\_\_\_\_\_

\_\_\_\_\_

Peter Principal

**Exhibit 88 - Seller's Power of Attorney (Broad Powers) - Continued**

**DISABILITY**

**Definition of Disability.** (N.J.S. 46:2B-8b) A principal shall be under a disability if the principal is unable to manage his or her property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance.

Clauses [A] and [B] below shall not be a part of this Power of Attorney unless they are signed by the Principal.

**A. Takes Effect Regardless of Disability.** This Power of Attorney is effective now and remains in effect even if I become disabled (as defined above).

Dated: \_\_\_\_\_, \_\_\_\_\_

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Peter Principal

**B. Takes Effect Only Upon Disability.** This Power of Attorney will only become effective when (and if) I become disabled (as defined above).

Dated: \_\_\_\_\_, \_\_\_\_\_

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Peter Principal

STATE OF NEW JERSEY)

ss:

COUNTY OF \_\_\_\_\_)

I CERTIFY that on \_\_\_\_\_, \_\_\_\_\_, Peter Principal personally came before me and acknowledged under oath, to my satisfaction, that he:

- (a) is named in and personally signed the attached document; and
- (b) signed, sealed and delivered this document as his act and deed.

\_\_\_\_\_  
(Print or Type Name)

Attorney at Law of New Jersey

**RECORD AND RETURN TO:**

Greenbaum, Rowe, Smith & Davis, LLP  
Metro Corporate Campus I  
P.O. Box 5600  
Woodbridge, N.J. 07095

**EXHIBIT 89 - SELLER'S POWER OF ATTORNEY (LIMITED POWERS)**

Prepared by:

\_\_\_\_\_

**POWER OF ATTORNEY**

This Power of Attorney is made on \_\_\_\_\_, \_\_\_\_\_,

**Between:**

the Principal,

**Peter Principal**, residing at \_\_\_\_\_, referred to as "I",

**And:**

the Agent,

**Ann Agent**, residing at \_\_\_\_\_, referred to as "You".

**Grant of Authority.** I appoint You to act as my Agent (called an attorney in fact) to do each and every act which I could personally do for the following uses and purposes:

In connection with the sale of premises known as 123 Main Street, Municipality, New Jersey, you are authorized (i) to attend the closing of title for the sale of said premises and are authorized to deliver to the purchaser a deed, affidavit of title, 1099 reporting form and certificate of non-foreign status; (ii) to execute all documents necessary to consummate this transaction including, but not limited to, a title closing statement, mortgage closing statement, HUD-1 Uniform Settlement Statement, FNMA affidavit of purchaser and vendor, any other affidavit or document required by purchaser's attorney or mortgagee; (iii) to agree to all customary adjustments between purchaser and seller and (iv) to receive the proceeds of sale.

**Powers.** I give You all the power and authority which I may legally give to You. You may revoke this Power of Attorney or appoint a new Agent in your place. I approve and confirm all that You or your substitute may lawfully do on my behalf.

**Signatures.** By signing below, I acknowledge that I have received a copy of this Power of Attorney and that I understand its terms.

Witness:

\_\_\_\_\_

\_\_\_\_\_  
Peter Principal

**Exhibit 89 - Seller's Power of Attorney (Limited Powers) - Continued**

**DISABILITY**

**Definition of Disability.** (N.J.S. 46:2B-8b) A principal shall be under a disability if the principal is unable to manage his or her property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance.

Clauses [A] and [B] below shall not be a part of this Power of Attorney unless they are signed by the Principal.

**A. Takes Effect Regardless of Disability.** This Power of Attorney is effective now and remains in effect even if I become disabled (as defined above).

Dated: \_\_\_\_\_, \_\_\_\_\_

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Peter Principal

**B. Takes Effect Only Upon Disability.** This Power of Attorney will only become effective when (and if) I become disabled (as defined above).

Dated: \_\_\_\_\_, \_\_\_\_\_

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Peter Principal

STATE OF NEW JERSEY)

ss:

COUNTY OF \_\_\_\_\_)

I CERTIFY that on \_\_\_\_\_, \_\_\_\_\_, Peter Principal personally came before me and acknowledged under oath, to my satisfaction, that he:

- (a) is named in and personally signed the attached document; and
- (b) signed, sealed and delivered this document as his act and deed.

\_\_\_\_\_  
(Print or Type Name)  
Attorney at Law of New Jersey

RECORD AND RETURN TO:  
Greenbaum, Rowe, Smith & Davis, LLP  
Metro Corporate Campus I  
P.O. Box 5600  
Woodbridge, N.J. 07095

**EXHIBIT 90 - BROKER'S COMMISSION RECEIPT**



**Prudential New Jersey Properties**

50 E. Mt. Pleasant Avenue  
Livingston, NJ 07039  
Bus 973 992-6363 Fax 973 992-4863  
www.PrudentialNewJersey.com

**COMMISSION BILL**

**SELLER**

~~XXXXXXXXXX~~  
~~XXXXXXXXXX~~ Drive  
Livingston, NJ 07039

**BUYERS**

~~XXXXXXXXXX~~  
~~XXXXXXXXXX~~ Drive  
West Orange, NJ 07052

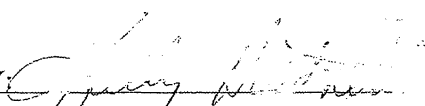
Commission due for professional services in the sale of property located at:

~~XXXXXXXXXX~~ Ridge Drive, Livingston, NJ 07039  
Purchase Price \$~~XXXXXXXXXX~~.00

Commission Rate 2.5% \$ ~~XXXXXXXXXX~~.25

MLS FEE \$ - 68.00

TOTAL AMOUNT DUE \$ ~~XXXXXXXXXX~~3.00

RECEIVED BY: 

DATE: 12-14-09

Exhibit 90 - Broker's Commission Receipt - Continued



**RE/MAX**  
VILLAGE SQUARE REALTORS  
518 Valley Road  
Upper Montclair, NJ 07043  
Office 973 509-2222  
Fax 973 509-7779

December 10, 2009

~~XXXXXXXXXX~~ to ~~XXXXXXXXXX~~  
~~XXXXXXXXXX~~ Ridge Dr.  
Livingston, NJ 07039

Commission due for Professional Services rendered on the sale of the above subject property. Please provide a copy of the HUD Statement along with the commission check.

Sale Price	\$ <del>XXXXXXXXXX</del> .00
Total Commission (2.5%)	\$ <del>XXXXXXXXXX</del> .25
Multiple Listing Fee	\$68.00
Commission Due at Closing	<u>\$ <del>XXXXXXXXXX</del>.25</u>

Please make check payable to RE/MAX Village Square.

We appreciate your business and thank you for the opportunity to serve your real estate needs.

Sincerely,

Jessica Lane  
Sales Associate

/af

*[Handwritten signature and date 12/14/09]*



Each Office Independently Owned and Operated



**EXHIBIT 91 - CLOSING CHECKLIST FOR REPRESENTING SELLER**

CLOSING CHECKLIST FOR REPRESENTING SELLER

SELLER: STEWART AND SARA SELLER  
BUYER: PATRICK AND PORTIA PURCHASER  
PROPERTY: 1 Property Way, Municipality, New Jersey  
CLOSING: [Closing Date]

---

		<u>STATUS</u>			
		<u>Prep'd</u>	<u>Signed</u>	<u>Del</u>	<u>Rec</u>
1.	Retainer Letter				
2.	Agreement of Sale Purchase Price \$ _____ Deposit \$ _____ with Seller's Attorney; interest to be shared equally				
3.	Deed				
4.	Affidavit of Title				
5.	Survey Affidavit				
6.	FIRPTA Certificate				
7.	1099-S Reporting Form				
8.	Title Closing Statement				
9.	HUD-1 Settlement Statement				
10.	Mortgage Payoff Letter				
11.	Sales Proceeds \$ _____ and Deposit \$ _____ (Drawn payable to Stewart and Sara Seller)				

**Exhibit 91 - Closing Checklist for Representing Seller - Continued**

12. Interest on Deposit ( $\frac{1}{2}$  to Seller and  $\frac{1}{2}$  to Buyer)
13. Certificate of Occupancy (evidence that property is not in violation of any applicable municipal ordinances or regulations)
14. Smoke Detector, Carbon Monoxide Alarm, Fire Extinguisher Certificate
15. Title Report - Documentation for Omission of Judgments, Exceptions
16. Survey
17. Tax Bill
18. Keys
19. Brokers' Receipts for real estate commission
20. Termination of Insurance

**EXHIBIT 92 - CLOSING CHECKLIST FOR REPRESENTING BUYER**

**CLOSING CHECKLIST FOR REPRESENTING PURCHASER**

**SELLER:** STEWART AND SARA SELLER

**BUYER:** PATRICK AND PORTIA PURCHASER

**PREMISES:** 1 Home Drive, Township, New Jersey

**CLOSING DATE:** [Closing Date]

		<u>STATUS</u>			
		<u>Prep'd</u>	<u>Signed</u>	<u>Del</u>	<u>Rec</u>
1.	Retainer Letter				
2.	Contract				
3.	Assignment of Contract				
4.	Obtain rundown				
5.	Deed				
6.	Seller's Affidavit of Title - Make reference to judgments				
7.	1099-S Reporting Form				
8.	HUD-1 Settlement Statement				
9.	Sales Proceeds of \$_____ and Deposit of \$_____ (Drawn Payable to Stewart and Sara Seller)				
10.	Smoke Detector Certificate				
11.	Mortgage Documents from Lender				
12.	Mortgagor's Affidavit of Title				
13.	Title Commitment - Check Seller's documents re: compliance with exceptions				

**Exhibit 92 - Closing Checklist for Representing Buyer - Continued**

14. Survey
15. Homeowners Insurance Policy  
and paid receipt
16. Mortgage Payoff Letters
17. Notices of Settlement
18. Receipt for brokers' commissions
19. Sewer liens - payoffs
20. Smoke Detector, Carbon Monoxide Alarm,  
Fire Extinguisher Certificate
21. Fire Prevention Bureau Certificate  
of Inspection
22. Transfer of utilities
23. Receipted tax bills
24. Keys
25. Use and Occupancy Agreement
26. Power of Attorney
27. Appraisal Fee \$850 - verify payment

## **Section 6.5      Closing Problems**

No matter how well prepared, organized and coordinated the parties involved in a transaction have been, there are times when the unanticipated or the unforeseeable will occur. While there are so many events that could impede or even prevent the closing from occurring, among the most common problems which may arise is the discovery by the purchaser at the time of the pre-closing inspection of a problem with the home which did not exist at the time of the original home inspection or the discovery by the title company during the course of performing its title rundown of additional judgments or liens which affect the property.

As soon as a problem is brought to the purchaser's attorney's attention, an attempt to obtain as much information as possible should be made so that a solution to the problem may be developed with the seller's attorney. By way of example, if the purchaser has detected a problem with the home and is refusing to close, it is helpful to attempt to obtain from the real estate broker accompanying the purchaser during the pre-closing walk through an objective statement of the condition which exists and a fair assessment of the cost to correct the problem. In the instance of a condition with the property, the most common solution is to attempt to negotiate a payment to the purchaser in a form of a credit against the purchase price on the closing statement if a mutually acceptable amount can be agreed upon. It should be noted that credits to the purchaser at closing are often prohibited or require the prior approval of the lender; accordingly, the prior consent of the lender may be required for any credit against the purchaser price.

If the problem concerns the title to the property, the title company should transmit by telecopy to the purchaser's attorney as much information as possible regarding the information which has been retrieved by the title company. It is then important to immediately communicate to the seller's attorney the information regarding the problem and any proposal to resolve the matter. If at issue is a problem with the title of the property, the party which holds a valid claim against the property and/or the title company will have to quantify the extent to which there is a monetary claim against the property. The purchaser's attorney will need to discuss with the seller's attorney the nature of the claim and the amount at issue. Once an agreement has been reached with the seller's attorney, the appropriate amount would have to be disbursed from the sales proceeds so that the claim against the property is satisfied.

Frequently, because of the inability to quantify with any certainty the amount required to satisfy the claim and the absence of sufficient time in which to work out the details of the payment of the claim, it may be necessary to place an amount in escrow pending the resolution of the precise amount required to satisfy the claim. The amount would be agreed to by the seller, purchaser and the title company and the lender, if appropriate. The amount may be approximately one and one half times to two times the estimated amount of the claim. This would allow the parties to close immediately with the purchaser having the comfort that sufficient funds have been set aside to satisfy the claim and with the title company willing to insure the transaction knowing that sufficient funds have been set aside to satisfy the claim against the property. The agreement of the parties to the amount and terms of the payment into and disbursement from the escrow is accomplished by means of a written escrow agreement signed by all parties having an interest in the establishment of the escrow. Appearing as Exhibit 93 is a general form of escrow agreement setting forth an outline of the terms which should be reflected in such an agreement. Once again, it should be noted that many lenders prohibit the

establishment of escrows at closing; accordingly, the prior consent of the lender may be required for the escrow of any funds at closing.

If the parties are unable to resolve their differences or the impediment to closing cannot be monetarily quantified, e.g. the seller failed to obtain the certificate of occupancy required by the municipality for a transfer of a home, the lender should be notified immediately and advised of the problem. If the problem can be resolved within a day's time, some lenders will permit the purchaser's attorney to retain the mortgage package and to close the next day, provided that the purchaser is willing to accept the documents as originally prepared and dated, and assume the obligation for payments as originally calculated. If the closing will be postponed for a longer time, the lender is likely to require the package to be returned and prepared again once the closing has been rescheduled. The rescheduling of the closing by the purchaser's attorney would have to take into consideration the ability of the lender to again prepare the closing documents and reissue the closing package. There may be an additional fee imposed when the package is prepared the second time.

**EXHIBIT 93 - GENERAL ESCROW AGREEMENT**

ESCROW AGREEMENT

ESCROW AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, by and among:

\_\_\_\_\_, about to reside at  
\_\_\_\_\_ (hereinafter referred to as  
"Seller") and

\_\_\_\_\_, about to reside at  
\_\_\_\_\_ (hereinafter referred to as  
"Buyer") and

\_\_\_\_\_, having an office located  
at \_\_\_\_\_  
(hereinafter referred to as "Escrow Agent").

W I T N E S S E T H :

WHEREAS, Buyer and Seller have entered into an Agreement for the sale of real property situated in \_\_\_\_\_ known as \_\_\_\_\_ (the "Property"); and

WHEREAS, closing of title in accordance with the Agreement occurred on \_\_\_\_\_;  
and

WHEREAS, [describe problem which resulted in the need for an escrow to be established at closing]; and

WHEREAS, [describe proposed manner in which problem will be resolved].

NOW, THEREFORE, in consideration of the closing of this transaction, the mutual promises and covenants, and other good and valuable consideration, the parties hereto agree as follows:

i) [Identify party that will serve as escrow agent and confirm the agreement of that party to serve. Note that more than one party may be designated, e.g. any attorney to hold the closing proceeds in escrow and the title company to hold closing documents in escrow].

ii) [Describe the actions which are to be taken by designated parties in order to release the items from escrow].

iii) [Describe the actions which are to be taken by the escrow agents upon the satisfaction of the conditions imposed as part of the escrow arrangement in order to prove that the conditions have been satisfied].

**Exhibit 93 - General Escrow Agreement - Continued**

iv) [Describe any other obligations of the parties beyond the performances stated in the escrow agreement, e.g. an indemnification and hold harmless by one of the parties of the other for loss or damage arising out of the circumstances which warranted the escrow].

v) [Describe the actions which will result in the termination of the Escrow Agreement]

vi) [Indemnity of Escrow Agent, e.g.] Seller and Buyer, by execution hereof, indemnify and agree to hold the Escrow Agent harmless from any and all claims or causes of action, damages or injuries arising out of or in any way related to the performance of its duties in connection herewith, except for those matters arising out of the Escrow Agent's gross negligence.]

vii) [Dispute resolution provision, e.g. arbitration or litigation] Seller acknowledges that the Escrow Agent is the attorney for the Buyer and that in the event of a dispute between Seller and Buyer arising out of this Escrow Agreement or the closing of title on \_\_\_\_\_, said Escrow Agent shall not be disqualified from representing Buyer by reason of its role as Escrow Agent. Notwithstanding the foregoing, in the event of any dispute between the Buyer and Seller concerning the Escrow Funds [and/or other escrowed items], the Escrow Agent shall retain the Escrow Funds [and/or other escrowed items] until resolution of the dispute, or in the discretion of the Escrow Agent, may arrange for arbitration in the County of \_\_\_\_\_, New Jersey before a single arbitrator designated by the American Arbitration Association in accordance with the Laws or Rules of the American Arbitration Association, with the costs of said arbitration to be divided equally between Seller and Buyer.

viii) This Escrow Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties hereto and their respective heirs, successors and Assigns. This Escrow Agreement may be amended, modified, superseded, waived or cancelled only by a written instrument executed by all parties hereto.

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Seller

\_\_\_\_\_

\_\_\_\_\_  
Seller

\_\_\_\_\_

\_\_\_\_\_  
Buyer

\_\_\_\_\_

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Escrow Agent

By: \_\_\_\_\_

## **Section 6.6 Post Closing**

Once the closing has been completed, there still remains a substantial amount of work to be performed by the purchaser's attorney. Furthermore, many of the post-closing functions must be performed immediately after the completion of the closing in order to protect the interests of the purchaser and to comply with the requirements of the lender.

### **Section 6.6.1 Recordation of Documents**

The original deed and mortgage (and other documents which may require recording such as an the lender's assignment of mortgage and the power of attorney pursuant to which documents may have been executed) must be sent to the appropriate county recording office as discussed in Section 4.3.9. The deed must be accompanied by the check representing the realty transfer fee and a separate check for the recording fees for the documents being recorded. Currently, the fee for recording a deed is \$40.00 for the first page and \$10.00 for each additional page to be recorded. The recording fee for a mortgage is \$30.00 for the first page and \$10.00 for each additional page. The documents being submitted for recording should comply with the requirements of the Recording Act, discussion of which appears in Section 4.3.8. On each document being recorded should be the notation "Record and Return to:" under which should be inserted the name and address of the party to whom the recorded document should be returned. If a full or partial exemption from the realty transfer fee is being claimed, the affidavit of consideration should be completed and mailed along with the deed to the county recording office for recordation. The affidavit of consideration or exemption is considered a separate page for which the recording fee is to be paid.

It is often helpful to utilize a form letter for the transmittal of documents for recording. Depending upon any backlog in the county recording office, it may be several weeks before the document is recorded and returned to the party submitting the document. Once an instrument has been recorded, the instrument will be stamped with the date on which it was recorded and the county recording office in which the recording was performed. Each page of the recorded instrument will be stamped with the number of the deed or mortgage book, as appropriate, in which it was recorded and consecutive page numbers within the recording book. Before instrument has been recorded and returned, it is possible to obtain evidence of the receipt of a document by the county recording office for recording by providing an additional copy of the letter submitting the instrument(s) on which the county recording office will confirm the receipt of the documents or by providing a form of recorder's receipt for completion by the county recording office. In order to facilitate the efforts of the county recording office, a postage paid, self-addressed envelope should be included for the return of the confirmation. The enclosure will be returned to the party submitting the documents for recordation reflecting the daily number or instrument number assigned to the document when it was received by the county recording office.

A transmittal letter to the county recording office appears as Exhibit 94 and a recorder's receipt appears as Exhibit 95.

As discussed at Section 4.3.9, *N.J.S.A. 46:26C-1 et seq.*, adopted on May 1, 2012, contemplates the adoption of rules and regulations for the electronic recording of documents in the future.

**EXHIBIT 94 - TRANSMITTAL LETTER TO COUNTY RECORDING OFFICE**

[Date]

Union County Register  
1st Floor Courthouse (Rear)  
2 Broad Street  
Elizabeth, N.J. 07207-6001

**Re: [Name of Purchaser] - from - [Name of Seller]  
(File #1234-001)**

Dear Sir/Madam:

Enclosed please find the following for:

( X ) recording        ( ) cancellation    ( ) filing

( X ) Deed (record first)    ( X ) Mortgage (record second)

( ) Discharge of Mortgage        ( ) Notice(s) of  
Settlement

( ) Release of Part of        ( ) UCC-3 Statement of  
Mortgaged Property        Partial Release

( X ) Please charge recording fee to our account #000.

( X ) Check in the amount of \$6,347.50 is enclosed for realty transfer fee.

( ) Check in the amount of \$    is enclosed for recording fee.

Kindly return the enclosed receipt with the recording information noted thereon to the undersigned in the self-addressed, postage paid envelope enclosed for your convenience. Thank you.

Very truly yours,

[Attorney for Purchaser]

**EXHIBIT 95 - RECORDER'S RECEIPT**

[DATE]

[Name and Address of  
Attorney for Purchaser]

Dear Madam or Sir:

This is to certify that a certain Deed between Steven and Susan Seller and Patrick and Petunia Purchaser dated \_\_\_\_\_ affecting premises in Municipality, New Jersey was RECORDED in this office on \_\_\_\_\_ in Book \_\_\_\_\_, Page \_\_\_\_\_.

Recording Fee: \$\_\_\_\_\_

Very truly yours,

Clerk/Register

File No. 01234-001

The purchaser's attorney should also confirm with the county recording office the form of funds acceptable to the office to which the attorney will be directing the documents for recording. As a matter of practice, some of the county recording offices are unwilling to accept personal checks and/or attorney business account checks (but will accept attorney trust account checks) in payment of either the realty transfer fee or recording fees.

It should be noted that some county recording offices allow attorneys to maintain accounts by depositing a sum of funds with the office against which funds will be withdrawn for fees such as recording, filing and realty transfer fees. The attorney would then merely instruct the county recording office to charge the attorney's account for the fee rather than to go through the effort of calculating and submitting a check for the fee.

The attorney should keep informed of changes in the recording fees, and the specific fees imposed by the recording office of the county in which the property is located. *N.J.S.A. 22A:4-4.1* establishes statutory fees that are applied throughout the State; however, the county recording office imposes a postage and handling charge for the return of recorded instruments and an indexing charge depending on the number of names to be indexed. The charge varies in each county but is nominal.

If the attorney maintains an escrow account with the county recording office, changes or differences in recording fees will not affect the timely recording of documents since the office will merely draw the required funds to cover the fee. However, if the attorney calculates the fee and includes a check with the document submitted for recording, if the check is in the wrong amount, the document will be returned unrecorded to the sender. The result is a delay in recording, as well as the time and effort to obtain and issue a check in the correct amount and to resubmit the document for recording. The correction of the recording fee check may depend upon the cooperation of the attorney for the other party in the transaction.

Different fees may also be imposed by counties due to the decision of the county to establish a trust fund to accomplish the purposes of New Jersey's County Homelessness Trust Fund Act, P.L. 2009, c. 123. Enacted as P.L. 2009, c. 123, the Act supplements the "Prevention of Homelessness Act (1984)" (*N.J.S.A. 52:57 D-280 et. seq.*) and amends *N.J.S.A. 22A:4-17*. *N.J.S.A. 22A:4-17* permits counties to establish a Homelessness Trust Fund for the purpose of moving the homeless and formerly homeless into permanent affordable housing. In order to fund this initiative, those counties that establish such a fund may add a \$3.00 surcharge to recording fees. Not all counties have imposed the \$3.00 surcharge and the counties which have established a trust fund have different start dates for the surcharge.

It should be noted that the Act provides that the surcharge applies to every document recorded in the land records except "assignments or substitutions of previously recorded deeds of trust." The provision has been interpreted by most counties to exempt assignments of mortgage from the \$3.00 surcharge.

### **Section 6.6.2 Mortgage Package to Lender**

The lending institution providing the financing will include in its package post-closing instructions with which the purchaser's attorney is to comply. The closing instructions are often very strict as to the time by which the post-closing package is to be returned to the lender. Specifically, the instructions may provide that the package is to be returned within twenty-four (24) or forty-eight (48) hours of the closing. Every effort should be made to ensure the return of the package by the stated deadline. Some lenders will also dictate the manner in which the package is to be returned, e.g. overnight delivery, and the address to which it is to be returned which may differ from the address from which the package originated. The desire of the lender to expedite the return of the closing package may be attributable to the obligation of the lender to sell or assign its interests in the loan to either an investor or to the secondary mortgage market.

In preparing the post-closing package, the directions of the lender should be followed carefully. The lender will require the original note to be returned. Since the original mortgage will have been forwarded to the county recording office for recordation, the lender is likely to require a copy of the mortgage certified by the attorney to be a "true copy" of the mortgage transmitted for recording to be submitted to the lender. Where any document is required by the lender to be certified as a true copy, the attorney should write on the top of the first page of the instrument "I certify this to be a true copy" or "Certified to be a true copy" and the attorney should sign and print his or her beneath that notation.

The post-closing instructions will also instruct the attorney to return the other documents that were included in the package for execution at the closing. The post-closing instructions may also specify the number of originals and copies of each documents which are to be signed and returned as part of the package. It is, therefore, important to review these instructions prior to the closing so that sufficient copies of the documents are made and signed at the closing. In addition to the documents generated by the lender, the lender may ask for original executed copies of the affidavits of title, RESPA/HUD-1 Settlement Statement, the marked-up title commitment, as well as other items which may not have been previously received by the lender, such as the homeowners insurance policy or certificate of occupancy.

If the lender issued a gross mortgage check and, as part of the closing instructions is requiring the amounts to be paid to the lender, e.g. prepaid interest, real estate tax, homeowners insurance, and private mortgage insurance escrows, and loan origination fees due to the lender, payment of those amounts must be submitted along with the post-closing package. If the instructions are not clear, the attorney should also confirm whether separate checks are required for the payment of the amounts due and the form of funds acceptable to the lender. Some lenders will not accept the personal check of the purchaser for those amounts. Obviously, if the lender has issued a net check, thereby deducting from the mortgage proceeds amount the payments due to the lender, no payment to the lender need accompany the post-closing package. A letter forwarding the documents to the lender post-closing appears as Exhibit 96.

### **Section 6.6.3 Payoff of Existing Mortgage**

On the closing day or the day after closing in the event that the closing is held too late in the day to dispatch the mortgage payoff check, the check representing the amount required to satisfy the existing mortgage on the property should be forwarded to the lender in accordance with the payoff letter received from the lending institution. A discussion of obtaining the payoff letter appears in Section 4.3.3(a). Since the calculation of the payoff amount includes interest through the date of receipt of the check by the lending institution, it is crucial for the check to be dispatched on the day of closing (if the figures anticipated interest through the first business day after closing) or on the day after the closing in the event the closing is scheduled and completed too late in the day for the timely dispatch of the closing proceeds (in which case interest was included through the second business day after the day of closing). The amount for which the seller will be responsible will include the amount required to satisfy the loan as well as the charge for the overnight delivery of the check.

The form of the check should comply with the form of funds required by the lender. Some payoff letters will specify that the payoff proceeds must be in the form of a certified check or bank check. Notwithstanding such instructions in the payoff letter, it is not uncommon for a lender, when asked, to agree to accept an attorney trust check even if the payoff letter does not expressly allow for the payment by such funds. Prior to the closing, the lender's acceptance of an attorney trust check should be confirmed by telephone. A letter transmitting the payoff check to the lender holding the seller's mortgage on the property appears as Exhibit 97.

Once the lender has received the payoff check and has confirmed that the check has cleared, it will arrange for the original mortgage to be endorsed for cancellation by the lender and returned to the purchaser's attorney along with other documentation related to the loan transaction. By way of example, the original note, title insurance policy and survey submitted to the lender at the time the loan was made may be returned to the purchaser's attorney. The endorsement of a mortgage for cancellation is the reflection of a notation on the original mortgage that the lending institution has been paid in full the amounts due under the mortgage and that the clerk's or register's office in the county in which the property is located is authorized to cancel the mortgage of record. The names of the appropriate officers of the lender will appear signed and printed beneath the endorsement. A mortgage which has been endorsed for cancellation and then cancelled of record appears as Exhibit 98.

**EXHIBIT 96 - LENDER'S POST-CLOSING TRANSMITTAL LETTER**

[Date]

**VIA FEDERAL EXPRESS**

Purchaser's Mortgage Company  
1 Mortgage Way  
Municipality, NJ 12345

Attn: Ms. Cathy Closer  
Post Closing Dept.

**Re: Patrick and Patricia Purchaser  
1 Property Road, Township, NJ  
Loan No. 999999-999**

Dear Ms. Closer:

Enclosed please find an original and certified true copy of the following documents in connection with the above-captioned matter:

- (1) Initial Good Faith Estimate;
- (2) Initial Federal Truth-in-Lending Disclosure Statement;
- (3) Lock-in Confirmation Addendum;
- (4) Description of Lender's Program;
- (5) Adjustable Rate Note;
- (6) Mortgage (certified copy only);
- (7) First Payment Letter;
- (8) Mortgagors' Affidavit of Title;
- (9) HUD-1 Settlement Statement;
- (10) Addendum to HUD-1;
- (11) Name Affidavits;
- (12) Initial Escrow Account Disclosure Statement;
- (13) New Loan Tax Information Sheet;
- (14) Initial Tax Authorization Notice (3);
- (15) Federal Truth-in-Lending Disclosure Statement;
- (16) Request for Taxpayer Identification Number and Certification (2);
- (17) Correction of Errors Statement;
- (18) Borrower's Certification;
- (19) As Is Statement;
- (20) Residential Loan Application;
- (21) This firm's trust account check in the amount of \$140.80 made payable to MGIC representing 2 months PMI premium.

In the event you should have any questions, please do not hesitate to contact me.

Very truly yours,

**EXHIBIT 97 - PAYOFF TRANSMITTAL LETTER**

[Date]

VIA FEDERAL EXPRESS

Best Mortgage Corporation  
123 Lender's Way  
Raleigh, NC 12345

Attn: Mortgage Payoff Department

**Re:   Name of Seller  
      987 Property Way  
      Municipality, New Jersey  
      Loan #9999999999**

Gentlemen:

Enclosed please find this firm's trust account check in the amount of \$253,292.84 representing payment in full of the above-captioned loan. This check includes interest through and including November 15, 1996.

Kindly arrange to have the original Mortgage endorsed for cancellation and forward same to the undersigned for cancellation of record, together with the original paid Note and any other pertinent loan documentation in your possession.

Thank you for your courtesy and cooperation in this matter.

Very truly yours,

Attorney for Purchaser

cc: Attorney for Seller

**EXHIBIT 98 - MORTGAGE ENDORSED FOR  
CANCELLATION AND CANCELLED OF RECORD**

<b>RECORDING INFORMATION SHEET</b>		ESSEX COUNTY REGISTER'S OFFICE HALL OF RECORDS, ROOM 130 465 MARTIN LUTHER KING Jr. Blvd NEWARK NJ 07102	
<b>INSTRUMENT NUMBER:</b> <b>10004176</b>	<b>DOCUMENT TYPE:</b> <b>CANCELLATION OF MORTGAGE</b>		
<b>Official Use Only</b>  <div style="border: 1px solid black; padding: 5px; margin: 5px 0;">           PHILIP THIGPEN, REGISTER            ESSEX COUNTY, NJ             INSTRUMENT NUMBER            10004176            RECORDED ON            January 14, 2010 02:36 pm            BOOK: 12236 PAGE: 4939         </div> <div style="text-align: right; margin-top: 10px;">AC</div>	<b>Return Address (for recorded documents)</b> GREENBAUM, ROWE, SMITH AND RAVIN, P.C.  P.O. BOX 5600 WOODBRIDGE NJ 07095		
MAIL COPY _____ NO COPY _____ ENVELOPE _____  ADDITIONAL STAMPINGS _____		<b>No. Of Pages (excluding Summary Sheet)</b>	1
		<b>Recording Fee (excluding Transfer Tax)</b>	\$20.00
		<b>Realty Transfer Tax</b>	\$0.00
		<b>Amount Charged (Charge)</b>	\$20.00
		<b>Municipality</b>	MONTCLAIR
		<b>Parcel Information</b>	<b>Block</b> <b>Lot</b>
		<b>First Party Name</b>	DAVID [REDACTED]
		<b>Second Party Name</b>	HUDSON CITY SAVINGS BANK
<b>Additional Information (Official Use Only)</b>		<div style="font-size: 1.2em; font-weight: bold; margin-bottom: 5px;">CANCELLED OF RECORD</div> <div style="font-size: 0.9em; margin-bottom: 5px;">JAN 14 2010</div> <div style="font-family: cursive; font-size: 1.1em; margin-bottom: 5px;">Philip Thigpen</div> <div style="font-weight: bold; font-size: 0.8em;">Register</div>	
***** DO NOT REMOVE THIS PAGE. ***** COVER SHEET (DOCUMENT SUMMARY FORM) IS PART OF ESSEX COUNTY FILING RECORD ***** RETAIN THIS PAGE FOR FUTURE REFERENCE. *****			

# Exhibit 98 - Mortgage Endorsed for Cancellation and Cancelled of Record - Continued

Record and Return to:  
Greenbaum, Rowe, Smith & Davis  
Post Office Box 612  
Bridgewater, New Jersey 08807

1790616

887186

## MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on March 11, 2003. The mortgagor is David [redacted] and Jacqueline [redacted], husband and wife. ("Borrower"). This Security Instrument is given to HUDSON CITY SAVINGS BANK, which is organized and existing under the laws of The State of New Jersey, and whose principal office and mailing address is West 80 Century Road, Paramus, New Jersey 07652 ("Lender"). Borrower owes Lender the principal sum of Five Hundred Thousand and No/100 Dollars (U.S. \$ 500,000.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on April 1, 2033. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions, and modifications; (b) the payment of all other sums, with interest, advanced under Paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. This Security Instrument and the Note secured hereby are subject to modifications (including changes in the interest rate, the due date, and other terms and conditions), as defined in New Jersey Laws 1985, ch. 353, section, § 1 et seq., and upon such modification, shall have the benefit of the lien priority provisions of that law. For this purpose, Borrower does hereby mortgage, grant, and convey to Lender the following described property located in the municipality of Montclair Two in Essex County, New Jersey:

Being the same vacant land conveyed to the said Mortgagors by Deed from Lafayette Sq Construction Co, LLC, a New Jersey limited liability company, dated March 11, 2002 and recorded March 12, 2002 in the Essex County Clerk/Register's Office in Deed Book 5868, Page 223. This mortgage is being given to secure the purchase price for the improvement on [redacted]

**CANCELLED OF RECORD**

SEE DESCRIPTION RIDER ANNEXED HERETO

JAN 14 2010

which has the address of [redacted] Ct, Montclair (City) Register  
(Street) (City)  
New Jersey 07042 ("Property Address");  
(Zip Code)

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant, and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) hazard or property insurance premiums; (d) flood insurance premiums, if any; (e) mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of Paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. § 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds annually, analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If, under paragraph 21, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to late charges due under the Note; second, to prepayment charges due under the Note; third, to amounts payable under paragraph 2; fourth, to interest due; and last, to principal due.

## Exhibit 98 - Mortgage Endorsed for Cancellation and Cancelled of Record - Continued

**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions payable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

**5. Hazard or Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance to paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible, or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amounts or payments. If under paragraph 21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

**6. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceedings, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**7. Protection of the Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in Court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

**8. Mortgage Insurance.** If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the mortgage insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the mortgage insurance previously in effect, from an alternate mortgage insurer approved by Lender. If substantially equivalent mortgage insurance coverage is not available, Borrower shall pay to Lender each month a sum equal to one-twelfth of the yearly mortgage insurance premium being paid by Borrower when the insurance coverage lapsed or ceased to be in effect. Lender will accept, use, and retain these payments as a loss reserve in lieu of mortgage insurance. Loss reserve payments may no longer be required, at the option of Lender, if mortgage insurance coverage (in the amount and for the period that Lender requires) provided by an insurer approved by Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law.

**9. Inspection.** Lender or its agents may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

**10. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

**Exhibit 98 - Mortgage Endorsed for  
Cancellation and Cancelled of Record - Continued**

**SCHEDULE A  
LEGAL DESCRIPTION**

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Township of Montclair, County of Essex State of New Jersey:

BEING shown and designated as Lot 19.03 in Block 1101 as shown on a certain map entitled, "Stonebridge Court" and which map was filed in the Essex County Clerk's Office on February 1, 2001 as Map No. 4114.

BEING further described in accordance with a survey made by McCumsey - Petry dated August 6, 2002:

Beginning at a point in the easterly sideline of Stonebridge Court (50 feet in width). Said point being southerly along varies courses a distance of 136.67' along said sideline, extended, which intersects the southerly sideline of Stonebridge Road, extended, (width varies) and from said point of beginning running, thence;

1. South 83 degrees 15 minutes 40 seconds East, 148.01 feet leaving said sideline along the dividing line of lot 19.03 on the south and lot 18.01 on the north to a point in the westerly terminus of Howe Avenue (50 feet in width), thence;
2. South 15 degrees 47 minutes 15 seconds West, 138.80 feet along the dividing line of lot 19.03 on the west and part of Howe Avenue & lot 28 on the east to a point, thence;
3. North 69 degrees 31 minutes 36 seconds West, 55.11 feet along the dividing line of lot 19.03 and lot 1 to a point, thence;
4. South 15 degrees 54 minutes 44 seconds West, 60.44 feet still along said dividing line to a point, thence;
5. North 69 degrees 15 minutes 00 seconds West 52.00 feet along the dividing line of lot 19.03 on the north and lot 19.02 on the south to a point in the easterly sideline of Stonebridge Court, thence;
6. Northwesterly along a non-tangent curve to the left having a central angle of 60 degrees 11 minutes 52 seconds a radius of 50.00 feet and an arc length of 52.53 feet to a point of reverse curvature. Said curve having a chord bearing and distance of North 09 degrees 20 minutes 56 seconds West, 50.15 feet, thence;
7. Northwesterly along a curve to the right having a central angle of 60 degrees 08 minutes 33 seconds a radius of 35.00 feet and an arc length of 36.74 feet still along said sideline to a point of reverse curvature. Said curve having a chord bearing and distance of North 09 degrees 22 minutes 35 seconds West, 35.08 feet, thence;
8. Northwesterly along a curve to the left having a central angle of 28 degrees 43 minutes 53 seconds a radius of 375.00 feet and an arc length of 90.09 feet still along said sideline to the point and place of beginning. Said curve having a bearing and distance of North 13 degrees 48 minutes 45 seconds East, 89.87 feet.

Being also known as Tax Lot 19.03, in Block 1101, as shown on the Official Tax Map of the Township of Montclair.

## Exhibit 98 - Mortgage Endorsed for Cancellation and Cancelled of Record - Continued

11. **Borrower Not Released; Force By Lender Not a Waiver.** Extension of time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant, and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear, or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. **Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

14. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

15. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end, the provisions of this Security Instrument and the Note are declared to be severable.

16. **Borrower's Copy** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

17. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

18. **Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower may at Lender's complete discretion have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorney's fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. In the event that Borrower seeks to reinstate, by curing a default through a bankruptcy proceeding, the Lender shall be entitled to interest on the amount necessary to cure the default at the rate specified in the Note secured by this Security Instrument. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 17. Accordingly, the right of Borrower to cure any default and reinstate the obligation subsequent to acceleration by Lender shall be at Lender's complete discretion.

19. **Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There may also be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 14 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

20. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit, or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 20, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety, or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

21. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding, and sale of the Property; (e) the Borrower's right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure; and (f) any other disclosure required under the Fair Foreclosure Act, codified at Sections 2A:50-53 et seq. of the New Jersey Statutes, or other Applicable Law. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, attorneys' fees and costs of title evidence permitted by the Rules of Court.

## Exhibit 98 - Mortgage Endorsed for Cancellation and Cancelled of Record - Continued

**22. Release.** Upon payment of all sums secured by this Security Instrument, Borrower shall have the option to request the Lender to cancel this Security Instrument. If the Borrower requests the Lender to cancel this Security Instrument, the Lender shall have the right to charge the Borrower recordation costs and any other appropriate administrative fees in accordance with State and/or Federal Law.

**23. No Claim of Credit for Taxes.** Borrower will not make a deduction from or claim credit on the principal or interest secured by this Security Instrument by reason of any governmental taxes, assessments, or charges. Borrower will not claim any deduction from the taxable value of the Property by reason of this Security Instrument.



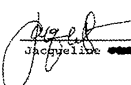
**24. Owner Occupancy Provision.** Any provision of this mortgage to the contrary notwithstanding, the following provision shall be applicable. If during the term of the note and mortgage, the lender/mortgagee discovers that the property is not being used either as a primary or secondary residence by the owner/mortgagor, but rather is being used by the owner/mortgagor as either a rental or an investment property, then (a) if the loan is an adjustable rate mortgage, the lender/mortgagee will have the option of immediately increasing the interest rate by one (1) percentage point, increasing the "Margin" one (1) percentage point, and increasing the lifetime caps on the interest rate by one (1) percentage point; OR (b) if the loan is a fixed rate mortgage, the lender/mortgagee will have the option of immediately increasing the interest rate by one (1) percentage point.

**25. Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)]

<input type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> 2-4 Family Rider
<input type="checkbox"/> Planned Unit Development Rider	<input checked="" type="checkbox"/> Legal Description	<input type="checkbox"/> Other

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it. Borrower(s) also acknowledge a receipt of a true copy of this instrument, provided without charge.

Signed, sealed, and delivered in the presence of:


 _____ An Attorney At Law of New Jersey	 David _____ (Seal) Borrower	
_____ _____	 Jacqueline _____ (Seal) Borrower	
_____ _____	_____ (Seal) Borrower	
_____ _____	_____ (Seal) Borrower	

(Space Below This Line For Acknowledgement)

STATE OF NEW JERSEY Somerset County ss:

On this 11th day of March, 2003, before me, the subscriber, personally appeared  
David and Jacqueline, husband and wife

who I am satisfied, are the person(s) named in and who executed the within instrument, and thereupon they acknowledged that they signed, sealed, and delivered the same as their act and deed, for the purposes therein expressed.

  
 \_\_\_\_\_  
 An Attorney At Law of New Jersey

(Space Below This Line Reserved For Lender and Recorder)

Record and Return to:

~~Carol A. Graves, Esq.~~  
~~Post Office Box 6820~~  
~~Bridgewater, New Jersey 08807~~

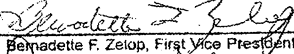
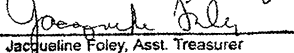


Instr# 810618      Carole A. Graves  
 Recorded/Filed HB 2      Essex County Register  
 07/16/2003 15:23:0 Bk 9009 Pg 146 #Pgs 5 KA

CANCEL & RETURN TO:

~~Carol A. Graves, Esq.~~  
 Greenbaum, Rowe, Smith & Davis LLP  
 P. O. Box 5600  
 Woodbridge, New Jersey 07095

The principal amount of the within mortgage together with interest thereon having been fully paid, the Register of County of Essex is hereby authorized to cancel this mortgage of record. HUDSON CITY SAVINGS BANK

(seal)   
 Bernadette F. Zelop, First Vice President  
  
 Jacqueline Foley, Asst. Treasurer

If the original mortgage cannot be located and endorsed for cancellation, the same result may be achieved by the completion of a discharge of mortgage and execution of same by the proper officials of the lending institution. A copy of a discharge of mortgage is included as Exhibit 99.

At times, a mortgage might encumber more property than that being purchased. Such mortgages are commonly referred to as "blanket" mortgages. This would typically be the case when the seller is a builder of new homes and has mortgaged all of the lands and proposed improvements within a development as security for a construction loan. At the closing for each dwelling, the seller will pay the release consideration to the lender and secure the release of only the portion of the overall encumbered property being purchased. The remaining portions of the property will continue to be encumbered by the mortgage until their respective releases similarly have been secured by the payment of the related release consideration. A form of letter specifying the terms of the release of a single unit from a blanket mortgage appears as Exhibit 100.

If the seller has given the mortgage lender additional security in the form of an interest in certain personalty such as materials, equipment, fixtures, and improvements to the real property, the title commitment will reflect the filing of a UCC-1 financing statement in the office of the county recording office and sometimes in the office of the Secretary of State as well. The consideration for the release of a single property from the lien of a blanket mortgage may be stated in the recorded mortgage itself or may subsequently be calculated at the time of the release of an individual unit or lot from its lien in accordance with a provision in the recorded mortgage. In either case, it is prudent to receive a written release statement from the lender confirming the amount due in connection with the release of the property from the mortgage unless the seller has arranged to have the executed release documents available the closing. A release of part of mortgaged property releasing a single property from a blanket mortgage appearing as Exhibit 101. A UCC-3 statement of partial release evidencing the release of a single property from the filed UCC-1 financing statement by which the seller gave a security interest in personalty related not only to the subject property but to other property as well appears as Exhibit 102. The UCC-3 will be provided for filing in each office in which the UCC-1 financing statement was filed, i.e. the office of the county recording office and/or the office of the New Jersey Secretary of State. See Section 7.1.3 for a discussion of the issues related to the sale and purchase of newly constructed dwellings and Section 7.2 for other considerations in connection for multi-family developments.

Upon the receipt of either the mortgage endorsed for cancellation, release of part of mortgaged property, or the discharge of mortgage, the purchaser's attorney should cancel of record the mortgage endorsed for cancellation or record the partial release or discharge of mortgage in the county recording office. Some lenders will arrange for the cancellation of record or the recording of the discharge or partial release in the county recording office before forwarding the instrument to the purchaser's attorney. In such cases, the lender will include the county recording office's fee in the payoff statement. If the lender has not done so, the purchaser's attorney is responsible for ensuring the instrument is submitted to the appropriate county recording office for recordation.

## EXHIBIT 99 - DISCHARGE OF MORTGAGE

### Discharge of Mortgage

A certain Mortgage dated \_\_\_\_\_, was made by \_\_\_\_\_

to \_\_\_\_\_

This Mortgage was made to secure payment of \$ \_\_\_\_\_ and interest. It was recorded or registered in the office of the county recording officer of \_\_\_\_\_ County, State of New Jersey, on \_\_\_\_\_, in Mortgage Book \_\_\_\_\_ on Page \_\_\_\_\_.

1. This Mortgage has been PAID IN FULL or otherwise SATISFIED and DISCHARGED. It may now be discharged of record. This means that this Mortgage is now canceled and void.

2. I sign and CERTIFY to this Discharge of Mortgage on \_\_\_\_\_.

Witnessed or Attested by: \_\_\_\_\_ (Seal)

\_\_\_\_\_  
\_\_\_\_\_  
(Seal)

STATE OF NEW JERSEY, COUNTY OF \_\_\_\_\_ SS:  
I CERTIFY that on \_\_\_\_\_

personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument;
- (b) executed this instrument as his or her own act.

\_\_\_\_\_  
*Print name and title below signature*

STATE OF NEW JERSEY, COUNTY OF \_\_\_\_\_ SS:  
I CERTIFY that on \_\_\_\_\_

personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument;
- (b) was authorized to and did execute this instrument as

of \_\_\_\_\_ the entity named in this instrument; and,  
(c) executed this instrument as the act of the entity named in this instrument.

RECORD AND RETURN TO:

\_\_\_\_\_  
*Print name and title below signature*

(For Recorder's Use Only)

**EXHIBIT 100 - BLANKET MORTGAGE LOAN PAYOFF LETTER**

**VALLEY NATIONAL BANK**  
1455 VALLEY ROAD  
WAYNE, NJ 07470

June 9, 2008

**Greenbaum, Rowe, Smith & Davis LLP**

**[REDACTED], LLC**  
Loan #98817  
Unit 2

Dear Ms. [REDACTED]:

Pursuant to your request for an amount sufficient to release the above captioned lot from our mortgage lien, please be advised that \$93,200.00 will be required.

Upon receipt of a check in the amount of \$93,200.00 we will execute a "Release of Part of Mortgaged Premises" and UCC-3 Termination form(s), as completed by your office and return same to you. Kindly forward the documents and check to the undersigned.

Very truly yours,

/s/ Doris V. [REDACTED]

Doris V. [REDACTED]  
Construction Mortgage Administrator

Via Fax (732) 476-2613  
Direct Fax: (973) 317-1094  
Email: [D\[REDACTED\]@valleynationalbank.com](mailto:D[REDACTED]@valleynationalbank.com)

## EXHIBIT 101 - RELEASE OF PART OF MORTGAGED PROPERTY

### Release of Part of Mortgaged Property

This Release is made on  
BY the Lender(s)

whose address is

referred to as "I,"  
TO the Borrower(s)

whose address is

referred to as "You."  
If more than one person signs this Release, the word "I" shall mean "We."

1. **Release.** I hold a mortgage on a property owned by you. I also hold the note, bond or other agreement for payment that is secured by the mortgage. I agree to change the mortgage by removing some of the property covered by the mortgage. This property is released or freed from the mortgage. The rest of the property (not released) remains subject to the mortgage. I have been paid \$ \_\_\_\_\_ for making this Release.

2. **Mortgage.** The mortgage I hold is dated \_\_\_\_\_, and was made by \_\_\_\_\_  
to \_\_\_\_\_

The mortgage was recorded on \_\_\_\_\_, in the office of the County Recording Officer of \_\_\_\_\_  
County, New Jersey, in book \_\_\_\_\_ of mortgages on page \_\_\_\_\_. The original  
amount of the mortgage was \$ \_\_\_\_\_.

3. **Release of Property.** The property which is released from and no longer subject to the mortgage is located in the \_\_\_\_\_ of \_\_\_\_\_ in the County of \_\_\_\_\_ and State of New Jersey. The property includes: (a) the land; (b) all buildings that are located on the land; (c) all fixtures that are attached to the land or building(s), for example: furnaces, bathroom fixtures and kitchen cabinets; and (d) all other rights that I now have relating to the property. The legal description is: \_\_\_\_\_

(Check Box if Applicable)

☐ Please see attached Legal Description annexed hereto and made a part hereof.

---

(For Recorder's Use Only)

## Exhibit 101- Release of Part of Mortgaged Property - Continued

4. **Who Is Bound.** This Release is binding upon me and all who succeed to my rights as holder of the mortgage.

5. **Signatures.** I agree to this Release. If this Release is made by a corporation, its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by: \_\_\_\_\_ (Seal)  
\_\_\_\_\_, Lender

\_\_\_\_\_, Lender (Seal)

STATE OF NEW JERSEY, COUNTY OF  
I CERTIFY that on

SS:

personally came before me and stated to my satisfaction that this person (or if more than one, each person):  
(a) was the maker of the attached instrument; and,  
(b) executed this instrument as his or her own act.

\_\_\_\_\_  
*Print name and title below signature*

STATE OF NEW JERSEY, COUNTY OF  
I CERTIFY that on

SS:

personally came before me and stated to my satisfaction that this person (or if more than one, each person):  
(a) was the maker of the attached instrument;  
(b) was authorized to and did execute this instrument as

of \_\_\_\_\_ the entity named in this instrument; and,  
(c) executed this instrument as the act of the entity named in this instrument.

RECORD AND RETURN TO:

\_\_\_\_\_  
*Print name and title below signature*

## Estoppel Certificate

1. **Certificate.** You make this Certificate regarding the mortgage described in this Release. By making this Certificate, you agree that you will be prevented (estopped) from ever denying the facts you now certify as being true.

2. **Certified Facts.** You certify and acknowledge that: (a) the mortgage is in full force and a valid lien is upon the remainder of the mortgaged property; (b) the balance due is \$ \_\_\_\_\_ plus interest at the rate of \_\_\_\_\_ % per year from \_\_\_\_\_; (c) you do not make any claim to reduce or dispute the amount due; (d) you make no other claims against me, the Lender; and (e) all terms of the mortgage remain the same, except:

\_\_\_\_\_  
\_\_\_\_\_, Borrower

\_\_\_\_\_  
\_\_\_\_\_, Borrower

## EXHIBIT 102 - UCC-3 STATEMENT OF PARTIAL RELEASE

## UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)	
Christine F. Li, Esq.	(732) 549-5600
B. SEND ACKNOWLEDGMENT TO: (Name and Address)	
Christine F. Li, Esq. Greenbaum, Rowe, Smith & Davis LLP P.O. Box 5600 Woodbridge, New Jersey 07095	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #		1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.	
UCC#2004031346 filed 2/11/04; Continuation #2008094782 filed 9/2/08		<input checked="" type="checkbox"/>	
2. <input type="checkbox"/> TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.			
3. <input type="checkbox"/> CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.			
4. <input type="checkbox"/> ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.			
5. AMENDMENT (PARTY INFORMATION): This Amendment affects <input type="checkbox"/> Debtor or <input type="checkbox"/> Secured Party of record. Check only <u>one</u> of these two boxes. Also check <u>one</u> of the following three boxes and provide appropriate information in items 6 and/or 7. <input type="checkbox"/> CHANGE name and/or address: Please refer to the detailed instructions in regards to changing the name/address of a party. <input type="checkbox"/> DELETE name: Give record name to be deleted in items 6a or 6b. <input type="checkbox"/> ADD name: Complete items 7a or 7b, and also item 7c; also complete items 7e - 7g (if applicable).			
6. CURRENT RECORD INFORMATION:			
6a. ORGANIZATION'S NAME			
Supreme Development, LLC			
OR			
6b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME
			SUFFIX
7. CHANGED (NEW) OR ADDED INFORMATION:			
7a. ORGANIZATION'S NAME			
OR			
7b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME
			SUFFIX
7c. MAILING ADDRESS			
200 Monmouth Parkway		CITY	STATE
		West Long Branch	NJ
			POSTAL CODE
			07764
			COUNTRY
			USA
7d. SEE INSTRUCTIONS		7e. TYPE OF ORGANIZATION	
13-2445639		Debtor	
		7f. JURISDICTION OF ORGANIZATION	
		New Jersey	
		7g. ORGANIZATIONAL ID #, if any	
		6066144250 <input type="checkbox"/> NONE	

8. AMENDMENT (COLLATERAL CHANGE): check only one box.Describe collateral ☒ deleted or ☐ added, or give entire ☐ retained collateral description, or describe collateral ☐ assigned

So much of the collateral as reflected in original Financing Statement No. 2004031346 as contained within or appurtenant to Unit 507 and its undivided 1.345% interest in the Common Elements of ABC Condominium.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here <input type="checkbox"/> and enter name of DEBTOR authorizing this Amendment.			
9a. ORGANIZATION'S NAME			
Raritan Bank, NA			
OR			
9b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME
			SUFFIX
10. OPTIONAL FILER REFERENCE DATA			

☐ FILING OFFICE COPY   
 ☐ ACKNOWLEDGMENT COPY   
 ☐ DEBTOR COPY   
 ☐ SECURED PARTY COPY

## Exhibit 102 - UCC-3 Statement of Partial Release - Continued

## Instructions for UCC Financing Statement AMENDMENT (Form UCC3)

Please type or laser-print this form. Be sure it is completely legible. Read all Instructions, especially Instruction 1a; correct file number of initial financing statement is crucial. Follow instructions completely.

Fill in form very carefully; mistakes may have important legal consequences. If you have questions, consult your attorney. Filing office cannot give legal advice. Do not insert anything in the open space in the upper portion of this form; it is reserved for filing office use.

An Amendment may relate to only one financing statement. Do not enter more than one file number in item 1a.

When properly completed, send Filing Office Copy, with required fee, to filing office. If you want an acknowledgment, complete item B and, if filing in a filing office that returns an acknowledgment copy furnished by filer, you may also send Acknowledgment Copy, otherwise detach. Always detach Debtor and Secured Party Copies.

If you need to use attachments, you are encouraged to use either Amendment Addendum (Form UCC3AD) or Amendment Additional Party (Form UCC3AP). Always complete items 1a and 9.

A. To assist filing offices that might wish to communicate with filer, filer may provide information in item A. This item is optional.

B. Complete item B if you want an acknowledgment sent to you. If filing in a filing office that returns an acknowledgment copy furnished by filer, present simultaneously with this form a carbon or other copy of this form for use as an acknowledgment copy.

1a. **File number:** Enter file number of initial financing statement to which this Amendment relates. Enter only one file number. In some states, the file number is not unique; in those states, also enter in item 1a, after the file number, the date that the initial financing statement was filed.

1b. Only if this Amendment is to be filed or recorded in the real estate records, check box 1b and also, in item 13 of Amendment Addendum, enter Debtor's name, in proper format exactly identical to the format of item 1 of financing statement, and name of record owner if Debtor does not have a record interest.

*Note:* Show purpose of this Amendment by checking box 2, 3, 4, 5 (in item 5 you must check two boxes) or 8; also complete items 6, 7 and/or 8 as appropriate. Filer may use this Amendment form to simultaneously accomplish both data changes (items 4, 5, and/or 8) and a Continuation (item 3), although in some states filer may have to pay a separate fee for each purpose.

2. To terminate the effectiveness of the identified financing statement with respect to security interest(s) of authorizing Secured Party, check box 2. See Instruction 9 below.

3. To continue the effectiveness of the identified financing statement with respect to security interest(s) of authorizing Secured Party, check box 3. See Instruction 9 below.

4. To assign (i) all of assignor's interest under the identified financing statement, or (ii) a partial interest in the security interest covered by the identified financing statement, or (iii) assignor's full interest in some (but not all) of the collateral covered by the identified financing statement: Check box in item 4 and enter name of assignee in item 7a if assignee is an organization, or in item 7b, formatted as indicated, if assignee is an individual. Complete 7a or 7b, but not both. Also enter assignee's address in item 7c. Also enter name of assignor in item 9. If partial Assignment affects only some (but not all) of the collateral covered by the identified financing statement, filer may check appropriate box in item 8 and indicate affected collateral in item 8.

5,6,7. To change the name of a party: Check box in item 5 to indicate whether this Amendment amends information relating to a Debtor or a Secured Party; also check box in item 5 to indicate that this is a name change; also enter name of affected party (current record name) in items 6a or 6b as appropriate; and enter new name (7a or 7b). If the new name refers to a Debtor complete (7c); also complete 7e-7g if 7a was completed.

5,6,7. To change the address of a party: Check box in item 5 to indicate whether this Amendment amends information relating to a Debtor or a Secured Party; also check box in item 5 to indicate that this is an address change; also enter name of affected party (current record name) in items 6a or 6b as appropriate; and enter new address (7c) in item 7.

5,6,7. To change the name and address of a party: Check box in item 5 to indicate whether this Amendment amends information relating to a Debtor or a Secured Party; also check box in item 5 to indicate that this is a name/address change; also enter name of affected party (current record name) in items 6a or 6b as appropriate; and enter the new name (7a or 7b). If the new name refers to a Debtor complete item 7c; also complete 7e-7g if 7a was completed.

5,6. To delete a party: Check box in item 5 to indicate whether deleting a Debtor or a Secured Party; also check box in item 5 to indicate that this is a deletion of a party; and also enter name (6a or 6b) of deleted party in item 6.

5,7. To add a party: Check box in item 5 to indicate whether adding a Debtor or Secured Party; also check box in item 5 to indicate that this is an addition of a party and enter the new name (7a or 7b). If the new name refers to a Debtor complete item 7c; also complete 7e-7g if 7a was completed. To include further additional Debtors or Secured Parties, attach Amendment Additional Party (Form UCC3AP), using correct name format.

*Note:* The preferred method for filing against a new Debtor (an individual or organization not previously of record as a Debtor under this file number) is to file a new Financing Statement (UCC1) and not an Amendment (UCC3).

7d. Reserved for Financing Statement Amendments to be filed in North Dakota or South Dakota only. If this Financing Statement Amendment is to be filed in North Dakota or South Dakota, the Debtor's taxpayer identification number (tax ID #) – Social Security number or employer identification number must be placed in this box.

8. Collateral change. To change the collateral covered by the identified financing statement, describe the change in item 8. This may be accomplished either by describing the collateral to be added or deleted, or by setting forth in full the collateral description as it is to be effective after the filing of this Amendment, indicating clearly the method chosen (check the appropriate box). If the space in item 8 is insufficient, use item 13 of Amendment Addendum (Form UCC3AD). A partial release of collateral is a deletion. If, due to a full release of all collateral, filer no longer claims a security interest under the identified financing statement, check box 2 (Termination) and not box 8 (Collateral Change). If a partial assignment consists of the assignment of some (but not all) of the collateral covered by the identified financing statement, filer may indicate the assigned collateral in item 8, check the appropriate box in item 8, and also comply with instruction 4 above.

9. Always enter name of party of record authorizing this Amendment; in most cases, this will be a Secured Party of record. If more than one authorizing Secured Party, give additional name(s), properly formatted, in item 13 of Amendment Addendum (Form UCC3AD). If the indicated financing statement refers to the parties as lessee and lessor, or consignee and consignor, or seller and buyer, instead of Debtor and Secured Party, references in this Amendment shall be deemed likewise so to refer to the parties. If this is an assignment, enter assignor's name. If this is an Amendment authorized by a Debtor that adds collateral or adds a Debtor, or if this is a Termination authorized by a Debtor, check the box in item 9 and enter the name, properly formatted, of the Debtor authorizing this Amendment, and, if this Amendment or Termination is to be filed or recorded in the real estate records, also enter, in item 13 of Amendment Addendum, name of Secured Party of record.

10. This item is optional and is for filer's use only. For filer's convenience of reference, filer may enter in item 10 any identifying information (e.g., Secured Party's loan number, law firm file number, Debtor's name or other identification, state in which form is being filed, etc.) that filer may find useful.

The fee which is reflected on the HUD-1 settlement statement for services rendered by the purchaser's attorney in arranging for the satisfaction of the mortgage should include an amount allocated to the fees charged by the county recording office for this purpose. Once the cancelled mortgage or recorded discharge is returned to the purchaser's attorney, that document together with any other loan documents related to the seller's mortgage which were returned to the purchaser's attorney should be forwarded to the seller's attorney for subsequent transmittal to the seller. Usually, the original note, title insurance policy and survey will be returned by the lender with the cancelled mortgage.

#### **Section 6.6.4 Alternate Method of Cancelling Mortgages**

The process to satisfy the existing mortgage is discussed at Section 4.3.3(a). The process starts with identifying the mortgage which the seller has given to a lender and requesting a payoff letter from the lender. The same process is used if there is more than one mortgage. At the closing, the purchaser's attorney will arrange for the payoff amount to be calculated relying on the payoff letter and for the payoff to be deducted from the purchase price and dispatched to the lender. As part of the post-closing efforts, the purchaser's attorney confirms that the payoff process has been completed when the mortgage satisfaction documents are received from the lender and recorded in the county in which the mortgage was recorded. The purchaser's attorney has then successfully cleared the seller's mortgage as an exception to title.

The purchaser's attorney may follow precisely the pay-off procedure described at Section 4.3.3(a) yet encounter difficulty in obtaining the mortgage cancellation or discharge document for recording. The lender to which the payoff funds were sent may no longer exist and any successor organization responsible for the original lender's operations may be uncooperative or unable to confirm the satisfaction of the mortgage. The lender may still be in business but, due to clerical problems, the lender may fail to complete the payoff process by delivering the mortgage satisfaction documents evidencing the payoff of the loan. If the lender fails to complete the payoff process by delivering the mortgage satisfaction documentation after receiving the payoff funds, an alternative method of cancelling the mortgage is authorized by *N.J.S.A. 46:18-11.5* to *N.J.S.A. 46:18-11.7*.

Either an attorney licensed to practice law in New Jersey or a person licensed as an insurance producer pursuant to the New Jersey Insurance Producer Licensing Act, *N.J.S.A. 17:22A-1 et seq.* may issue the discharge of mortgage as agent or attorney-in-fact for the owner or holder of the mortgage so long as he or she has paid the mortgage in full. However, the attorney or insurance producer must make written demands for the satisfaction or discharge before it may prepare the discharge, together with the affidavit and attachments required under the statute. Section 4.3.3(a)(4) is a detailed discussion of the alternate method of cancelling the mortgage.

#### **Section 6.6.5 Title Insurance Company Package**

The title company will require the purchaser's attorney to submit to it copies of the documents forwarded for recording, documentation in support of its omission of exceptions on its title commitment, and confirmation of the date on which the transaction closed. The title company will require the payment of its premium in order to process the owner's and mortgagee's policies of title insurance. The check for the premium reflected in the invoice of the title company should accompany the package.

Some title companies will include a form of letter with the title commitment when it is issued, such as that which appears as Exhibit 103, which serves as a "checklist" and facilitates the compilation and submission of the documents and information to be submitted to the title company.

The submission will include copies of the seller's affidavit of title and mortgagor's affidavit of title. While most of the proofs in support of the omission of exceptions should have been forwarded to the title company prior to the scheduling of the closing and subsequently confirmed by endorsements of the title commitment by the title company, any documents which may not have been previously submitted to the title company should be submitted at this time.

It is also a good practice to include a copy of the title commitment which has been marked-up by the purchaser's attorney advising of the disposition of each of the exceptions to be omitted from the title commitment. It would also inform the title company of actions taken at the closing, such as payment of the real estate taxes through the current or next tax quarter.

The title insurance policies will not issue from the title company until the title company has confirmed the recordation of the deed, mortgage and any other documents in the county recording office. The title company's confirmation of the recordation of those documents is commonly referred to as the performance of a "cover search." The title insurance will also confirm that any mortgage which had previously encumbered the property has been cancelled of record or otherwise discharged. When the purchaser's attorney has received from the county recording office the originally recorded deed, mortgage and cancelled mortgage, the title company should be advised of that fact and it should immediately undertake to perform its cover search and issue the policies. The final closing instructions of the lender may require the submission of the mortgagor's policy of title insurance within a certain number of days after closing, e.g. thirty (30) days. Accordingly, if the purchaser's attorney has knowledge of the recordation of all pertinent documents related to the transaction, the title company should be advised of that fact to expedite its issuance of the title policies.

**EXHIBIT 103 - TITLE COMPANY POST-CLOSING TRANSMITTAL LETTER**

ATTORNEYS AT LAW N.Y. & N.J.

September 23, 2013

**Chicago Title Company LLC-Toms River**

2446 Church Road, 3<sup>rd</sup> Floor  
Toms River, New Jersey 08753

Re: File No.: 2013-01168

805 Caldwell Avenue, Union, NJ 07083  
Block: 4008, Lot 19

Dear Sir or Madam:

Enclosed please find a check in the amount of \$1,632.00, which represents payment of your invoice as well as the HUD, affidavit of title, and copy of correspondence to the County recording office.

Thank you for your courtesies. Should you have any questions, please do not hesitate to Contact this office.

### **Section 6.6.6 Payment of Invoices of Other Professionals**

During the course of preparing for the closing, it is likely that services have been procured by the purchaser or by the attorney on the purchaser's behalf in furtherance of the transaction. Not only will the attorney have procured the services of the title company which will have to be paid at closing, but it is likely that the attorney obtained other work products, such as a new survey of the property. Funds should be made available by the purchaser for the payment of any such open invoices and the payments should be dispatched by the purchaser's attorney after the closing.

### **Section 6.7 Post-Closing Follow-Up**

Once the document submitted for recording in accordance with Section 6.6.1 have been returned by the county recording office, the purchaser's attorney should follow up with the title company for the issuance of the owner's and mortgagee's title insurance policies. A sample form of mortgagee's policy appears as Exhibit 104 and a sample form of owner's policy appears as Exhibit 105. The title insurance policies should be reviewed to ensure that they conform with the title commitment marked-up by the purchaser's attorney at closing. The mortgagee's policy of title insurance should be forwarded to the lender and the owner's policy along with the original recorded documents and copies or originals, if available, of all of the other closing and mortgage documents should be forwarded to the purchaser for retention in a consolidated package or binder as a record of the transaction. A sample summary (which serves as table of contents) of a closing document binder for a purchase, sale and refinance of residential properties, appear as Exhibits 105, 106 and 107, respectively. The client should be advised to retain the documents in a safe place.

**EXHIBIT 104 - TITLE INSURANCE POLICY (MORTGAGEE'S)****LOAN POLICY OF TITLE INSURANCE**

Issued by Chicago Title Insurance Company



CHICAGO TITLE INSURANCE COMPANY

**POLICY NUMBER:**

2013-00326

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 17 of the Conditions.

**COVERED RISKS**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, Chicago Title Insurance Company, a Nebraska Corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
  - (a) A defect in the Title caused by
    - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
    - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
    - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
    - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
    - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
    - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
    - (vii) a defective judicial or administrative proceeding.
  - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
  - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (a) the occupancy, use, or enjoyment of the Land;
  - (b) the character, dimensions, or location of any improvement erected on the Land;
  - (c) the subdivision of land; or
  - (d) environmental protection.
 If a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage
  - (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
  - (b) failure of any person or Entity to have authorized a transfer or conveyance;
  - (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
  - (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
  - (e) a document executed under a falsified, expired, or otherwise invalid power of attorney;
  - (f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
  - (g) a defective judicial or administrative proceeding.
10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.
11. The lack of priority of the lien of the Insured Mortgage upon the Title
  - (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either
    - (i) contracted for or commenced on or before Date of Policy; or
    - (ii) loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and
  - (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.
12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.
13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title
  - (a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
  - (b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
    - (i) to be timely, or

ALTA Loan Policy (6-17-06) New Jersey Variation

Valid Only if Schedules A and B are attached  
NJ-01080.404970-RAM-72-30730-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



## Exhibit 104 - Title Insurance Policy (Mortgagee's) - Continued

**POLICY NUMBER:** 2013-00326

- (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records..

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

IN WITNESS WHEREOF, Chicago Title Insurance Company has caused this policy to be signed and sealed by its duly authorized officers.

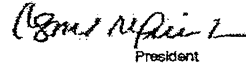
Attest:



Secretary



By:



President

CHICAGO TITLE INSURANCE COMPANY

Countersigned:

By:

Authorized Signatory

Issued by:

Chicago Title Company, LLC - Hackensack  
2 University Plaza, Suite 206  
Hackensack, NJ 07601  
Tel. 201-489-5000 Fax 201-489-5336

### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).


ALTA Loan Policy (6-17-06) New Jersey Variation

Valid Only if Schedules A and B are attached  
NJ-01080.404970-RAM-T2-30730-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**Exhibit 104 - Title Insurance Policy (Mortgagee's) - Continued**

<b>Issued By:</b>	<b>SCHEDULE A</b>
	
CHICAGO TITLE INSURANCE COMPANY 2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336	

**Your Ref:** HARI / FELDMAN

**Policy No.**

2013-00326

**Name and Address of Title Insurance Company:**

**Chicago Title Insurance Company**  
2 University Plaza, Suite 206  
Hackensack, NJ 07601  
TEL 201-489-5000 FAX 201-489-5336

**File No:** 2013-00326

**Loan No:** 246994188

**Address Reference:** 22 RED COAT DRIVE,  
EAST BRUNSWICK, NJ 08816

**Amount of Insurance:** \$243,837.00

**Date of Policy:** August 08, 2013

1. **Name of Insured**

2. **The estate or interest in the Land that is encumbered by the Insured Mortgage is:**

**Fee Simple**

3. **Title is vested in:**

4. **The Insured Mortgage and assignments, if any, are described as follows:**


This Policy insures that the said mortgage is a first lien on the premises described within the insured mortgage.

5. **The Land referred to in this policy is described as follows:**

ALTA Loan 6/17/06 New Jersey Variation

NJ-01080.404970-RAM-72-30730-1-13-2013-00326

**Exhibit 104 - Title Insurance Policy (Mortgagee's) - Continued**

<i>Issued By:</i>	<b>SCHEDULE A</b>
	
CHICAGO TITLE INSURANCE COMPANY	(Continued)
2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336	

**Your Ref:** HARI / FELDMAN

**Policy No.**

2013-00326

**SCHEDULE A - Continued**

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF**

ALTA Loan 6/17/06 New Jersey Variation

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**Exhibit 104 - Title Insurance Policy (Mortgagee's) - Continued**

Issued By:



CHICAGO TITLE INSURANCE COMPANY

2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336

**SCHEDULE A**

(Continued)

Your Ref: HARI / FELDMAN

Policy No.

2013-00326


**SCHEDULE A - Continued**

6. This policy incorporates by reference those ALTA endorsements selected below:

- ☐ 4.1-06 Condominium
- ☐ 5.1-06 Planned Unit Development
- ☐ 6-06 Variable Rate
- ☐ 6.2-06 Variable Rate-Negative Amortization
- ☐ 8.1-06 Environmental Protection Lien - New Jersey Variation - Paragraph B refers to the following State statute(s): N.J.S.A. 58:10-23.11 et seq.
- ☐ 9-06 Restrictions, Encroachments, Minerals - New Jersey Variation
- ☐ 13.1-06 Leasehold Loan
- ☐ 14-06 Future Advance-Priority
- ☐ 14.1-06 Future Advance-Knowledge
- ☐ 14.3-06 Future Advance-Reverse Mortgage
- ☐ 22-06 Location New Jersey Variation - The type of improvement is a \_\_\_\_, and the street address is as shown above.



**Exhibit 104 - Title Insurance Policy (Mortgagee's) - Continued**

<b>Issued By:</b>	<b>SCHEDULE A</b>
	
CHICAGO TITLE INSURANCE COMPANY	(Continued)
2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336	

**Your Ref: HARI / FELDMAN**

**Policy No.**

2013-00326

**LEGAL DESCRIPTION  
EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE TOWNSHIP OF EAST BRUNSWICK, COUNTY OF MIDDLESEX, AND STATE OF NEW JERSEY, AND IS DESCRIBED AS FOLLOWS:

BEING KNOWN AND DESIGNATED AS LOT 24 IN BLOCK 317-H, AS SHOWN ON A CERTAIN FILED MAP ENTITLED "MAP OF DEERFIELD ESTATES, SITUATE IN THE TOWNSHIP OF EAST BRUNSWICK, MIDDLESEX COUNTY, NEW JERSEY" DULY FILED IN THE OFFICE OF THE CLERK/REGISTER OF MIDDLESEX COUNTY, ON NOVEMBER 3, 1967 AS MAP 3137, FILE 955.

BEING FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF REDCOAT DRIVE, 50.00 FEET WIDE, SAID POINT BEING DISTANT 105.30 FEET EASTERLY FROM THE EASTERLY TERMINUS OF A 15.00 FOOT RADIUS ARC CONNECTING THE EASTERLY LINE OF COLONIAL DRIVE, 50.00 FEET WIDE, WITH THE SOUTHERLY LINE OF REDCOAT DRIVE, AND RUNNING; THENCE

(1) ALONG THE SOUTHERLY LINE OF REDCOAT DRIVE, AND ALONG AN ARC HAVING A RADIUS OF 525.00 FEET AND CURVING TO THE LEFT, A DISTANCE OF 100.00 FEET TO A POINT; THENCE

(2) SOUTH 02 DEGREES 39 MINUTES 05 SECONDS EAST, A DISTANCE OF 180.65 FEET TO A POINT; THENCE

(3) NORTH 75 DEGREES 42 MINUTES 10 SECONDS WEST, A DISTANCE OF 134.34 FEET TO A POINT; THENCE

(4) NORTH 08 DEGREES 15 MINUTES 45 SECONDS EAST, A DISTANCE OF 153.76 FEET TO THE POINT AND PLACE OF BEGINNING.

BEING IN ACCORDANCE WITH A SURVEY PREPARED BY A-1 LAND SURVEYS, INC., PROFESSIONAL LAND SURVEYORS, DATED MAY 16, 2013.

BEING ALSO KNOWN AS (REPORTED FOR INFORMATIONAL PURPOSES ONLY):


Block 317.08, Lot 24 on the official tax map of the TOWNSHIP OF EAST BRUNSWICK, County of Middlesex, State of New Jersey

ALTA Loan 6/17/06 New Jersey Variation

NJ-01080 404970-RAM-72-30730--1-13-2013-00326



**Exhibit 104 - Title Insurance Policy (Mortgagee's) - Continued**

<i>Issued By:</i>	<b>SCHEDULE A</b>
	
CHICAGO TITLE INSURANCE COMPANY	(Continued)
2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336	

**Your Ref:** HARI / FELDMAN

**Policy No.**

2013-00326

**EXHIBIT "A"**  
**LEGAL DESCRIPTION - CONTINUED**


ALTA Loan: 6/17/06 New Jersey Variation

NJ-01080.404970-RAM-72-30730--1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**Exhibit 104 - Title Insurance Policy (Mortgagee's) - Continued**

<b>Issued By:</b>	<b>SCHEDULE B – PART I</b>
	
CHICAGO TITLE INSURANCE COMPANY 2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336	

**Your Ref:** HARI / FELDMAN

**Policy No.**

2013-00326

**SCHEDULE B – PART I  
EXCEPTIONS FROM COVERAGE**

Notwithstanding any provision of the policy to the contrary, the following matters are expressly excepted from the coverage of the policy, and the Company will not pay loss or damage, costs, attorney's fees, or expenses that arise by reason of:

1. Municipal Liens, if any, for utility services due and payable at or prior to the policy effective date are hereby excepted from coverage.
2. The exact quantity of land in number of acres or square feet contained within the premises described herein is not insured.
3. SUBJECT TO SET BACK LINES, EASEMENTS AND RESTRICTIONS, AS SHOWN ON FILED MAP ENTITLED "MAP OF DEERFIELD ESTATES, SITUATE IN THE TOWNSHIP OF EAST BRUNSWICK, MIDDLESEX COUNTY, NEW JERSEY" DULY FILED IN THE OFFICE OF THE CLERK/REGISTER OF MIDDLESEX COUNTY, ON NOVEMBER 3, 1967 AS MAP 3137, FILE 955.
4. UTILITY EASEMENT AS SET FORTH IN DEED BOOK 2585, PAGE 878 AND DEED BOOK 2588, PAGE 965 TO PUBLIC SERVICE ELECTRIC AND GAS COMPANY.
5. UTILITY EASEMENT AS SET FORTH IN DEED BOOK 3015, PAGE 97 TO PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND NEW JERSEY BELL TELEPHONE COMPANY.
6. NOTWITHSTANDING ANY PROVISION IN THE POLICY TO THE CONTRARY UNLESS AN EXCEPTION IS TAKEN IN SCHEDULE B, THE POLICY INSURES AGAINST LOSS ARISING FROM ANY ENCROACHMENT, ENCUMBRANCE, VIOLATION, VARIATION, OR ADVERSE CIRCUMSTANCE AFFECTING THE TITLE. THE FOLLOWING MATTERS SHOWN ON A SURVEY MADE BY A-1 LAND SURVEYS, INC., PROFESSIONAL LAND SURVEYORS, DATED MAY 16, 2013, ARE ADDED TO SCHEDULE B:
  - A. 10 FOOT WIDE DRAINAGE EASEMENT THROUGH PREMISES;
  - B. OVERHEAD WIRES CROSSING PREMISES;
  - C. POSSIBLE MISLOCATION OF FENCES
  - D. SETBACK LINE HAS BEEN VIOLATED.

MORTGAGE POLICY INSURES THAT SAID VIOLATION WILL NOT RESULT IN A FORFEITURE OR REVERSION OF TITLE.

THIS POLICY DOES NOT INSURE AGAINST ERRORS OR INACCURACIES IN THE SURVEY WITH RESPECT TO MATTERS WHICH DO NOT AFFECT TITLE.


ALTA Loan 6/17/06 New Jersey Variation

NJ-01080.404970-RAM-72-30730--1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**Exhibit 104 - Title Insurance Policy (Mortgagee's) - Continued**

<b>Issued By:</b>	<b>SCHEDULE B – PART I</b>
	
CHICAGO TITLE INSURANCE COMPANY	(Continued)
2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336	

**Your Ref:** HARI / FELDMAN

**Policy No.**


2013-00326

7. Lien of unpaid real estate taxes for the year 2013. Taxes paid through the second quarter. Subsequent taxes not yet due and payable.

**END OF SCHEDULE B – Part I**



**Exhibit 104 - Title Insurance Policy (Mortgagee's) - Continued**

<i>Issued By:</i>	<b>SCHEDULE B – PART II</b>
	
CHICAGO TITLE INSURANCE COMPANY 2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336	

**Your Ref:** HARI / FELDMAN

**Policy No.** 2013-00326

**SCHEDULE B – Part II**

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:

None

**END OF SCHEDULE B – Part II**



## Exhibit 104 - Title Insurance Policy (Mortgagee's) - Continued

POLICY NUMBER: 2013-00326

## 1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Section 10 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of
  - (i) the amount of the principal disbursed as of Date of Policy;
  - (ii) the amount of the principal disbursed subsequent to Date of Policy;
  - (iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;
  - (iv) interest on the loan;
  - (v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;
  - (vi) the expenses of foreclosure and any other costs of enforcement;
  - (vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;
  - (viii) the amounts to pay taxes and insurance; and
  - (ix) the reasonable amounts expended to prevent deterioration of improvements;
 but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.
- (e) "Insured": The Insured named in Schedule A.
  - (i) The term "Insured" also includes
    - (A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;
    - (B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;
    - (C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
    - (D) successors to an Insured by its conversion to another kind of Entity;
    - (E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
      - (1) If the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
      - (2) if the grantee wholly owns the named Insured, or
      - (3) If the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;
    - (F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;
    - (ii) With regard to (A), (B), (C), (D), and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor

ALTA Loan Policy (6-17-06) New Jersey Variation

acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.

- (f) "Insured Claimant": An Insured claiming loss or damage.
- (g) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.
- (h) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (i) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (j) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (k) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (l) "Title": The estate or interest described in Schedule A.
- (m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

## 2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

## 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as Insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as Insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

## 4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

## 5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense



## Exhibit 104 - Title Insurance Policy (Mortgagee's) - Continued

**POLICY NUMBER:** 2013-00326

of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as Insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

### 6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as Insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

### 7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) To pay or tender payment of the Amount of  
ALTA Loan Policy (6-17-05) New Jersey Variation

Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by

the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

### 8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of

(i) the Amount of Insurance,  
(ii) the Indebtedness,  
(iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or

(iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as Insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions.

(d) In addition to the extent of liability under (a), (b), and (c), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

### 9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as Insured, in a reasonably diligent manner by any method, including litigation and the

Valid Only if Schedules A and B are attached  
NJ-01080.404970-RAM-72-30730-I-13-2013-00326



## Exhibit 104 - Title Insurance Policy (Mortgagee's) - Continued

POLICY NUMBER: 2013-00326

completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as Insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

**10. REDUCTION OF INSURANCE; REDUCTION OF TERMINATION OF LIABILITY**

(a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.

(b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

**11. PAYMENT OF LOSS**

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

**12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT**

(a) **The Company's Right to Recover**  
Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

**(b) The Insured's Rights and Limitations**

(i) The owner of the Indebtedness may release or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.

(ii) If the Insured exercises a right provided in (b)(i), but has knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.

**(c) The Company's Rights Against Noninsured Obligors**

The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guaranty, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

**13. ARBITRATION**

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

**14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT**

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

**15. SEVERABILITY**

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

**16. CHOICE OF LAW; FORUM**

(a) **Choice of Law:** The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) **Choice of Forum:** Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

**17. NOTICES, WHERE SENT**

Any notice of claim and any other notice or statement in writing required to be given the Company under this Policy must be given to the Company at: Claims Department, P.O. Box 45023, Jacksonville, Florida 32232-5023.

ALTA Loan Policy (5-17-08) New Jersey Variation

Valid Only if Schedules A and B are attached  
NJ-01080.404970-RAM-72-30730-1-13-2013-00326

**EXHIBIT 105 - TITLE INSURANCE POLICY (OWNER'S)****OWNER'S POLICY OF TITLE INSURANCE**

Issued by Chicago Title Insurance Company


**POLICY NUMBER**  
 2013-00326
**CHICAGO TITLE INSURANCE COMPANY**

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

**COVERED RISKS**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, Chicago Title Insurance Company, a Nebraska Corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
  - (a) A defect in the Title caused by
    - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
    - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
    - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
    - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
    - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
    - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
    - (vii) a defective judicial or administrative proceeding.
  - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
  - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to—
  - (a) the occupancy, use, or enjoyment of the Land;
  - (b) the character, dimensions, or location of any improvement erected on the Land;
  - (c) the subdivision of land; or
  - (d) environmental protection
 if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without knowledge.
9. Title being vested other than as stated in Schedule A or being defective
  - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
  - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
    - (i) to be timely, or
    - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

IN WITNESS WHEREOF, the Company has caused this Policy to be signed with the facsimile signatures of its President and Secretary and sealed as required by its By-Laws.

Attest:

Secretary



By:

  
 President

Countersignature:

By: \_\_\_\_\_


Issued by:  
 Chicago Title Company, LLC  
 2 University Plaza, Suite 208  
 Hackensack NJ 07601  
 Tel: 201-489-5000 Fax: 201-489-5336

ALTA Owner's Policy (09/17/06)

Valid Only If Schedules A and B are attached

 NJ-01080.404970-RAM-72-306-1-13-2013-003  
 28


**Exhibit 105 - Title Insurance Policy (Owner's) - Continued**

<i>Issued By:</i>	
	<b>SCHEDULE A</b>
CHICAGO TITLE INSURANCE COMPANY 2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336	

**Your Ref:** HARI / FELDMAN

**Policy No.**

2013-00326

**Name and Address of Title Insurance Company:** Chicago Title Insurance Company  
2 University Plaza, Suite 206  
Hackensack, NJ 07601  
TEL 201-489-5000 FAX 201-489-5336

**File No:** 2013-00326

**Address Reference:** 22 RED COAT DRIVE,  
EAST BRUNSWICK, NJ 08816

**Amount of Insurance:** \$333,837.00

**Date of Policy:** August 08, 2013

1. Name of Insured
2. The estate or interest in the Land that is insured by this policy is:  
Fee Simple
3. Title is vested in:

4. The Land referred to in this policy is described as follows:

**See Exhibit A" attached hereto and made a part hereof**

**THIS POLICY VALID ONLY IF SCHEDULE B IS ATTACHED**


ALTA Owner 6/17/06

NJ-01080.404970-RAM-72-306-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**Exhibit 105 - Title Insurance Policy (Owner's) - Continued**

Issued By:		<b>SCHEDULE A</b>
CHICAGO TITLE INSURANCE COMPANY		(Continued)
2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336		

Your Ref: HARI / FELDMAN

Policy No.

2013-00326

**LEGAL DESCRIPTION  
EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE TOWNSHIP OF EAST BRUNSWICK, COUNTY OF MIDDLESEX, AND STATE OF NEW JERSEY, AND IS DESCRIBED AS FOLLOWS:

BEING KNOWN AND DESIGNATED AS LOT 24 IN BLOCK 317-H, AS SHOWN ON A CERTAIN FILED MAP ENTITLED "MAP OF DEERFIELD ESTATES, SITUATE IN THE TOWNSHIP OF EAST BRUNSWICK, MIDDLESEX COUNTY, NEW JERSEY" DULY FILED IN THE OFFICE OF THE CLERK/REGISTER OF MIDDLESEX COUNTY, ON NOVEMBER 3, 1967 AS MAP 3137, FILE 955.

BEING FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF REDCOAT DRIVE, 50.00 FEET WIDE, SAID POINT BEING DISTANT 105.30 FEET EASTERLY FROM THE EASTERLY TERMINUS OF A 15.00 FOOT RADIUS ARC CONNECTING THE EASTERLY LINE OF COLONIAL DRIVE, 50.00 FEET WIDE, WITH THE SOUTHERLY LINE OF REDCOAT DRIVE, AND RUNNING; THENCE

(1) ALONG THE SOUTHERLY LINE OF REDCOAT DRIVE, AND ALONG AN ARC HAVING A RADIUS OF 525.00 FEET AND CURVING TO THE LEFT, A DISTANCE OF 100.00 FEET TO A POINT; THENCE

(2) SOUTH 02 DEGREES 39 MINUTES 05 SECONDS EAST, A DISTANCE OF 180.65 FEET TO A POINT; THENCE

(3) NORTH 75 DEGREES 42 MINUTES 10 SECONDS WEST, A DISTANCE OF 134.34 FEET TO A POINT; THENCE

(4) NORTH 08 DEGREES 15 MINUTES 45 SECONDS EAST, A DISTANCE OF 153.76 FEET TO THE POINT AND PLACE OF BEGINNING.

BEING IN ACCORDANCE WITH A SURVEY PREPARED BY A-1 LAND SURVEYS, INC., PROFESSIONAL LAND SURVEYORS, DATED MAY 16, 2013.

**THIS POLICY VALID ONLY IF SCHEDULE B IS ATTACHED**


ALTA Owner 6/17/06

NJ-01080.404970-RAM-72-306-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



## Exhibit 105 - Title Insurance Policy (Owner's) - Continued

Issued By:		<b>SCHEDULE A</b>
CHICAGO TITLE INSURANCE COMPANY 2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336		(Continued)

Your Ref: HARI / FELDMAN

Policy No.

2013-00326

### EXHIBIT A


LEGAL DESCRIPTION (Continued)

BEING ALSO KNOWN AS (REPORTED FOR INFORMATIONAL PURPOSES ONLY):

Block 317.08, Lot 24 on the official tax map of the TOWNSHIP OF EAST BRUNSWICK, County of Middlesex,  
State of New Jersey



**Exhibit 105 - Title Insurance Policy (Owner's) - Continued**

Issued By:		<b>SCHEDULE B</b>
CHICAGO TITLE INSURANCE COMPANY 2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336		

Your Ref: HARI / FELDMAN

Policy No.

2013-00326

**SCHEDULE B  
EXCEPTIONS FROM COVERAGE**

Notwithstanding any provision of the policy to the contrary, the following matters are expressly excepted from the coverage of the policy, and the Company will not pay loss or damage, costs, attorney's fees, or expenses that arise by reason of:

1. Mortgage made by

This Policy insures that the said mortgage is a first lien on the premises described within the insured mortgage.

2. Municipal Liens, if any, for utility services due and payable at or prior to the policy effective date are hereby excepted from coverage.
3. Subsurface conditions and/or encroachments not disclosed by an instrument of record.
4. The exact quantity of land in number of acres or square feet contained within the premises described herein is not insured.
5. SUBJECT TO SET BACK LINES, EASEMENTS AND RESTRICTIONS, AS SHOWN ON FILED MAP ENTITLED "MAP OF DEERFIELD ESTATES, SITUATE IN THE TOWNSHIP OF EAST BRUNSWICK, MIDDLESEX COUNTY, NEW JERSEY" DULY FILED IN THE OFFICE OF THE CLERK/REGISTER OF MIDDLESEX COUNTY, ON NOVEMBER 3, 1967 AS MAP 3137, FILE 955.
6. UTILITY EASEMENT AS SET FORTH IN DEED BOOK 2585, PAGE 878 AND DEED BOOK 2588, PAGE 965 TO PUBLIC SERVICE ELECTRIC AND GAS COMPANY.
7. UTILITY EASEMENT AS SET FORTH IN DEED BOOK 3015, PAGE 97 TO PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND NEW JERSEY BELL TELEPHONE COMPANY.
8. NOTWITHSTANDING ANY PROVISION IN THE POLICY TO THE CONTRARY UNLESS AN EXCEPTION IS TAKEN IN SCHEDULE B, THE POLICY INSURES AGAINST LOSS ARISING FROM ANY ENCROACHMENT, ENCUMBRANCE, VIOLATION, VARIATION, OR ADVERSE CIRCUMSTANCE AFFECTING THE TITLE. THE FOLLOWING MATTERS SHOWN ON A SURVEY MADE BY A-1 LAND SURVEYS, INC., PROFESSIONAL LAND SURVEYORS, DATED


ALTA Owner 6/17/06

NJ-01080 404970-RAM-72-306-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association



**Exhibit 105 - Title Insurance Policy (Owner's) - Continued**

<i>Issued By:</i>	<b>SCHEDULE B</b>
	
CHICAGO TITLE INSURANCE COMPANY 2 UNIVERSITY PLAZA, SUITE 206, HACKENSACK NJ 07601 PHONE: 201-489-5000 FAX: 201-489-5336	<b>(Continued)</b>

**Your Ref:** HARI / FELDMAN

**Policy No.**

2013-00326

MAY 16, 2013, ARE ADDED TO SCHEDULE B:

- A. 10 FOOT WIDE DRAINAGE EASEMENT THROUGH PREMISES;
- B. OVERHEAD WIRES CROSSING PREMISES;
- C. POSSIBLE MISLOCATION OF FENCES
- D. SETBACK LINE HAS BEEN VIOLATED.

OWNER'S POLICY INSURES THAT THE VIOLATION OF FRONT YARD SETBACK LINE AS SHOWN ON THE AFOREMENTIONED SURVEY WILL NOT RESULT IN A FORFEITURE OR REVERSION OF TITLE.

THIS POLICY DOES NOT INSURE AGAINST ERRORS OR INACCURACIES IN THE SURVEY WITH RESPECT TO MATTERS WHICH DO NOT AFFECT TITLE.

9. Lien of unpaid real estate taxes for the year 2013. Taxes paid through the second quarter. Subsequent taxes not yet due and payable.

**(END OF SCHEDULE B)**



## Exhibit 105 - Title Insurance Policy (Owner's) - Continued

2013-00326

## EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10; or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A

## CONDITIONS

## 1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 11 and 12 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
  - (i) The term "Insured" also includes
    - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
    - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
    - (C) successors to an Insured by its conversion to another kind of Entity;
    - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
      - (1) If the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
      - (2) If the grantee wholly owns the named Insured,
      - (3) If the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
      - (4) If the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
    - (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
  - (e) "Insured Claimant": An Insured claiming loss or damage.
  - (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(j) "Title": The estate or interest described in Schedule A.

(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

## 2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

## 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as Insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as Insured, is rejected as Unmarketable Title.



## Exhibit 105 - Title Insurance Policy (Owner's) - Continued

POLICY NUMBER

2013-00326

## CONDITIONS CONTINUED

If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

**4. PROOF OF LOSS**

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

**5. DEFENSE AND PROSECUTION OF ACTIONS**

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

**6. DUTY OF INSURED CLAIMANT TO COOPERATE**

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or

damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

**7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance. To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

**8. DETERMINATION AND EXTENT OF LIABILITY**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or  
(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

**9. LIMITATION OF LIABILITY**

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

ALTA Owner's Policy (06/17/06)

NJ-01080.404970-RAM-72-306-1-13-2013-00326

Copyright American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.



## Exhibit 105 - Title Insurance Policy (Owner's) - Continued

POLICY NUMBER

2013-00326

## CONDITIONS CONTINUED

(b) in the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as Insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

#### 10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

#### 11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

#### 12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

#### 13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guarantees, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

#### 14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim

arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

#### 15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

#### 16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

#### 17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

#### 18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at: Claims Department, PO Box 45023, Jacksonville, Florida 32232-5023.



## EXHIBIT 106 - CLOSING DOCUMENTS BINDER SUMMARY (PURCHASE)

### CLOSING DOCUMENTS BINDER

**RE:** Peter and Patricia Purchaser -from-  
Steven and Susan Seller

**PREMISES:** 1 Property Way, Municipality, New Jersey

**CLOSING DATE:** [Date of Closing]

---

### TABLE OF CONTENTS

---

Document No.

1	Note
2	Mortgage
3	Truth-in-Lending Disclosure Statement
4	Residential Loan Application
5	Affidavit of Title
6	HUD-1 Settlement Statement and Addendum
7	Initial Tax Authorization Notice
8	"Advise Only" Tax Bill and Statements and Property Tax Assessment Notice
9	Errors Certification
10	Attorney/Settlement Agent Certification
11	Receipted Final Water Reading Bill
12	Survey (originals) and Receipted Invoice
13	Sellers' Affidavit of Title
14	1099-S Reporting Form
15	Smoke Detector Compliance Letter
16	Alarm Service Receipt for Payment

**Exhibit 106 - Closing Documents Binder Summary (Purchase) - Continued)**

- 17      Receipted Invoice of Peter Kuker Real Estate
- 18      Receipted Invoice of Greenbaum, Rowe, Smith, and Davis LLP
- 19      Deed (original)
- 20      Title Policy (original)

**EXHIBIT 107 - CLOSING DOCUMENTS BINDER SUMMARY (SALE)**

CLOSING DOCUMENTS BINDER

**RE:** Stewart and Sally Seller -to-  
Peter and Portia Purchaser

**PREMISES:** 333 Home Road, Township, New Jersey

**CLOSING DATE:** [Date of Closing]

---

**TABLE OF CONTENTS**

---

Document No.

- |   |  |
|---|--|
| 1 | Deed   |
| 2 | Affidavit of Title   |
| 3 | HUD-1 Settlement Statement   |
| 4 | 1099-S Reporting Form  |
| 5 | FIRPTA Certificate   |
| 6 | Certificate of Continued Occupancy                                 |
| 7 | Termite Warranty   |
| 8 | Receipted Invoice of Realtors Agency, Inc.                         |
| 9 | "Paid" Note and Cancelled Mortgage of The Savings Bank (originals) |

**EXHIBIT 108 - CLOSING DOCUMENTS BINDER SUMMARY (REFINANCE)**

**CLOSING DOCUMENTS BINDER**

**RE:** Betty Borrower -from- New Mortgage Company, Inc. (Refinance)  
**PREMISES:** 123 Home Street, Municipality, New Jersey  
**CLOSING DATE:** [Date of Closing]

---

**TABLE OF CONTENTS**

---

Document No.

1	Note
2	Mortgage
3	Assignment of Mortgage and Notice of Assignment, Sale or Transfer of Servicing Rights
4	Affidavit of Title
5	Notice of Right to Cancel
6	Truth-in-Lending Disclosure Statement
7	Monthly Payment Schedule
8	HUD-1 Settlement Statement
9	Initial Escrow Account Statement
10	Receipt for Payment of 1999 4th Quarter Taxes and receipted 2000 Preliminary Tax Bill
11	Tax Information Sheet
12	Address Certification and Reverification Authorization
13	Borrower Certifications
14	Flood Insurance Certification
15	Request for Taxpayer Identification Number and Certification
16	Termite Certification
17	Roof Life Statement
18	Homeowners Insurance Policy and Paid Receipt

**Exhibit 108 - Closing Documents Binder Summary (Refinance) - Continued)**

- 19      Survey (originals) and Paid Receipt
- 20      "PAID" Note, Cancelled Mortgage, Assignments of Mortgage and Loan Policy from Satisfied Mortgage Company, Inc. (originals)
- 21      Loan Policy issued to New Mortgage Company, Inc.

## **CHAPTER VII**

### **SELECTED REAL ESTATE TRANSACTIONS**

#### **Section 7.1     New Construction**

A purchase of a home to be newly constructed by the seller is much different than the resale of an existing property. Even before the purchaser's attorney is in a position to negotiate and review a contract for the home, there are factors of which the purchaser should be aware prior to contracting with a developer.

##### **Section 7.1.1    Competence and Reputation of the Builder**

The purchaser should make inquiry of the other developments and homes which the builder has built and independently investigate the reputation, integrity, and competence of the builder by asking to inspect other homes built by the builder and visiting those properties. Exposure to other purchasers from the builder will also give the prospective purchaser a sense of whether other purchasers have been satisfied with the work of the builder. The builder's past and current financial situation should also be investigated. The source of the funding for the construction should be determined and confirmation from the source of the funding should be received to support the position that the builder will have sufficient funds to complete not only the home in which the prospective purchaser is interested, but the other homes within the development and other common improvements as well. The governmental offices of the municipality where the builder will be constructing the home is also a source of information regarding the builder and the development in general. Representatives of the building department may be able to answer the purchaser's questions regarding the compliance of the development with municipal regulations and requirements, and the posting of bonds by the builder to ensure the completion of the improvements. The purchaser may also receive advice of problems experienced by other purchasers of which the municipality has been made aware.

##### **Section 7.1.2    New Home Warranty and Builders' Registration Act**

The New Home Warranty and Builders' Registration Act, *N.J.S.A. 46:3B-1 et seq.* and the regulations promulgated pursuant thereto at *N.J.A.C. 5:25-1.1 et seq.* have two basic components. First, a significant portion of the Act requires all new home builders to register under the Act with the New Jersey Department of Community Affairs. The name of the entity or individual transferring title to the new home is the entity which is required to register and warrant the new homes. The certificate issued to a registered entity is valid for two years and may be renewed for additional two year periods.

The second component of the Act is the mandate that all new homes be enrolled in a warranty plan. Homes may be enrolled in the State warranty plan or in a private warranty plan such as that offered by Residential Warranty Corp. Warranty coverage under the program is for the following:

1.     One year from and after the warranty date, the home is to be free from defects caused by faulty workmanship and defective materials due to non-compliance with the building standards as approved by the Commissioner of the Department of Community Affairs. This includes a broad range of defects, ranging from those of a cosmetic nature to major structural defects.
2.     Two years from and after the warranty date, the dwelling is to be free from defects caused by faulty installation of plumbing, electrical, heating and cooling delivery systems.

3. Ten years from and after the warranty date for major construction defects as defined in the Act.

### **Section 7.1.3 New Residential Construction Off-Site Conditions Disclosure Act**

In the case of *Strawn v. Canuso*, 140 N.J. 43 (1995), the New Jersey Supreme Court ruled that "professional sellers" of residential housing, e.g., sellers, builders and brokers, must disclose off-site conditions which would materially affect the decision to purchase a home. The broad disclosure obligation created by the *Strawn* case served as the impetus for the adoption of the New Residential Construction Off-Site Conditions Disclosure Act, *N.J.S.A. 46:3C-1 et seq.*, which took effect on September 12, 1995 and applies to most contracts for the sale of new residential construction. The Act protects the purchaser by disclosing the existence of physical developments off-site which might affect the value of the property. The Act also purports to protect the seller against claims of nondisclosure concerning off-site conditions.

"Off-site conditions" which are required to be disclosed are defined as: (1) sites included in the "National Priorities List" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 *et seq.*; (2) the latest sites included on the New Jersey master list of known hazardous discharge sites; (3) certain classes of overhead electric utility transmissions lines; (4) electrical transformer substations; (5) underground gas transmission lines; (6) certain sewer pump stations and sewer trunk lines; (7) sanitary landfill facilities (as defined under *N.J.S.A. 13:1E-3*); (8) public wastewater treatment facilities; and (9) airport safety zones."

All persons and entities owning, leasing or otherwise maintaining any of the regulated conditions must provide the municipality in which the condition is located with written notice of the condition. The New Jersey Department of Environmental Protection is obligated to provide information to municipalities with respect to National Priorities List sites, sanitary landfills and known hazardous discharge sites. Every municipality is required to compile lists of reported off-site conditions which are located within its borders, which are to be made available to the public for inspection. The information is to be updated every August 31.

The Act requires sellers, builders, real estate brokers and real estate salespersons to disclose off-site regulated conditions where the transaction involves "newly constructed residential real estate." These parties must advise prospective purchasers that listings of such off-site conditions may be obtained from the municipality in which the land is situated, as well as from all municipalities within one-half mile of the property being sold. Additionally, a purchaser is afforded a statutory right to terminate a contract based on the existence of off-site condition(s) within five days of the seller's and purchaser's execution of the contract. Under the Act, by failing to terminate a contract within this five-day period, a purchaser is deemed to have waived the right to terminate the contract based on off-site hazards.

Once the notice has been given, the parties responsible for giving the notice under the Act will be deemed to have satisfied all obligations with respect to disclosure of off-site conditions. The language which is to be included in each real estate contract for newly constructed homes appears in the Rider to the Contract for the Sale of New Construction Real Estate which appears as Exhibit 110.

#### **Section 7.1.4 Review and Negotiation of the Contract for New Construction**

In the sale of a newly constructed home, it is likely that the builder will present the purchaser with a standard form of contract. Depending upon the real estate market, it is likely that the builder will be willing to negotiate and modify the provisions in the contract to afford protection of the interests of the purchaser.

Some suggestions as to how certain provisions in contracts for the sale of newly constructed homes may be modified to protect the interests of the purchaser are as follows:

(a) **Construction Standards.** The contract should specify the standards by which the home will be constructed, e.g. a good and workmanlike manner, and that the construction will comply with all applicable Federal, State and local laws and regulations.

(b) **Deposit.** If the contract provides that the deposit placed by the purchaser is to be used for the construction of the home, an attempt should be made to modify the provision for the retention of the deposit in escrow until closing. If the builder insists upon the use of the deposit in the construction of the home, the financial ability of the builder to complete the home or to repay the deposit money to the purchaser if the builder is unable to complete the construction should be investigated. Furthermore, the purchaser should attempt to obtain some form of financial security for the return of the deposit money, such as a letter of credit, in the event the builder does not complete the construction and does not voluntarily return the full deposit to the purchaser. Permission to record the contract or a memorandum of the contract should be obtained so that the recorded instrument will serve as an encumbrance against the property which must be disposed of in the event the builder attempts to convey title to the property to a party other than the purchaser.

(c) **Mortgage Contingency.** While the builder may require several months to complete the construction of the home, the contract may contain a mortgage contingency requiring the purchaser to immediately submit a mortgage application or otherwise waive the rights under the mortgage contingency. The purchaser should be aware that, even if an application is made for a mortgage contingency immediately upon the execution of the contract, the commitment issued by the lender may be subject to certain conditions in light of the fact that the home is being newly constructed. The commitment will be subject to the final inspection and approval of the home by the lender. The commitment may provide that the interest rate to be received by the purchaser will be that rate in effect at the time of the completion of the construction and at the time of the closing; accordingly, the purchaser will be subject to the uncertainties arising from the fluctuation of the interest rate. If a protracted period of time elapses between the time of the application for the commitment and the completion of the construction, the purchaser may be subject to certain credit reverifications at the time of closing. The purchaser should also be certain that the commitment will not expire before the completion of the home and closing or provides a mechanism by which the purchaser is assured of an extension of the mortgage commitment. Additionally, the purchaser may be required to pay additional fees to ensure that the mortgage commitment remains effective.

(d) **Location of Closing.** The contract is likely to specify that the closing is to be held at the builder's attorney's office. This clause should be negotiated to attempt to transfer the location of the closing to the office of the attorney for the purchaser.

(e) **Model.** Any models to which the home is to conform should be identified with precision.

(f) **Land.** The contract should clearly identify the land upon which the improvements will be constructed.

(g) **Improvements.** The construction to be undertaken by the builder should be described with the greatest detail possible. If reference is being made to another model home, the contract should provide that the home to be constructed by the builder is to be the same as the model referenced in the contract. An attempt to eliminate the subjectivity and ambiguity which arises by the use of the terms "substantially similar" should be made at the point of negotiating the contract.

If there are plans and specifications for the home to be constructed, those should be attached to the form of contract. Any details regarding items such as carpeting, linoleum, tile, bathroom and kitchen fixtures and cabinets, and appliances should all be identified by means of the manufacturer, grade, serial number, color, etc.

(h) **Substitution.** If the builder is not able to obtain materials or needs to substitute materials in the home, the contract should expressly provide that any substitution should be of materials of an equal or better quality.

(i) **Approval of Changes.** If any substitution is required, the contract should provide that it will not be made unless both parties have agreed to a change in writing. Such a provision may validly cause some concern to the builder since the builder does not wish to interrupt or delay construction awaiting the written approval of a purchaser before a modification could be made. To address that concern, the contract might reflect a less burdensome procedure, such as the builder advising by telecopy of any proposed change and allowing the purchaser for a period of twenty-four (24) hours thereafter to approve or reject the change.

(j) **Escalation Clause.** The purchaser should attempt to avoid a clause which allows the seller to increase the purchase price if the price of materials and labor increases during the course of construction. Depending upon the condition of the economy, it is unlikely that a builder will insist on the inclusion of such a clause in the contract; however, the inclusion of an escalation clause in a contract should expressly limit the amount by which the builder may increase the price, or in the alternative, require the consent of the purchaser to the increase or allow the purchaser to cancel the contract. Even if such a right to cancel is included in the contract, the exercise of the purchaser's right under such a clause may not be realistic due to the substantial investment of the purchaser in the property prior to advice of the increase.

(k) **Improvements Within Lot Lines.** The contract should specify that all improvements will be constructed within the lot lines. Furthermore, a final survey of all improvements including those outside the dwellings such as a driveway should be performed prior to closing to confirm the fact that such improvements are, in fact, within the lot lines.

(l) **Community Improvements.** The contract should specify those improvements which are being constructed by the builder such as streets, paving, sidewalks, curbs, common areas and facilities, and the responsibility of the seller for the costs associated with such improvements. The contract should also provide that a bond satisfactory to the municipality has been placed in the event that the improvements have not been completed by the time of closing.


(m) **Taxes and Assessments.** The contract should include a statement of the manner in which added taxes and assessments for the improvements constructed by the builder will be allocated between the seller and the purchaser.

(n) **Delays.** If the contract includes a clause allowing the seller to delay the closing date due to the unavailability of workman or materials, the length of time by which the closing date may be postponed should be limited.

(o) **Utility Meter Charges and Deposits.** If such charges are to be borne by the purchaser, this fact should be explained to the purchaser at the time of contract.

(p) **Certificate of Occupancy.** The contract may provide that the issuance of a Certificate of Occupancy by the municipal construction official will determine the completion of the home for closing. A certificate of occupancy for a newly constructed dwelling appears as Exhibit 109. The provision should expressly provide that the certificate of occupancy is to be final and unconditional and that, notwithstanding the issuance of that final and unconditional certificate of occupancy, the home must be habitable by the purchaser. Due to the inability of the builder to complete such items which do not affect the occupancy of the home such as the inability to complete landscaping, grading and seeding due to the weather, the purchaser may permit a clause in the contract whereby a temporary or conditional certificate of occupancy will be acceptable as long as the fact that the certificate of occupancy is temporary or conditional in nature is limited to the inability of the builder to complete the item due to adverse weather conditions and does not affect the habitability of the home. There should be an agreement in place as to the outside date by which the builder will complete the item and an escrow fund established at closing to ensure the performance.

**EXHIBIT 109 - CERTIFICATE OF OCCUPANCY (NEW CONSTRUCTION)**

 <p>NEW BRUNSWICK 25 KIRKPATRICK STREET PO BOX 269 NEW BRUNSWICK, NJ 08903-0269</p>	<p>Date Issued: <u>10/23/2007</u>          Control Number: _____          Permit Number: <u>22189</u>          Permit Issue Date: <u>2/27/2007</u>          Certificate Number: <u>22189</u></p>
--	--

**Certificate**  
Construction Code Division  
(Certificate of Occupancy)

**Identification**

Work Site Location: 1 SPRING STREET NEW BRUNSWICK, NJ 08901 Block: 15 Lot: 2.01 Qual: \_\_\_\_\_

Owner In Fee: SPRING STREET URBAN STREET REN  
 Owner Address: 1 SPRING STREET NEW BRUNSWICK NJ 08901  
 Telephone: (732) 846-3636

Contractor: SPRING STREET URBAN STREET REN  
 Address: 1 SPRING STREET NEW BRUNSWICK NJ 08901  
 Telephone: (732) 846-3636 Fax: \_\_\_\_\_  
 License Number or Builders Registration Number: \_\_\_\_\_ Federal Emp. Number: \_\_\_\_\_

Home Warranty Number: \_\_\_\_\_  
 Type of Warranty Plan: ☐ State ☐ Private  
 Use Group: R-2 Construction Classification: TYPE 1 A  
 Maximum Live Load: 0 Maximum Occupancy Load: 0  
 Description of Work Used: NEW 23 STORY HIGH RISE WITH 7 STORY PARKING DECK

Certificate Comments:

☒ **Certificate of Occupancy**  
 This serves notice that said building or structure has been constructed in accordance with the New Jersey Uniform Construction Code and is approved for occupancy.

☐ **Certificate of Approval**  
 This serves notice that the work completed has been constructed or installed in accordance with the New Jersey Uniform Construction Code and is approved. If the permit was issued for minor work, this certificate was based upon what was visible at the time of inspection.

☐ **Certificate of Continued Occupancy**  
 This serves notice that based on a general inspection of the visible parts of the building there are no imminent hazards and the building is approved for continued occupancy.

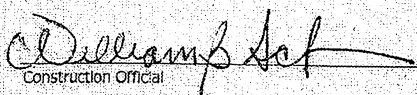
☐ **Temporary Certificate of Compliance**  
 The following conditions must be met no later than \_\_\_\_\_ or the owner will be subject to fine or order to vacate. This certificate has an expiration date of: \_\_\_\_\_  
**Conditions to be met:** \_\_\_\_\_

☐ **Certificate of Clearance - Lead Abatement 5:17**  
 This serves notice that based on written certification, lead abatement was performed as per NJAC5:17 to the following extent:  
☐ Total removal of lead-based paint hazards in scope of work  
☐ Partial or limited time period ( \_\_\_\_\_ years); see file.

☐ **Certificate of Clearance - Asbestos Abatement**  
 This serves notice that based on written certification, asbestos abatement was performed to the following extent:  
☐ Total removal of asbestos hazards in scope of work  
☐ Partial or limited time period ( \_\_\_\_\_ years); see file.

☐ **Certificate of Compliance**  
 This serves notice that said potentially hazardous equipment has been installed and/or maintained in accordance with the New Jersey Uniform Construction Code and is approved for use until \_\_\_\_\_.

☐ **Temporary Certificate of Occupancy**  
 The following conditions must be met no later than \_\_\_\_\_ or the owner will be subject to fine or order to vacate. This certificate has an expiration date of: \_\_\_\_\_  
**Conditions to be met:** \_\_\_\_\_

  
 Construction Official

Date Printed: 10/23/2007

Fee: \$0.00  
 Check Number: \_\_\_\_\_  
 Collected By: \_\_\_\_\_

Page 1

## Exhibit 109 - Certificate of Occupancy (New Construction) - Continued

Date Issued October 24, 2007  
Control # B04-491  
Permit # 22189

## CERTIFICATE



City of New Brunswick

IDENTIFICATION  
Block 15 Lot 2.01  
Work Site Location ONE SPRING STREET  
NEW BRUNSWICK, NJ 08901  
Owner in Fee/Occupant: [REDACTED] AND [REDACTED]  
Address ONE SPRING STREET UNIT: # [REDACTED]  
NEW BRUNSWICK, NJ 08901  
Tele. (732) 846-3636 Fax ( ) [REDACTED]  
Contractor SPRING STREET DEV. URBAN RENEWAL  
Address 120 ALBANY STREET NEW BRUNSWICK, NJ 08901  
Tele. (732) 846-3636 Fax ( ) [REDACTED]  
Lic. Or Bldrs. Reg. No. [REDACTED]  
Federal Emp. No. [REDACTED]

## XX CERTIFICATE OF OCCUPANCY

This serves notice that said building or structure has been constructed in accordance with the New Jersey Uniform Construction Code and is approved for occupancy.

☐ CERTIFICATE OF APPROVAL

This serves notice that the work completed has been constructed or installed in accordance with the New Jersey Uniform Construction Code and is approved. If the permit was issued for minor work, this certificate was based upon what was visible at the time of inspection.

☐ TEMPORARY CERTIFICATE OF OCCUPANCY/COMPLIANCE

If this is a temporary Certificate of Occupancy or Compliance, the following conditions must be met no later than \_\_\_\_\_ or the owner will be subject to fine or order to vacate:

Home Warranty No. 77762 Qualifier #: C0601  
Type of warranty Plan: ☒ State ☐ Private  
Use Group R-2  
Maximum Live Load N/A  
Construction Classification 1-A  
Maximum Occupancy Load N/A  
Description of Work/Use: \_\_\_\_\_

## CONDOMINIUM - SINGLE FAMILY

☐ CERTIFICATE OF CLEARANCE - LEAD ABATEMENT 5:17

This serves notice that based on written certification, lead abatement was performed as per NJAC 5:17, to the following extent:  
☐ Total removal of lead-based paint hazards in scope  
☐ Partial or limited time period (\_\_\_\_ years); see file

☐ CERTIFICATE OF CONTINUED OCCUPANCY

This serves notice that based on a general inspection of the visible parts of the building there are no imminent hazards and the building is approved for continued occupancy.

☐ CERTIFICATE OF COMPLIANCE

This serves notice that said potentially hazardous equipment has been installed and/or maintained in accordance with the New Jersey Uniform Construction Code and is approved for use until \_\_\_\_\_

Fee \$ 50.00

Paid ☐ Check No. 1075

Collected by: TC

CONSTRUCTION OFFICIAL William J. [Signature]

1. WHITE - APPLICANT 2. CANARY - OFFICE 3. PINK - TAX ASSESSORS 4. GOLD - FIRE SAFETY

(q) **Lot Clearing.** An understanding should be reached as to the extent to which the builder will or will not clear existing trees and shrubs from the lot.

(r) **Release from Blanket Mortgage.** As discussed in greater detail in Section 6.6.3, the builder may have given a blanket construction mortgage on the property which is the subject of the transaction, as well as on other lands and proposed improvements being developed. The contract should provide that the seller will provide for the release of the property from the lien of the mortgage and from any UCC-1 financing statement which might have been filed giving the lender a security interest in related personalty such as materials, fixtures and equipments in exchange for the release consideration specified under the loan documents or by the lender in writing. In order to effectuate such release, the lender will deliver a release of part of mortgaged property (see Exhibit 101) and a UCC-3 statement of partial release evidencing the release of the personalty related to the property from the blanket financing statement (see Exhibit 102).

A blanket mortgage and/or blanket financing statement may encumber a multi-family development such as a condominium or townhouse development, as discussed in the next section, even if the development is not being newly constructed. A release from the blanket instruments would similarly be obtained at closing in exchange for the payment of the release consideration determined by the lender.

It is not unusual for standard forms of contracts for sale of real estate to be modified by a rider to set forth the specific provisions which address the unique features of newly constructed real estate. A Rider setting forth provisions applicable to newly constructed premises to supplement the New Jersey Association of REALTORS® standard form of contract appears as Exhibit 110.

## **Section 7.2 Common Interest Communities**

The property in which the purchaser is interested may not be a detached, single-family home constructed on an individual lot; rather, it may be subject to common interest ownership such as a unit under the condominium form of ownership, an attached dwelling constructed on an individually subdivided lot subject to fee simple ownership, or an apartment under the cooperative form of ownership. Furthermore, ownership of a dwelling in such a community may be subject to governance by a community association such as a condominium association, homeowners association, or apartment corporation. If the property is subject to any of these forms of ownership, there are important decisions to be made by the client in proceeding with the purchase of such property. Moreover, the form of ownership of the property will impact upon the services to be provided by the attorney and the procedures to be followed in closing.

# EXHIBIT 110 - RIDER TO CONTRACT FOR NEW CONSTRUCTION REAL ESTATE AND NOTIFICATION REGARDING OFF-SITE CONDITIONS



## NEW JERSEY ASSOCIATION OF REALTORS® STANDARD FORM OF RIDER TO CONTRACT FOR SALE OF REAL ESTATE NEW CONSTRUCTION

©2001 NEW JERSEY ASSOCIATION OF REALTORS®, INC.



### TABLE OF CONTENTS

1. TIME OF CLOSING OF TITLE	6. CONSTRUCTION STANDARDS	11. WELL/SEPTIC CERTIFICATION
2. SELLER'S INABILITY TO DELIVER THE DEED	7. WARRANTIES	12. PRE-CLOSING WALK-THROUGH
3. SUBSTITUTION OF MATERIALS	8. INSULATION	13. RECORDING OF AGREEMENT PROHIBITED
4. STANDARD CHOICES	9. SITE VISITS/PREOCCUPANCY INSPECTION	14. NOTIFICATION REGARDING OFF-SITE CONDITIONS
5. OPTIONS AND SELECTIONS	10. RADON CLAUSE	

This Rider is attached to a Contract for Sale of Real Estate ("Contract") and is made a part of the Contract. The Attorney Review Clause set forth in the contract remains a part of the transaction as modified by this Rider. This Rider and the Contract are collectively referred to as the "Agreement." In the event of any conflict between the Contract and the Rider, the terms of this Rider shall govern. It is understood that the property being sold consists of a lot and a detached single family home (the "House") to be constructed upon the lot by the Seller.

### 1. TIME OF CLOSING OF TITLE.

Closing of title will occur when the Seller delivers the Deed to the Property and the Buyer delivers the unpaid portion of the total purchase price and all other sums required to be paid under this Agreement. Closing of title is anticipated to occur at such place as Seller may designate, on or about the date appearing at the beginning of this Agreement. This date shall be the Anticipated Closing Date. The Seller will notify the Buyer in writing of the exact date, time and place of closing at least ten (10) business days before it occurs. The Seller may not schedule closing before the Anticipated Closing Date unless the Buyer consents. Upon receiving notice of the exact date, time and place of closing, the Buyer may not postpone the closing without the consent of the Seller. FAILURE OF THE BUYER TO CLOSE TITLE AT THE SCHEDULED TIME AND PLACE, UNLESS THE SELLER CONSENTS TO A POSTPONEMENT, WILL BE A BREACH OF THIS AGREEMENT MADE BY THE BUYER. The Buyer will close title even if all site or other improvements are not complete. No funds will be escrowed if the improvements or the preoccupancy inspection report items are incomplete. If Buyer is unable or refuses to close on the date and time specified by Seller, at its option Seller may exercise its rights in this Agreement or have Buyer reimburse Seller at or before closing for Seller's total reasonable carrying and administrative costs for postponing the closing to another time, date and place set by Seller.

The Buyer will be under no obligation to close title unless the Seller provides a temporary, conditional or permanent Certificate of Occupancy at or before the time of closing. Issuance of a permanent Certificate of Occupancy shall be accepted by the parties to this Agreement as conclusive evidence that construction has been completed according to its plans and specifications.

### 2. SELLER'S INABILITY TO DELIVER THE DEED.

If the Seller will not be able to deliver the Deed on the Anticipated Closing Date, the Seller may postpone the closing for up to \_\_\_\_\_ calendar days from the Anticipated Closing Date. To exercise this right, the Seller must notify the Buyer in writing within not less than ten (10) calendar days of the Anticipated Closing Date that the closing has been postponed and specify the new closing date. If, after this extended period has expired, the Seller is still unable to deliver a Deed, the Buyer may terminate this Agreement by so notifying the Seller in writing. If this Agreement is so terminated by the Buyer, the Seller will, within ten (10) business days, return to the Buyer all deposit monies paid under this Agreement, with interest in the event the Seller has retained the deposit monies in escrow and placed them in an interest bearing account. The Seller will also reimburse the Buyer for the expenses of title searches and survey certificates which the Buyer has incurred if the Buyer produces adequate proof that the Buyer has paid or been charged these expenses. When the Seller returns the deposit monies and makes any applicable reimbursement to the Buyer, neither the Buyer nor the Seller will have any further rights or obligations under this Agreement. To comply with the Interstate Land Sales Act, Seller states that this Agreement is for the sale of a home on improved land which the Seller is obligated to erect within a period of two (2) years, if there are no unanticipated circumstances totally outside of the control of the Seller.

The Buyer agrees that if this Agreement is postponed and/or terminated under this Paragraph, the Seller will not be responsible for any expenses which the Buyer might incur as a result of the delay or termination. Such expenses include, but are not limited to, storage of the Buyer's furniture or other personal property and/or substituted housing as well as mortgage commitment extension fees.

### 3. SUBSTITUTION OF MATERIALS.

Seller has the right to make substitution of materials, equipment or design changes without prior notice to Buyer whenever Seller, in its sole discretion, finds it necessary or expedient for reasons such as site conditions and availability of materials, provided that the substitutions are of equal or better quality. Seller has the right, in its sole discretion, to determine the placement of the House on the lot including as a reverse of the floor plan; the right to make any grading adjustments; and to remove, change or leave any naturally occurring features on the lot.

## Exhibit 110 - Rider to Contract for New Construction Real Estate and Notification Regarding Off-Site Conditions- Continued

### 4. STANDARD CHOICES.

All color and other selections for standard items to be included, where selections are offered by the Seller, must be made by the Buyer within seven (7) calendar days of the date the Buyer receives a fully signed copy of this Agreement or such later date as the Seller may permit in writing. All color and other selections, where selections are offered by the Seller, with regard to options and/or extras to be included in the House must be made by the Buyer within seven (7) calendar days of the Buyer's agreement with the Seller to include such options and/or extras in the purchase of the property. If the Buyer does not notify the Seller within the proper time of the choice selected, the Seller, in its sole discretion, has the right to do one or more of the following: (a) increase the prices of decorator selections; (b) change the Anticipated Closing Date; or (c) make decorator selections for Buyer and Buyer will accept and pay for the selection made by Seller. If Seller elects to make choices for the Buyer, the choice(s), as selected by Seller, may not be changed by the Buyer except as set forth in this Paragraph. If all selections are not made within the selection period or if the Buyer seeks to change previously made selections, whether made by the Buyer or the Seller, after the expiration of the selection period, the Seller reserves the right to impose a \$\_\_\_\_\_ processing fee for each such selection or selection change. It shall be in the sole discretion of the Seller whether to agree to permit any selection or selection change after the expiration of the selection period. The Buyer's selections and extras or options are limited to those explicitly listed in this Agreement or on a selection sheet provided by the Seller or on display in the Seller's sample of the model type being purchased. The Buyer understands that the Seller's ability to deliver materials, appliances, equipment or extra or optional items of the kind, color, make or model which were displayed to or chosen by the Buyer depends upon availability from manufacturers and/or suppliers. If any standard, extra or optional item to be sold as a part of or with the House becomes unavailable for reasons beyond the Seller's control, the Buyer authorizes the Seller as follows: (i) to substitute colors which the Seller feels are compatible with the color scheme of the House; and (ii) to substitute materials, appliances, equipment or optional items of equal or better quality. Where possible, the Seller will consult with the Buyer before making any substitutions; however, if the Seller exercises this authority to make substitutions, the Buyer will be obligated to accept the substitution.

The Buyer understands and agrees that all work to be performed in connection with the construction shall be done under the order and direction of the Seller. No contractors, agents or other persons, including the Buyer, shall be allowed to perform work of any kind on the property prior to the closing of title and delivery of the deed to the Property from the Seller to the Buyer.

### 5. OPTIONS AND SELECTIONS.

Options or extras offered by the Seller and desired by the Buyer not listed at the time the Agreement is signed by the Buyer and the Seller and the cost of which is not included in the purchase price stated in the Contract must be paid for when ordered by the Buyer unless the Seller and the Buyer agree otherwise in a Rider signed by them both.

### 6. CONSTRUCTION STANDARDS.

Construction shall be performed in a good and workmanlike manner and shall comply with all applicable Federal, State and local laws and regulations. The Seller agrees that it has constructed or will construct the property to substantially conform to the model type, if any, indicated, which the Buyer has selected after inspecting the Seller's plans, specifications and/or sample and all improvements shall be constructed within the lot lines. THE BUYER UNDERSTANDS THAT THE HOUSE, AS CONSTRUCTED, MAY VARY FROM THE SELLER'S PROMOTIONAL MATERIALS AND/OR PLANS AND/OR SPECIFICATIONS FOR THE MODEL TYPE AND/OR FROM THE SELLER'S SAMPLE OF THE MODEL TYPE TO THE EXTENT THAT FIELD CONDITIONS, TOPOGRAPHY, AVAILABILITY OF MATERIALS AND OTHER CIRCUMSTANCES BEYOND THE SELLER'S CONTROL MAY PREVENT THE HOUSE FROM CONFORMING TO SUCH PROMOTIONAL MATERIALS, PLANS, SPECIFICATIONS AND/OR SAMPLE OF THE MODEL TYPE. THE BUYER UNDERSTANDS THAT THE SELLER'S SAMPLES MAY CONTAIN OPTIONS AND/OR EXTRAS THAT ARE NOT INCLUDED IN THE BASE PRICE OF THE HOUSE. THE SELLER WILL CLEARLY MARK THESE EXTRAS AND/OR OPTIONS IN THE SAMPLES.

### 7. WARRANTIES.

Seller warrants the construction to Buyer as provided in the New Home Warranty and Builders' Registration Act, N.J.S.A. 46:3B-1 et. seq. (the "Warranty Act"). The Seller will enroll the property in an approved warranty security plan prior to closing. The Seller will pay all requisite fees and premiums for enrollment and coverage, provided that the Buyer will be responsible for any deductibles which are a part of the warranty security plan. Seller warrants the construction of any common facilities for a period of two (2) years from the date of completion of each facility and that they are fit for their intended use. Seller warrants the following to be free from material and workmanship defects for a period of one (1) year from the date of possession or closing: outbuildings, driveways, walkways, patios, retaining walls and fences, if any. Seller warrants that all drainage is proper and adequate and that offsite improvements, if any, are free from defects for a period of one (1) year from the date of their construction. Seller warrants that the home is fit for its intended use. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PURPOSE OTHER THAN AS EXPRESSLY STATED IN THIS AGREEMENT AND IN THE WARRANTY ACT. THE SELLER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OR WARRANTY ARISING BY VIRTUE OF LAW WITH RESPECT TO THE PROPERTY, OR ANYTHING CONTAINED IN THE HOUSE, OR WHICH WOULD OTHERWISE ARISE BY VIRTUE OF THE MAKING OF THIS AGREEMENT. THIS MEANS THAT THE ONLY WARRANTIES WHICH ARE GIVEN BY THE SELLER TO THE BUYER OR OTHER OWNER OF THE PROPERTY ARE THOSE LISTED ABOVE.

## Exhibit 110 - Rider to Contract for New Construction Real Estate and Notification Regarding Off-Site Conditions- Continued

At the closing, the Seller will assign to the Buyer any unexpired, assignable warranties issued by the manufacturers or suppliers of appliances, equipment or other personal property installed in or sold with the Property. The Seller does not independently warrant any such appliance, equipment or other personal property except to the extent required within this Agreement. By signing this Agreement, the Buyer acknowledges and agrees to the following statements:

The Seller is not obligated to repair or replace any part of the House or other property which is the subject of this Agreement unless it is covered by one of the warranties listed above;

The Seller has not made any promises or representations as to the condition of the House or other property which is the subject of this Agreement;

The Seller has not authorized anyone else to make any promise or representation as to the condition of the House or other property which is the subject of this Agreement; and

The furniture, decorations, wall and window treatments, upgraded flooring, cabinetry, lighting fixtures, appliances and/or other upgrades and/or options in the Seller's samples are for display purposes only and are not included in the sale of the property unless separately agreed to in a rider to this Agreement.

The Seller also expressly disclaims liability for any consequential damages to personal property arising out of any breach of warranty. This means that the Seller will not be responsible if personal property is damaged because of a defect in any warranted item. By signing this Agreement, the Buyer agrees that the Seller will not be liable for consequential damages.

### 8. INSULATION.

The Unit shall be insulated with \_\_\_\_\_ [Insert Type] as follows:

LOCATION	THICKNESS	R-VALUE
Attic	_____	_____
Exterior Walls	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

The above stated R-values are based upon information supplied to the Seller by the manufacturer of the insulation.

### 9. SITE VISITS/PREOCCUPANCY INSPECTION.

Buyer and Buyer's contractors are not allowed to do any work in the House before the closing. Due to safety and insurance regulations, Buyer's site inspections must be by appointment and accompanied by Seller's representative. Visits to the House when under construction are limited to two (2) visits before the preoccupancy inspection. Buyer assumes all liability for any damage or injuries during any unaccompanied visit. A breach of this Paragraph is a default under this Agreement. Before the closing, Seller will specify the time and date for Buyer's walk-through inspection of the House. Those items which, in Seller's judgment, must be completed or repaired to satisfy building code or Warranty Act standards will be entered on a preoccupancy inspection report signed by Buyer and Seller. The agreed upon items will be repaired or completed by Seller as soon as possible after the closing and will not prevent or delay the closing.

### 10. RADON CLAUSE.

The obligations of the Buyer under the Contract of Sale are contingent upon the Premises being free of elevated levels of naturally occurring radon gas. The Seller and Buyer agree that the Buyer has the right, at his expense, to retain a qualified inspector to conduct and complete an investigation to test for elevated levels of naturally occurring radon gas on the property using established testing procedures recommended by the New Jersey Department of Environmental Protection (DEP) and/or United States Environmental Protection Agency (EPA). In the event that the test results indicate levels of radon gas above four (4) picocuries, Buyer shall give Seller, within three (3) days of receipt of the test results, a copy of the test results. Seller shall then, at its own cost and expense, take whatever remedial measures are necessary to lower the presence of radon to the four (4) picocurie level. Upon taking such remedial action, this contingency shall have been satisfied.

### 11. WELL/SEPTIC CERTIFICATION.

Seller shall comply with all laws, ordinances, rules and regulations for the installation and testing of the private well and septic system. Seller shall obtain all approvals necessary to test and operate the private well and septic system and shall provide copies of all approvals to Buyer. Seller represents that the drinking water shall be potable and in compliance with all applicable governmental standards.

## Exhibit 110 - Rider to Contract for New Construction Real Estate and Notification Regarding Off-Site Conditions - Continued

### 12. PRE-CLOSING WALK-THROUGH.

It is understood and acknowledged that at the time of closing, Buyer may find items which Buyer believes need service or adjustment. Immediately prior to closing Buyer will have a pre-closing walk-through with a representative of Seller only in order to prepare a list of mutually-agreed incomplete items which are Seller's responsibility and which items are to be serviced by Seller within a reasonable period of time after closing. Both parties will sign the list. Unless same is required by the New Home Warranty and Builder's Registration Act and is covered by the insurance program, Seller does not warrant nor will Seller change the color variations or dye lots or streaks in brick, stone, marble, shingles, paints, tiles, cabinets, carpeting, and/or woodgrains and the staining of woodgrains. Seller shall have no responsibility whatsoever for any difference or change in color, tint, shading, discoloration, or toning between samples of standard items, extras, options or upgraded items displayed to Buyer or of merchandise ordered by either Buyer or Seller, and that which is actually delivered and/or installed in or upon the subject premises. It is expressly understood that Buyer shall not be permitted access to the dwelling prior to closing unless such access has previously been arranged with the Seller. Buyer agrees that Buyer will not request or demand any escrows for incomplete items at title closing. Rather, Buyer agrees to accept a written guarantee from Seller that the incomplete work will be completed within a reasonable period of time. An additional list of incomplete items may be submitted by Buyer to Seller within thirty (30) days after closing. The only items which will be the Seller's responsibility to complete are those that are considered a defect by the Homeowner Warranty standards. Such additional items will be completed within a reasonable period of time. It is specifically agreed that the pre-closing walk-through is the only time cosmetic items will be addressed by Seller. The Seller does not warrant cracks in doors, trim, sheetrock or walls; chips, scratches or mars in tile, glass woodwork, walls, brick, mirrors, countertops; or nail pops in trim, sheetrock, walls or flooring unless specifically listed and agreed upon on the pre-closing walk-through.

After closing, Buyer agrees to provide Seller with convenient access to the dwelling and be present whenever reasonably requested by Seller so that Seller can make the repairs that are Seller's responsibility. Buyer agrees to remove any obstruction installed or stored by Buyer, at Buyer's own cost, which in any way makes Seller's responsibility more difficult or costly. If Seller, or anyone that Seller designates, schedules repairs to be made within normal business hours and Buyer unreasonably denies convenient access to the dwelling, then Seller is relieved of Seller's responsibility to make those specific repairs.

Buyer and Seller acknowledge and agree that the warranty and insurance remedies contained in the Homeowner Warranty provided by Seller to Buyer constitute the only remedy of recourse to the Buyer. The parties agree that the conciliation and arbitration procedures as outlined in the Homeowners Warranty Act are better suited to the determination of outstanding issues, if any, between the parties than any remedy which may be secured by resort to legal process. Any disputes between the Buyer and Seller shall be resolved pursuant to the mandatory binding arbitration provisions contained herein.

### 13. RECORDING OF AGREEMENT PROHIBITED.

The Buyer agrees not to record this Agreement or any memorandum of this Agreement. If the Buyer breaches this promise, the Seller may declare this Agreement in default and proceed as provided in the Agreement.

### 14. NOTIFICATION REGARDING OFF-SITE CONDITIONS.

Pursuant to the "New Residential Construction Off-Site Conditions Disclosure Act" (N.J.S.A. 46:3C-1, et. seq.), sellers of newly constructed residential real estate are required to notify buyers of the availability of lists disclosing the existence and location of off-site conditions which may affect the value of the residential real estate being sold. The lists are to be made available by the municipal clerk of the municipality within which the residential real estate is located and in other municipalities which are within one-half mile of the residential real estate. The addresses and telephone numbers of the relevant municipalities and the appropriate municipal offices where the lists are made available are listed below. Buyers are encouraged to exercise all due diligence in order to obtain any additional or more recent information that they believe may be relevant to their decision to purchase the residential real estate. Buyers are also encouraged to undertake an independent examination of the general area within which the residential real estate is located in order to become familiar with any and all conditions which may affect the value of the residential real estate.

Buyer has five (5) business days from the date the contract is executed by the Buyer and the Seller to send notice of cancellation of the contract to the Seller. The notice of cancellation shall be sent by certified mail. The cancellation will be effective upon the notice of cancellation being mailed. If the Buyer does not send a notice of cancellation to the Seller in the time or manner described above, the Buyer will lose the right to cancel the Agreement as provided in this notice.

MUNICIPALITY \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_

**Exhibit 110 - Rider to Contract for New Construction Real Estate  
and Notification Regarding Off-Site Conditions - Continued**

216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230

IN THE PRESENCE OF:

_____	Date	_____ (L.S.) SELLER
_____	Date	_____ (L.S.) BUYER
_____	Date	_____ (L.S.) BUYER

### **Section 7.2.1 Planned Real Estate Development Full Disclosure Act**

The Planned Real Estate Development Full Disclosure Act at *N.J.S.A. 45:22A-21 et seq.* regulates planned real estate developments in the State of New Jersey in which interests are offered pursuant to a common promotional plan and which provide for common or shared elements or interests in real property. The Act applies to not only condominium units created pursuant to the New Jersey Condominium Act but also to townhouse developments consisting of individually subdivided lots where the development consists of 100 or more lots. The Act does not apply to certain offerings or dispositions of property as set forth at *N.J.S.A. 45:22A-25*.

When a development is subject to the Act, the developer is required to register the project with the Division of Codes and Standards of the New Jersey Department of Community Affairs ("DCA"). A prospective purchaser from the developer of a dwelling within a community subject to the Act should be provided with a copy of a disclosure statement, commonly referred to as a public offering statement, P.O.S., or an offering plan, affecting the development which has been registered with the DCA. The Act requires that information such as a description of the dwellings and other improvements proposed for the community be included as well as copies of any management contracts, leases or other agreements affecting the use and maintenance of the property be included, descriptions and estimated dates of completion of proposed amenities in the development and a copy of the proposed operating budget for the community.

The public offering statement for a development may be voluminous and may reserve rights to the developer which, in the end, may be adverse to the interests of the purchaser. Even without the reservation of rights, the public offering statement should be thoroughly and critically scrutinized to confirm that, by way of example, the proposed budget adequately covers all the expenses of the community including funds to cover reserves for repairs and replacements that may be required in the future, rather than merely setting forth an attractive monthly maintenance fee at the outset. Some of the documents which should be obtained and considerations discussed with a purchaser are as follows: (a) the annual audit of the funds of the community association should be reviewed to determine the financial condition of the community if the community association has been operation for a fiscal year; (b) the current operating budget of the association should be reviewed to determine the monthly maintenance charges or common expense assessments to be paid by each owner; (c) the extent to which owners within the community are delinquent in the payment of the maintenance charges; (d) the services provided by virtue of the payment monthly of the maintenance charges; (e) any contemplated increases in those assessments or additional or special assessments; (f) the existence and status of any litigation or adversarial proceedings to which the association is a party; and (g) restrictions imposed on the owners which may not be consistent with the expectations of the prospective homeowner, such as restrictions on the ownership of pets and the usage of parking facilities and other common amenities, and any related user fees.

In representing a purchaser of a dwelling within a community subject to the Act, a clear understanding should be reached with the client as to the scope of the legal representation. It is important to reach an agreement regarding the purchaser's attorney's fee in light of the fact that a thorough review of a public offering statement may require several hours of an attorney's time and a related increase in the legal fee for services rendered.

A contract for the sale of a dwelling subject to the Act must also comply with other requirements imposed by the Act. Specifically, the contract must include a provision which allows the purchaser to cancel the contract by sending or delivering written notice of cancellation to the seller by

midnight of the seventh (7th) calendar day following the date on which it was executed. If the purchaser gives timely notice of cancellation, the seller is required to refund in its entirety any deposit placed by the purchaser with the seller.

If the contract is being prepared by a real estate broker, it should expressly provide that the purchaser has the right to seek review and approval by an attorney during the first three (3) business days of the seven (7) day rescission period. That three (3) day attorney review would be required where the contract is being prepared by a real estate broker as discussed in Section 3.2.

A developer's contract for the sale of a newly constructed unit within a condominium development appears as Exhibit 111.

### **Section 7.2.2 Condominiums**

Where the subject property is a condominium unit, the creation of the condominium should comply with the requirements of the New Jersey Condominium Act, *N.J.S.A. 46:8B-1* if it was created after January 7, 1970. The Act dictates the creation of condominiums by virtue of a Master Deed reflecting the contents required under the Act. The requirements of the Master Deed are set forth at *N.J.S.A. 46:8B-9* and the contents of the document include a certified survey of the lands forming the entire condominium, identification of each unit, a description of the common and limited elements of the condominium, the proportionate undivided interest in the common elements of each unit, the manner in which common expenses are to be allocated, the bylaws of the association responsible for administering the affairs of the condominium, and the voting rights of the unit owners.

As an attorney representing the purchaser of a unit in the condominium, there are certain differences in preparing for the closing:

(a) The deed will convey to the purchaser a specific unit in the condominium along with its undivided proportionate (percentage) interest in the common elements. The deed will also reference the Master Deed (the instrument creating the condominium), and its date execution and of recordation and its recording information. When a newly constructed unit within a condominium development is being conveyed for the first time by the developer, the deed may require the signature of the purchaser for the purpose of giving the developer a power of attorney to amend the governing documents in certain limited instances described in the documents. A unit deed appears as Exhibit 112.

(b) A survey or location certificate will be obtained to identify the location of the unit, rather than a survey of the property. The survey or location certificate will be a certification from the surveyor or the engineer certifying that the unit is as depicted in the exhibits to the master deed. A survey certificate appears as Exhibit 113.

**EXHIBIT 111 - DEVELOPER'S AGREEMENT FOR  
NEWLY CONSTRUCTED CONDOMINIUM UNIT**

**RESCISSION PERIOD**

**NOTICE TO THE PURCHASERS:**

THE PURCHASER HAS THE RIGHT TO CANCEL THIS CONTRACT OR AGREEMENT BY SENDING OR DELIVERING WRITTEN NOTICE OF CANCELLATION TO THE DEVELOPER BY MIDNIGHT OF THE SEVENTH CALENDAR DAY FOLLOWING THE DAY ON WHICH IT IS EXECUTED. SUCH CANCELLATION IS WITHOUT PENALTY AND ALL MONIES PAID BY YOU SHALL BE PROMPTLY REFUNDED IN THEIR ENTIRETY.

**NOTICE TO THE PURCHASER AND SELLER:**

WITHIN THE FIRST THREE BUSINESS DAYS OF THIS SEVEN DAY PERIOD, EACH PARTY MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL THE CONTRACT. SEE SECTION 32 ON ATTORNEY REVIEW FOR DETAILS.

**CONTRACT FOR SALE OF REAL ESTATE**

THIS CONTRACT, dated \_\_\_\_\_, 20\_\_, is between the

SELLER: ABC DEVELOPMENT, L.L.C., a New Jersey Limited Liability Company, 100 Builder's Way, Municipality, New Jersey 72338; and

the BUYER(S): \_\_\_\_\_ SS# \_\_\_\_\_

\_\_\_\_\_ SS# \_\_\_\_\_

ADDRESS \_\_\_\_\_

HOME TELEPHONE NO. \_\_\_\_\_ WORK TELEPHONE NO. \_\_\_\_\_

**TABLE OF CONTENTS**

<u>Paragraph # and Heading</u>	<u>Page</u>
1. Sale and Purchase.....	
2. Property.....	
3. Purchase Price .....	
4. Payment of Purchase Price .....	
5. Mortgage Contingency .....	
6. Deposits.....	
7. House to Sell Contingency .....	
8. Exclusions.....	
9. Closing Charges .....	
10. Adjustments .....	
11. Closing of Title.....	

**Exhibit 111 - Developer's Agreement for  
Newly Constructed Condominium Unit - Continued**

12.	Title .....
13.	Possession .....
14.	Fire and Other Casualty .....
15.	Changes in Construction.....
16.	Insulation.....
17.	Decorator Selections .....
18.	Default of Buyer.....
19.	Delay of Seller .....
20.	Warranties.....
21.	Membership in Condominium Association.....
22.	Common Elements.....
23.	Site Visits .....
24.	Preoccupancy Homeowner Orientation .....
25.	Entire Agreement .....
26.	Assignment, Binding Effect, Recording.....
27.	Notices.....
28.	Headings .....
29.	Governing Law .....
30.	Attorney Review .....
31.	Modifications.....
32.	Real Estate Broker .....
33.	Power of Attorney.....
34.	Megan's Law Statement.....
35.	Public Offering Statement .....

**THE SELLER AND THE BUYER AGREE AS FOLLOWS:**

**1. Sale and Purchase.** The Seller will sell and the Buyer will buy the Property under the terms of this Contract.

**2. Property.** The property to be sold under this Contract is described below:

**Street Address:** \_\_\_\_\_ **Job No.:** \_\_\_\_ **Building No.:** \_\_\_\_\_

**Model Type:** \_\_\_\_\_

**Percentage Interest in Common Elements:** \_\_\_\_\_

Throughout this Contract, the property to be sold is referred to as the "Unit." The Unit is located in HOMESTEAD CONDOMINIUM, Borough of \_\_\_\_\_, \_\_\_\_\_ County, New Jersey, which is referred to in this Contract as the "Condominium". The approximate location and size of the Unit may be found at Exhibit "B" and "C" of the Master Deed which is reproduced in the Public Offering Statement for the Condominium.

**Exhibit 111 - Developer's Agreement for  
Newly Constructed Condominium Unit - Continued**

**3. Purchase Price.**

(a) Base Price: \$ \_\_\_\_\_

(b) Optional Extras:

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

Total Extras \$ \_\_\_\_\_

(c) Total Purchase Price \$ \_\_\_\_\_

**4. Payment of Purchase Price.**

(a) The Purchase Price is to be paid as follows:

(1) Deposit at signing of this Contract: \$ \_\_\_\_\_

(2) Additional Deposit Due \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ : \$ \_\_\_\_\_

(3) Mortgage Amount (See Section 5 of this Contract: \$ \_\_\_\_\_

(4) Balance at Closing by certified check or bank check: \$ \_\_\_\_\_

**Exhibit 111 - Developer's Agreement for  
Newly Constructed Condominium Unit - Continued**

**5. Mortgage Contingency.**

Type of Mortgage: \_\_\_\_\_ Amount of Loan: \_\_\_\_\_  
Length of Mortgage: \_\_\_\_\_ Interest Rate: \_\_\_\_\_

If Paragraph 4(a)(3) above contains a "Mortgage Amount", then this Contract shall be contingent upon Buyer obtaining a mortgage loan; if no amount is shown then this Contract is not contingent upon Buyer securing a mortgage. Buyer agrees to make a written application for a mortgage loan with an institutional lender ("Lender") in the amount set forth in Paragraph 4(a)(3) within 10 days after the date of this Contract and provide Seller with a copy of the written application within 7 days of the expiration of such 10-day period. **IF SUCH APPLICATION IS NOT TIMELY SUBMITTED TO LENDER, THE OBLIGATION OF EACH PARTY TO PERFORM SHALL BECOME FIXED AS IF NEVER SUBJECT TO ANY MORTGAGE CONTINGENCY, AND THIS CONTRACT SHALL BECOME BINDING.** The terms of the mortgage loan will be those specified above in this Paragraph 5. Buyer shall provide Lender with all necessary information and documentation at the time of the application, and shall provide Lender with any additional information or documentation within five days after Lender requests same. If Buyer fails to provide such information or documentation, then Buyer shall be in default of this Contract. Buyer shall pay to Lender all applicable fees and charges for the application and/or commitment.

This mortgage contingency clause shall be deemed satisfied, and Buyer will be required to go forward with the purchase, upon issuance of a commitment to make a mortgage loan by Lender, regardless of the terms or conditions of the commitment. In particular, and without limitation, this mortgage contingency clause shall be satisfied if the commitment is conditioned on Buyer selling a home, having a job and/or providing additional information or documentation. Once the Buyer receives a commitment, any subsequent change in the Buyer's credit, financial condition, employment or otherwise shall be at Buyer's risk. In addition, if the mortgage commitment must be extended, renewed or reissued, and as a result the interest rate or other terms or conditions or the commitment change, the Buyer agrees to accept and/or fulfill any such new interest rate, terms and/or conditions.

If the Lender issues a commitment to make a mortgage loan, the Buyer will promptly sign the commitment, provide a copy to Seller and take all actions necessary to satisfy any conditions and contingencies so that closing of title can take place in accordance with Paragraph 11 of this Contract. Failure of Buyer to sign the commitment or to satisfy any conditions and contingencies shall be deemed a default of this Contract by Buyer. Buyer hereby authorizes the Lender to release to Seller, upon Seller's request, all information contained in and regarding Buyer's mortgage loan and loan application.

**Exhibit 111 - Developer's Agreement for  
Newly Constructed Condominium Unit - Continued**

If Buyer has not received a mortgage commitment within 30 days after the date of this Contract (the "Mortgage Contingency Date"), or has been denied a mortgage loan prior to the Mortgage Contingency Date, Buyer may: (a) elect to waive the mortgage contingency and complete the purchase without a mortgage, or (b) request that Seller extend the Mortgage Contingency Date for up to 30 days, or, (c) request a cancellation of this Contract and a refund of Buyer's deposit without interest. Any request to extend the Mortgage Contingency Date or request to cancel the Contract must be in writing received by Seller before the Mortgage Contingency Date and contain copies of documents proving that Buyer had made timely application for the mortgage and that the application was either denied or is still awaiting determination. **IF SUCH REQUEST IS NOT TIMELY GIVEN, THE OBLIGATION OF EACH PARTY TO PERFORM SHALL BECOME FIXED AS IF NEVER SUBJECT TO ANY MORTGAGE CONTINGENCY, AND THIS CONTRACT SHALL BECOME BINDING.** If Seller elects to extend the Mortgage Contingency Date, Seller shall notify Buyer within 5 days of receipt of the Buyer's request, and if at the end of the commitment extension a mortgage commitment has still not been issued, then Buyer may (a) elect to waive the mortgage contingency and complete the purchase without a mortgage, or (b) request the cancellation of this Contract and a refund of Buyer's deposit without interest. If Buyer's mortgage application is denied or if Buyer requests a cancellation of this Contract within the mortgage contingency period or any extension of the mortgage contingency period agreed to by Seller, then Seller shall, at Seller's option elect within ten (10) days either to: (1) refund Buyer's deposit without interest; or (2) direct Buyer to apply for a mortgage commitment consistent with the terms of this Contract to a lending institution selected by Seller, and Buyer agrees to timely complete and execute all documents, fully comply with all reasonable requests of such lender, and pay all reasonable fees and costs in connection with such application.

Buyer represents that Buyer has sufficient cash available, together with the proceeds of the mortgage loan referred to in Paragraph 4(a)(3), if any, to consummate the acquisition of the Property pursuant to this Contract. Seller makes no representations or warranties about Buyer's ability to obtain a mortgage loan or the interest rate or terms of such a loan.

**6. Deposits.**

The Seller will hold all money paid by the Buyer under this Agreement prior to closing in escrow. The Seller may not use or keep that money (a) until closing of title, or (b) unless the Buyer breaks a promise made in this Contract, as discussed in Paragraph 18 below. If, under the terms of the Contract, the Buyer has the right to terminate the Contract and elects to exercise that right, Seller will return to Buyer all money paid by Buyer. This money will be held in an attorney trust account of the law firm of \_\_\_\_\_ ("Escrow Agent"), in \_\_\_\_\_ Bank, \_\_\_\_\_ Road, \_\_\_\_\_, New Jersey \_\_\_\_\_. This means that the Seller receives all deposit monies in trust (in escrow) and will hold same until closing of title or termination of this Contract. The Seller may, in its sole discretion, cause the deposit account to be interest bearing. Any interest earned on the deposit monies in trust will be paid to the Seller. Interest on the deposit monies will not be applied as a credit for the benefit of the Buyer toward other sums owed by the Buyer to the Seller under this Contract.

**Exhibit 111 - Developer's Agreement for  
Newly Constructed Condominium Unit - Continued**

The Developer may obtain a bond or other security in a form acceptable to the Division of Codes and Standards of the New Jersey Department of Community Affairs so as to permit the Developer to obtain use prior to closing of the deposit monies being held by the Escrow Agent. If the Developer decides to secure the release of the deposit monies for use prior to closing, the Developer will register with the Division of Codes and Standards an amendment to its Public Offering Statement before the release of any deposits.

**7. House to Sell Contingency.**

This Contract is ☐ or is not ☐ subject to the sale of any other real estate. If this Contract is subject to the sale of other real estate, then a rider detailing the terms of such subject sale shall be attached to this Contract.

**8. Exclusions.**

Unless included as extras in Paragraph 3 above, all of the items shown in the model unit(s) are excluded from this sale. Such items include, but are not limited to: all furniture; special flooring and carpeting; wallpaper; window treatments; special lighting; outlets, light bulbs and all other electronic devices; decorator floors; decorator built-ins; decorator ceramic and vinyl tile; built-ins and bookcases; shelves and special mirrors; special interior trim; special interior decorator paint colors; painted interior garage walls, ceiling and floors; painted basement floor and walls; upgraded appliances; special exterior trim and siding materials; special exterior paint; oversized driveways; and fencing, irrigation, landscaping and special walkways. All extras or special items displayed in the models or sales exhibition center will be identified as such.

**9. Closing Charges.**

Buyer is responsible for paying all costs relating to recording the deed, a title search, title examination and title insurance policy as well as purchasing a survey through Seller, if requested. If this is a sale containing a mortgage contingency, then Buyer shall also pay all costs relating to the mortgage, including, without limitation, application fee, credit report, appraisal, mortgage title insurance, hazard insurance, recording fees and any fees or costs required by the mortgage lender, such as escrows and prepaid charges.

Buyer is also responsible upon the acquisition of title to his Unit to pay to the Condominium Association a \$950.00 capital contribution for the Unit. This payment is non-refundable and non-transferable and may be used by the Condominium Association, whether under Developer or unit owner control, in such amounts as the Board shall deem appropriate for (i) the off-set of cash flow or budget deficits, (ii) payment of operating expenses, (iii) operating contingency reserves, (iii) repair and replacement and/or deferred maintenance reserve, (iv) working capital reserve, and/or (v) any other lawful purpose(s) permitted by the Condominium Documents.

Moreover, none of the foregoing funds are required to be replenished by either the Developer or the Condominium Association once they have been so utilized.

**Exhibit 111 - Developer's Agreement for  
Newly Constructed Condominium Unit - Continued**

In addition, Buyer will also pay to the Condominium Association in advance his/her pro-rata portion of this monthly maintenance fee due to the Condominium Association for the month in which the closing takes place based upon the number of days left in the month at the time of closing as set forth in the Condominium Association's budget. Beginning with the first full month of occupancy, the monthly maintenance fee will be paid on a monthly basis to the Condominium Association as provided in the Public Offering Statement.

Seller shall be responsible for the real estate transfer tax due upon the closing of title.

**10. Adjustments.**

Taxes for the current year, municipal assessments, maintenance fees, utilities, water and sewer charges, and interest, if any, are to be apportioned as of the date of closing.

**11. Closing of Title.**

(a) Seller estimates that construction of the house will be completed on or about \_\_\_\_\_, 20\_\_ (the "Completion Date"). "Completion" is when a temporary or permanent certificate of occupancy covering the Property is issued by the municipality in which the Property is located.

(b) Closing of title will take place on the Completion Date at the time specified by Seller in a notice by telephone or mail to Buyer or Buyer's attorney. Closing will take place at \_\_\_\_\_ or at such other place as is specified in Seller's notice. It is suggested that the Buyer retain other legal counsel to better represent Buyer's interest in connection with this Contract and the acquisition of the Unit. The Buyer shall be responsible for the fees and charges of any attorney retained by the Buyer.

If the closing is postponed by the Buyer because of the Buyer's refusal or inability to close on the date and time specified by Seller, then Seller shall have the option, but not the obligation, to postpone the closing date on at least seven (7) days prior written notice to Buyer. **TIME SHALL BE OF THE ESSENCE FOR ANY POSTPONED CLOSING DATE.** This means that if Seller postpones the Closing, Buyer must close title on such postponed closing date or forfeit its deposit as provided in Paragraph 18 of this Contract. Also, Buyer shall pay to Seller at closing an additional One Hundred Fifty Dollars (\$150.00) per day for each day the Closing is delayed by the Buyer, not to exceed 10% of the purchase price, representing all carrying charges on the Property, such as taxes, insurance, interest, etc.

**Exhibit 111 - Developer's Agreement for  
Newly Constructed Condominium Unit - Continued**

**12. Title.**

Seller agrees to deliver a Bargain and Sale Deed with Covenants as to Grantor's Acts, Affidavit of Title and appropriate corporate resolution at closing of title. Title shall be good and marketable such as will be insurable at regular rates by a reputable title company free and clear of all liens and encumbrances, except the Unit shall be subject to: ordinances, statutes and regulations of any and all municipal or other governmental authority having jurisdiction; easements, grants, covenants or restrictions; the Master Deed; street dedications and public utility rights recorded or to be recorded; and such state of facts that an accurate survey may disclose, provided these exceptions do not prevent use of the Unit for one family dwelling purposes. The willingness of \_\_\_\_\_ Title Agency, L.L.C., \_\_\_\_\_, \_\_\_\_\_, New \_\_\_\_\_, to insure title to the Property shall constitute good and marketable title. Buyer is not required to use the services of \_\_\_\_\_ Title Agency, L.L.C. to obtain title insurance. \_\_\_\_\_ Title Agency, L.L.C. is affiliated with the Seller. If Seller is unable to deliver the status of title set forth in this Paragraph, Buyer's remedy will be in accordance with Paragraph 19 of this Contract.

**13. Possession.**

Possession will be given by delivery of the Deed upon closing of title and receipt by Seller of the full purchase price and all other monies due pursuant to this Contract. Buyer agrees not to enter into possession of the Unit at any time or for any reason prior to closing.

**14. Fire and Other Casualty.**

The risk of loss or damage to the Unit by fire or otherwise until closing of title is on Seller.

**15. Changes in Construction.**

Seller shall have the right to make substitution of materials and/or equipment and to make changes to Selections (as defined in Paragraph 17 of this Contract) whenever Seller shall find it necessary or expedient in its absolute discretion, provided that such substitutions or changes are of comparable or better quality. Seller also reserves the right to determine the location and physical layout of the house on the lot. Seller makes no representations as to the final grade of the lot or the existence of any trees or landscaping on the lot. Seller shall not be responsible to remove any debris or trees beyond the area of the lot disturbed by Seller.

**16. Insulation.**

In compliance with Federal Trade Commission Regulations, the following information concerning insulation in your home is furnished: (a) The developer installs fiberglass batt type of insulation which is manufactured to have an R value of R-13 for outside walls and R-30 in ceilings below attic space. R-30 insulation shall be installed in the floors of living spaces above unconditioned space. Insulation between units (floor/ceiling) is R-13; (b) For the first floor, a spray thermal insulation with a value of R-15 will be applied to the underportion of the ceiling in the parking garage area; (c) the primary entrance door is an insulation steel sheet door and is fully weather-stripped. Windows and sliding doors are dual glazed, thermo break equipped with poly-col, non-expanding foam sealant. (d) the manufactured thicknesses of the above types of insulation are as follows: R-13 is 3-5/8", R-19 is 5-1/2", R-30 is 9".

**Exhibit 111 - Developer's Agreement for  
Newly Constructed Condominium Unit - Continued**

**17. Decorator Selections.**

Buyer agrees to make decorator, appliance, optional and extra item selections (collectively, "Selections") within ten (10) days of the Seller's request that they be completed. If Buyer fails to make the Selections within this time period, Seller, in its exclusive discretion, shall have the right to make such Selections for Buyer and Buyer agrees to accept and pay for such Selections. Any Selections made by Buyer shall only be made by Seller if Seller agrees to do so in writing.

**18. Default of Buyer.**

Should Buyer fail to make payments, or violate any other term, condition or covenant of this Contract or fail, for any reason, to close title (i.e., complete the purchase) according to the terms and conditions of the Contract, the Buyer will be in default (i.e., will have broken Buyer's promises in this Contract). If the Buyer is in default, the Seller may retain the deposit (but not more than ten (10%) percent of the purchase price), plus the total of all monies paid by Buyer for options, upgrades, extras and custom changes installed. Seller will retain the money either on account of the purchase price or as liquidated damages. Liquidated damages are a fixed amount to be paid to Seller which the parties agree will be a reasonable estimate of the damages in the event of Buyer's default, since Seller's actual damages would be difficult to establish. If Seller elects to retain the money as liquidated damages, this Contract shall become null and void. In the event either party hereto shall institute legal proceedings in connection with, or for the enforcement of this Paragraph 18, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorney's fees, at both trial and appellate levels.

**19. Delay of Seller.**

Should Seller be unable to fulfill its obligations under the terms of this Contract for reasons beyond its control, the Seller may postpone the closing for up to six (6) months from the Completion Date by notifying the Buyer in writing that the closing has been postponed. If, after this period has expired, the Seller is still unable to perform its obligations under this Contract for reasons beyond its control, the Buyer may terminate this Contract by so notifying the Seller in writing or the Seller may terminate this Contract for circumstances beyond its control. In such event, Buyer's sole, legal or equitable remedy will be to receive a refund of all deposit monies and all monies paid to Seller for options, upgrades, extras and custom changes, together with the costs of title examination and survey actually incurred.

The Buyer agrees that if this Contract is postponed and/or terminated under this Paragraph, the Seller will not be responsible for any expenses which the Buyer might incur as a result of the delay or termination. Such expenses include, but are not limited to, storage of the Buyer's furniture or other personal property and/or substituted housing as well as mortgage commitment extension fees.

**20. Warranties.**

The Seller warrants its construction of the Units as follows:

**Exhibit 111 - Developer's Agreement for  
Newly Constructed Condominium Unit - Continued**

- a. In accordance with the provisions of the New Jersey New Home Warranty and Builders' Registration Act (N.J.S.A. 46:3B-1 et seq.), the Seller shall enroll each Unit, at or prior to closing, in an approved warranty security plan and shall pay all requisite fees/premiums for such enrollment and coverage; provided, however, any deductibles for such warranty coverage shall be the obligation of the purchaser.
- b. The Seller warrants that any outbuildings, driveways, walkways, patios, retaining walls and fences installed by the Seller and constituting a part of the Unit shall be free from substantial defects due to faulty materials or workmanship for a period of one (1) year from the date of closing or from the date of possession, whichever first occurs.
- c. The Seller warrants that all drainage is proper and adequate, and all off-site improvements, if any, will be free from defects for a period of one year from the date of construction.
- d. The Seller warrants that all Units offered hereby are fit for their intended use.
- e. The Seller warrants that the Common Elements and common facilities installed or constructed by the Seller will be free from substantial defects due to faulty materials or workmanship for a period of two (2) years from the date of completion of each improvement or facility.
- f. The Seller warrants that the Common Elements and common facilities installed or constructed by the Seller are fit for their intended use, and that within the two (2) year period in (e) above the Seller will correct any such defect within a reasonable time after notification of the defect.
- g. The Seller also warrants that the Unit shall substantially conform to sales models, descriptions or plans used, if any, to induce the purchaser to enter into this Contract to purchase a Unit, unless otherwise noted herein.
- h. At the time of closing of title to a Unit the Seller will assign to the Purchaser all assignable manufacturers' or suppliers' warranties or guarantees as to materials, appliances, fixtures and equipment. The manufacturer or contractor providing any such warranty shall be primarily liable to correct any defect in the warranted item for the duration of the warranty.

Seller does not independently warrant any such appliances, equipment or other personal property except to the extent required under this Paragraph 20.

SELLER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY ARISING BY VIRTUE OF LAW OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE WITH RESPECT TO THIS CONTRACT. THIS MEANS THAT THE ONLY WARRANTIES WHICH ARE GIVEN BY SELLER TO BUYER ARE THOSE LISTED IN THIS PARAGRAPH 20. BY SIGNING THIS CONTRACT BUYER ACKNOWLEDGES THIS DISCLAIMER BY SELLER.

**Exhibit 111 - Developer's Agreement for  
Newly Constructed Condominium Unit - Continued**

SELLER ALSO EXPRESSLY DISCLAIMS LIABILITY FOR ANY CONSEQUENTIAL DAMAGES ARISING OUT OF ANY BREACH OF ANY WARRANTY. THIS MEANS THAT SELLER WILL NOT BE RESPONSIBLE IF ANY PERSONAL PROPERTY IS DAMAGED BECAUSE OF A DEFECT IN ANY WARRANTED ITEM.

**21. Membership in Condominium Association.**

Upon closing of title, Buyer will automatically become a Member of the Condominium Association. Buyer will be a Member of said Condominium Association for so long as Buyer owns the Unit. Buyer agrees to abide by the Condominium Associations By-Laws and any Rules and Regulations that may, from time to time, be promulgated by the Condominium Association and/or Board of Directors. The Condominium Association and the Buyer's membership in the Condominium Association are subject to all of the terms of the Master Deed which has been or will be recorded for the Condominium Association and the Certificate of Incorporation, By-Laws and Rules and Regulations of the Condominium Association, as same may be modified after the date hereof. All of the foregoing documents of the Condominium Association are referred to collectively in this Agreement as the "Condominium Documents". The Condominium Documents and their exhibits set forth the rights and obligation of Buyer, the Condominium Association and other Owners as well as the Budget for the Condominium Association. The Public Offering Statement which has been prepared for this Condominium contains copies of the Condominium Documents.

**22. Common Elements.**

Buyer will acquire such beneficial interest in the Common Elements of the Condominium as set forth in the Condominium Documents. The Common Elements will be managed, operated and maintained by the Condominium Association for the benefit of all owners of Units in the Condominium. The funds necessary to operate and repair the Common Elements (as well as other common expenses and the cost of services provided by the Condominium Association) are obtained by the Condominium Association through the monthly maintenance fees which are allocated among Buyers in accordance with the Condominium Documents.

Buyer shall consult the Public Offering Statement, or the Condominium Documents as applicable, in order to determine the kind, nature, extent, capacity and availability of the Common Elements, including improvements installed or to be installed. When Buyer is the owner of the Unit, Buyer will be entitled to use the Common Elements for the purposes of which intended. This right is governed by and subject to the Condominium Documents. Buyer should consult the Public Offering Statement and the Condominium Documents, as applicable, for the Condominium for limitations and restrictions which are imposed or exist upon the use and availability of the Common Elements.

**Exhibit 111 - Developer's Agreement for  
Newly Constructed Condominium Unit - Continued**

**23. Site Visits.**

Buyer, and its invitees, agents and contractors, shall not do any work whatsoever in the Unit prior to closing of title. Furthermore, insurance regulations preclude Buyer from entering the Unit at any time without being accompanied by Seller's Representative. All visits shall be by appointment and only at the convenience of Seller. Buyer hereby assumes all risks and loss relating to Buyer's entering of the Unit prior to closing.

**24. Preoccupancy Homeowner Orientation.**

Seller will specify the time and date for a homeowner orientation and inspection of the Unit by Buyer. This orientation and inspection will be conducted within one to three days prior to closing. Those items which may be required to be completed or repaired in order to satisfy building code or Warranty Act standards will be entered on a preoccupancy inspection report. The listed items will be repaired or completed as soon as possible after closing. Defects in painted surfaces, chipped porcelain, plumbing fixtures, kitchen appliances, countertops, carpeting, flooring, chipped tiles, screens, glass surfaces or similar defects not noted on this walk through or correction are excluded from the Seller's responsibility. It is understood that as long as a certificate of occupancy has been issued, the listed items shall not constitute a bar to closing of title, and that the closing of title will be held in accordance with this Contract.

Seller represents that there are no known defects in the construction of the Unit that is the subject of this Contract or of the common areas and facilities that the Buyer could not detect with a reasonable inspection under this Paragraph.

**25. Entire Agreement.**

This Contract and the Application for Registration filed with the New Jersey Department of Community Affairs constitute the entire agreement between Seller and Buyer and supersede all prior agreements between the parties. There are no other agreements, understandings or representations other than those contained in this Contract or in any other written instrument which is made a part of this Contract and signed by Buyer and Seller.

No salesperson, broker or other person has any authority to modify the terms of this Contract or to make any other agreements, representations or promises. Unless expressly referenced in this Contract, the model homes, sale brochures, advertising and other promotional materials are not part of this Contract.

This Contract shall not survive closing of title and delivery of the deed but, instead, shall merge into the deed.

**Exhibit 111 - Developer's Agreement for  
Newly Constructed Condominium Unit - Continued**

**26. Assignment, Binding Effect, Recording.**

Buyers interest and obligations under this Contract cannot be assigned (i.e. transferred to another party) without Seller's written consent. This Contract will bind and inure to the benefit of Buyer and Seller and their respective permitted successors, assigns, or personal representative. This Contract shall not be recorded in the office for the recording of deeds or in any other office of public record.

**27. Notices.**

Except for the notices described in Paragraphs 11 and 32, all required notices shall be in writing and sent by certified mail, return receipt requested, postage prepaid, to the address shown in this Contract. Notice is deemed given twenty-four (24) hours after mailing. Notice may also be given by personal delivery, overnight courier or facsimile mail. In such event, notice shall be deemed given when received by the recipient.

**28. Headings.**

The headings in this Contract are for convenience only and do not affect the meanings or interpretations of the terms and conditions.

**29. Governing Law.**

This Contract is governed by New Jersey law. If any part of this Contract is deemed illegal or unenforceable, the rest of the Contract will, at Seller's option, remain in full force and effect, or in the alternative, Seller may cancel this Contract and refund all monies paid to Seller by Buyer and Seller and Buyer will have no further rights or liabilities to each other at law or equity.

**30. Attorney Review.**

**(a) Study by Attorney**

Buyer and/or Seller may choose to have an attorney study this Contract. If an attorney is consulted, the attorney must complete his or her review of the Contract within three (3) business days (as calculated below). The Contract will be legally binding at the end of this three (3) day period unless an attorney for Buyer or Seller reviews and disapproves of the Contract.

**(b) Counting the Time.**

The parties count the three days from the date of delivery of the signed Contract to Buyer and to Seller. You do not count Saturdays, Sundays or legal holidays. Buyer and Seller may agree in writing to extend the three (3) day period for attorney review.

**(c) Notice of Disapproval**

If an attorney for Buyer or Seller reviews and disapproves of this Contract, the attorney must notify the Broker(s) and Buyer and Seller within the three (3) day period, otherwise this Contract will be legally binding as written. The attorney must send a notice of disapproval to the Broker(s) and Buyer and Seller by certified mail, by facsimile, or by delivering it personally. The facsimile or certified letter will be effective upon delivery to the Broker's and Seller's respective offices and to Buyer at his or her address on page 1 of this Contract. The attorney may also, but need not, inform the Broker(s) and the parties of any suggested revisions in the Contract that would make it satisfactory.

**Exhibit 111 - Developer's Agreement for  
Newly Constructed Condominium Unit - Continued**

**(d) Other Rights of Cancellation**

The provisions of subparagraphs a, b and c above are required by law due to the fact that this Contract is being completed by a real estate broker. These provisions do not modify or lessen any other rights of cancellation given in this Contract. Buyer should familiarize himself or herself with the other rights of cancellation as they are broader than those discussed above.

**31. Modifications.**

Seller encourages Buyer to have an attorney review this Contract. Seller, however, is not required to accept any modification to this Contract. If Buyer or Buyer's attorney submits any proposed modifications during the attorney review period, Seller will have the right to treat that as a rejection of the Contract and promptly terminate the Contract and return Buyer's deposit.

**32. Real Estate Broker.**

IF BUYER AND SELLER HAVE NOT BOTH SIGNED A COMPLETED REAL ESTATE BROKER RIDER, THEN BUYER REPRESENTS THAT BUYER WAS NOT INTRODUCED TO THE PROPERTY BY ANY BROKER OR SALESPERSON. SHOULD ANY BROKER, SALESPERSON OR OTHER PERSON ASSERT A CLAIM FOR A COMMISSION OR FEE, BUYER AGREES TO BE RESPONSIBLE FOR THAT COMMISSION OR FEE. BUYER FURTHER AGREES TO PAY SELLER'S ATTORNEY'S FEES IF SELLER IS SUED FOR ANY COMMISSION OR FEE.

**33. Power of Attorney.**

Buyer agrees that at the time of closing, Buyer will execute a power of attorney appointing Seller as Buyer's attorney-in-fact for the purposes of amending the Condominium Documents and Governing Documents without Buyer's prior consent if required by the title insurance company selected to insure title, a governmental or quasi-governmental agency, or as specifically provided for in the Condominium Documents and Governing Documents, so long as any such amendment does not reserve any additional special privileges to Seller under the Condominium Documents and Governing Documents. Buyer acknowledges that this power of attorney is coupled with an interest in the subject matter.

**34. Megan's Law Statement.**

Under New Jersey law, the county prosecutor determines whether and how to provide notice of the presence of convicted sex offenders in an area.

In their professional capacity, real estate licensees are not entitled to notification by the county prosecutor under Megan's Law and are unable to obtain such information for you. Upon closing, the county prosecutor may be contacted for such further information as may be disclosable to you.

**35. Public Offering Statement.**

THE BUYER ACKNOWLEDGES THAT PRIOR TO SIGNING THIS CONTRACT, THE SELLER PROVIDED THE BUYER WITH A COPY OF THE PUBLIC OFFERING STATEMENT FOR THE CONDOMINIUM AS CURRENTLY REGISTERED WITH THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS.

**Exhibit 111 - Developer's Agreement for  
Newly Constructed Condominium Unit - Continued**

The Seller and the Buyer agree to the terms of this Contract by signing below. If a party is a corporation, this Contract is signed by its proper corporate officers and its corporate seal is affixed.

**NOTICE TO BUYER(S): YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT BY SENDING OR DELIVERING WRITTEN NOTICE OF CANCELLATION TO THE SELLER BY MIDNIGHT OF THE SEVENTH CALENDAR DAY FOLLOWING THE DAY ON WHICH IT IS EXECUTED. SUCH CANCELLATION IS WITHOUT PENALTY, AND ALL MONIES PAID SHALL BE PROMPTLY REFUNDED IN THEIR ENTIRETY.**

**BUYER(S):**

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Date

**SELLER:**

\_\_\_\_\_  
Seller

By: \_\_\_\_\_  
Authorized Agent of Seller

\_\_\_\_\_  
Date

**Exhibit 111 - Developer's Agreement for  
Newly Constructed Condominium Unit - Continued**

**ENDORSEMENT TO AGREEMENT OF SALE  
BUYER'S USE OF PROPERTY**

ENDORSEMENT TO SUBSCRIPTION AND PURCHASE AGREEMENT dated \_\_\_\_\_  
\_\_\_\_\_ between D.R. Horton, Inc. - New Jersey ("Seller") and \_\_\_\_\_  
\_\_\_\_\_ ("Buyer") of Unit No. \_\_\_\_\_ (the "Unit") in HOMESTEAD CONDOMINIUM (the  
"Agreement").

Despite anything contained in the Agreement to the contrary, Buyer and Seller further agree as follows:

In order to provide a stabilized community of primarily owner-occupied homes, Seller desires to sell homes only to buyers who will own the Property for a period of at least one (1) year. Therefore, in order to induce Seller to agree to sell the Property to Buyer, Buyer represents and agrees as follows:

1. Ownership of Property for One (1) Year. Buyer represents and warrants to Seller that Buyer shall not assign or attempt to transfer Buyer's rights under the Agreement or enter into any other type of contract for the sale or other transfer of the Property which would result in Buyer's failure to hold title thereto in fee simple and own the Property for a period of at least one (1) year from the closing of Buyer's purchase of the Property (herein referred to as the "Ownership Period"). The provisions of this paragraph and the accuracy of the above representations and warranties constitute a covenant of Buyer and a condition precedent to Seller's performance under the Agreement.
2. Conveyance Prior to Settlement. Any assignment by Buyer or attempt to assign Buyer's rights under the Agreement and sell or otherwise transfer the Property prior to closing for the sale of the Property shall constitute both (i) a material default of the Agreement, entitling Seller, at its sole election, to terminate the Agreement and retain Buyer's deposit pursuant to the terms of the Agreement and (ii) the failure of a condition precedent to Seller's obligation to sell the Property to Buyer. Seller's remedies are not limited to prior to the closing of Property to Buyer. If Buyer breaches the provisions of this Addendum and Buyer closes, Seller shall thereafter be limited to the remedies under Paragraph 3, below.
3. Conveyance Subsequent to Settlement. Except for "exception" situations as described in Paragraph 7, any sale or other transfer by Buyer under which Buyer transfers fee simple title to the Property prior to the expiration of the Ownership Period shall constitute a material breach of the Agreement. Any such material breach shall entitle Seller to recover from Buyer any and all damages, including reasonable attorneys fees, arising from Buyer's breach.

**Exhibit 111 - Developer's Agreement for  
Newly Constructed Condominium Unit - Continued**

4. No Unreasonable Restraints. Buyer acknowledges that the purpose of this Addendum is to comply with Seller's intention to sell homes only to buyers who will actually retain ownership of their homes during the Ownership Period thereby stabilizing property re-sales for permanent residents. Buyer agrees that the provisions and restrictions set forth in this Addendum do not constitute unreasonable restraint upon alienation of the Property.
5. Survival: Severability. All of the covenants contained herein shall survive the delivery and recordation of the deed conveying the Property from Seller to Buyer. The provisions of this Addendum shall be independent and severable, and a determination of invalidity or non-enforceability or partial invalidity or enforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision of this Addendum or the Agreement.
6. Subordination. Buyer hereby acknowledges and agrees that a violation of this Addendum by Buyer shall not defeat or render invalid the lien of any first mortgage made in good faith and for value by Buyer, and that the covenants and provisions of this Addendum shall be inferior and subordinate to the lien of any such first mortgage recorded concurrently with the deed conveying the Property to Buyer.
7. Exceptions. The following events shall be deemed to constitute "exception" situations under which Buyer may sell, transfer, or assign (collectively, a "Transfer") its right, title and interest in the Property prior to holding title to, and occupying, the Property for a period of one (1) year from closing.
  - a. A Transfer resulting from the death of the Buyer;
  - b. A Transfer by Buyer to Buyer and a spouse of Buyer;
  - c. A Transfer resulting from a decree of dissolution of marriage or legal separation or from a property settlement agreement incident to such decree;
  - d. A Transfer by Buyer into a revocable inter vivos trust in which Buyer is a beneficiary;
  - e. A Transfer, conveyance, pledge, assignment or other hypothecation of the Property to secure the performance of an obligation, which transfer, conveyance, pledge, assignment or hypothecation will be released or reconveyed upon the completion such performance;
  - f. A Transfer by Buyer where necessary to accommodate a mandatory job transfer required by Buyer's employer (not including Buyer, if Buyer is self-employed);
  - g. A Transfer necessitated by a medical or financial emergency, proof of which emergency has been delivered to Seller, and has been approved by Seller in its reasonable discretion; and
  - h. A Transfer which, in the reasonable judgment of Seller, constitutes an "exception" situation consistent with the intentions of this Addendum.

**Exhibit 111 - Developer's Agreement for  
Newly Constructed Condominium Unit - Continued**

Buyer acknowledges that (i) Buyer has read the provisions of this Addendum, (ii) Buyer understands the provisions of this Addendum and agrees they are reasonable, and (iii) Buyer acknowledges that no representation, warranty or other promise not contained in this Addendum has been made to Buyer by any employee, sales agent or representative of Seller upon which Buyer is relying in connection with Buyer's purchase of the Property.

THE TERMS AND CONDITIONS OF THIS ADDENDUM ARE HEREBY ACCEPTED AND MADE A PART OF THE AGREEMENT.

ABC Development, L.L.C., Seller

By: \_\_\_\_\_

\_\_\_\_\_  
Buyer's Signature

\_\_\_\_\_  
Buyer's Signature

## EXHIBIT 112 - CONDOMINIUM UNIT DEED

### NEW CONSTRUCTION

Prepared by: \_\_\_\_\_

### UNIT DEED

THIS UNIT DEED is made this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ between ABC DEVELOPMENT, L.L.C., having an office at 100 Builder's Way, Municipality, New Jersey \_\_\_\_\_ referred to in this document as "Grantor", and \_\_\_\_\_, about to reside at Unit \_\_\_\_\_, Building \_\_\_\_\_, \_\_\_\_\_, New Jersey, referred to in this document as "Grantee". (The words "Grantor" and "Grantee" include all Grantors and all Grantees under this Unit Deed.)

In return for the payment to the Grantor by the Grantee of \_\_\_\_\_ Dollars, the Grantor grants and conveys to the Grantee a certain condominium unit, located in the Borough of \_\_\_\_\_, County of \_\_\_\_\_ and State of New Jersey, specifically described as follows:

Unit \_\_\_\_\_, Building \_\_\_\_\_, \_\_\_\_\_, situated in Homestead Condominium, (referred to in this Unit Deed as the "Unit"), together with an undivided \_\_\_\_\_% interest in the Common Elements of said Condominium, as same may be adjusted in the future as allowed by the Master Deed for Homestead Condominium. The conveyance evidenced by this Unit Deed is made under the provisions of and is subject to the New Jersey Condominium Act (N.J.S.A. 46:8B-1 et seq.) and the Planned Real Estate Development Full Disclosure Act (N.J.S.A. 22A-21 et seq.), as amended, and any applicable regulations adopted under either law. The conveyance evidenced by this Unit Deed is also made in accordance with the terms, limitations, conditions, covenants, restrictions, easements, agreements and other provisions set forth in that certain Master Deed for Homestead Condominium dated \_\_\_\_\_, 2009 and recorded \_\_\_\_\_, 2009 in the \_\_\_\_\_ County Clerk's Office in Deed Book \_\_\_\_\_ at Page \_\_\_\_ et seq., as same may now or hereafter be lawfully amended and/or supplemented. The Unit is now designated as Lot \_\_\_\_\_, Block \_\_\_\_\_, on the municipal tax map of the Borough of \_\_\_\_\_ (or as Account No. \_\_\_\_\_). (check box if applicable) /\_\_\_/ No property tax identification number for the Unit is available at the time of this conveyance.

The Unit is subject to the Master Deed mentioned above and all its exhibits including all easements, terms, conditions, reservations, rights-of-way, air rights, covenants of record, governmental statutes, ordinances and regulations, possible added assessments for the year of sale as set or levied under N.J.S.A. 54:4-63.1, et seq. and all facts that an accurate survey may disclose.

This Unit Deed entitles the Grantee to have and to hold for its proper use and benefit forever the Unit and all it is subject to as described in this document.

The Grantor covenants that the Grantor has done nothing which encumbers or adversely affects title to the Unit or the common elements of the Condominium.

**Exhibit 112 - Condominium Unit Deed - Continued**

By signing this Unit Deed, the Grantee consents to any future amendments, supplements and/or revisions (from now on collectively called "amendments") of the Master Deed for the Homestead Condominium, the Certificate of Incorporation of the Homestead Condominium Association, Inc., the By-laws of the Homestead Condominium Association, Inc. and/or the Rules and Regulations of the Homestead Condominium Association, Inc. (from now on collectively called the "Condominium Governing Documents") which are (a) required by applicable statutes, regulations, ordinances or orders of any governmental entity having jurisdiction over the lands that are proposed for incorporation or are incorporated as part of the Condominium or the Condominium itself; (b) required by any title insurance company licensed to do business in the State of New Jersey insuring or proposing to insure title to the lands that are proposed for incorporation or are incorporated as part of the Condominium, any Unit within the Condominium; (c) required by any Institutional Lender owning, holding, servicing, insuring or guaranteeing or proposing to provide, own, hold, service, insure, guarantee or acquire a First Mortgage loan(s), the lien(s) of which will encumber (a) Unit(s) within the Condominium; or (d) required to incorporate additional Units and the improvements attendant thereto as part of the Condominium as contemplated by the Master Deed.

If an amendment is required for any one of the reasons described above, then the Grantee expressly agrees that the Grantor is authorized, on behalf of the Grantee, to sign and record any document necessary to make the amendment, supplement or revision effective. This authority is called a power of attorney and the Grantor, in exercising this authority, is referred to as the Grantee's attorney-in-fact. By signing this Unit Deed, the Grantee designates the Grantor as having this authority. This power of attorney will be binding upon anyone who claims an interest in the Unit by or through the Grantee, such as a mortgagee, other lienholders, a purchaser, a tenant or someone with an interest acquired through a will or by operation of law. If an amendment is required for one of the reasons expressed, only the signature of the attorney-in-fact is required in order for the amendment to be effective. The Grantor may not, however, exercise its authority as attorney-in-fact without a separate written consent of the Grantee if the amendment would substantially change the floor plan of the Grantee's Unit or the proportionate interest in the Common Elements associated with the Grantee's Unit (except as expressly permitted in the Master Deed); increase the nature of the financial obligations of the Grantee under the Condominium's governing documents; or reserve any additional special privileges for the Grantor.

The Grantee declares and acknowledges that this power of attorney is coupled with an interest in the subject matter. The Grantee understands that the Grantor has caused the Condominium's governing documents to be adopted and recorded and that same are binding on the owners of all Units in the Condominium for the mutual benefit of the owners of all Units including the Grantor. The Grantor, as the Developer of the Condominium, the initial seller of all Units and the present owner of Units has an interest in the Condominium and in the amendment of the Condominium's governing documents under the circumstances described. For this reason, this power of attorney may not be revoked by the Grantee.

The power of attorney will be effective for a period of ten (10) years from the date the first Unit is conveyed to an individual purchaser or until the Grantor conveys title to the last Unit to an individual purchaser, whichever is the first to occur. This power of attorney shall not be affected by the death or disability of any principal.

**Exhibit 112 - Condominium Unit Deed - Continued**

The Grantor has received the full payment from the Grantee.

This Unit Deed is signed by the Managing Member of the Grantor on the date first mentioned above.

**WITNESS:**

**ABC DEVELOPMENT, L.L.C.**  
Grantor

\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Member

**WITNESS:**

\_\_\_\_\_

\_\_\_\_\_(L.S.)  
Grantee

\_\_\_\_\_

\_\_\_\_\_(L.S.)  
Grantee

\_\_\_\_\_

\_\_\_\_\_(L.S.)  
Grantee

**Exhibit 112 - Condominium Unit Deed - Continued**

## CERTIFICATE OF ACKNOWLEDGMENT BY INDIVIDUAL

**STATE OF NEW JERSEY            )**  
   )**SS.:**  
**COUNTY OF                          )**

I am \_\_\_\_\_, an officer authorized to take acknowledgments and proofs in this State. I sign this acknowledgement below to certify that it was made before me.

On \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ appeared before me in person. (If more than one person appears the words “this person” shall include all persons named who appeared before the officer and made this acknowledgment.) I am satisfied that this person is the person named in and who signed this Deed. This person acknowledged signing, sealing and delivering this Deed as this person’s act and deed for the uses and purposes expressed in this Deed.

(Officer's signature and title)

**Exhibit 112 - Condominium Unit Deed - Continued**

**CORPORATE PROOF BY THE SUBSCRIBING WITNESS**

**STATE OF NEW JERSEY            )**  
**) ss.:**  
**COUNTY OF                                  )**

**BE IT REMEMBERED**, that on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me the subscriber, the undersigned authority, personally appeared \_\_\_\_\_ who, being by me duly sworn on \_\_\_\_\_ oath, deposes and makes proof to my satisfaction that \_\_\_\_\_ is the Secretary of ABC DEVELOPMENT, L.L.C., the corporation named in the within Instrument; that \_\_\_\_\_ is the President of said Corporation; that the execution, as well as the making of this Instrument, has been duly authorized by a proper resolution of the Board of Directors of the said Corporation; and that the seal affixed to said Instrument is the proper corporate seal and was thereto affixed and said Instrument signed and delivered by said President as and for the voluntary act and deed of said Corporation, in the presence of deponent, who thereupon subscribed his name thereto as attesting witness; and that the full and actual consideration paid or to be paid for the transfer of title or realty evidenced by the within deed, as such consideration is defined in P.L. 1968, c. 49, Sec. 1(c), is \$\_\_\_\_\_.

Sworn to and subscribed  
before me, the date aforesaid.

**Exhibit 112 - Condominium Unit Deed - Continued**

---

UNIT DEED

---

ABC DEVELOPMENT, L.L.C.  
a New Jersey Limited Liability Company

Grantor

to

Grantee

---

DATED:

---

RECORD AND RETURN TO:

EXHIBIT 113 - SURVEY CERTIFICATE

**Gregory Prochoren, P.L.S., Inc.**

Professional Land Surveyor  
New Jersey Lic. #27491



516 Amboy Avenue  
P.O. Box 427  
Woodbridge, New Jersey  
07095-0427  
Phone: (732) 636-4242  
Fax: (732) 636-4430

March 13, 2000

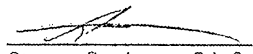
FILE NO.: 0603016

CERTIFIED TO: 1) ~~John M. [redacted]~~, unmarried  
2) National City Bank of Indiana, its successors and/or assigns,  
P.O. Box 1024, Dayton, OH 45401-1024  
3) Chicago Title Insurance Company  
4) Greenbaum, Rowe, Smith & Davis, LLP

I hereby certify that Unit 171 in Building 6 in "Village Pointe, A Condominium" in the Township of Edison, County of Middlesex and State of New Jersey is substantially located in accordance with the location shown on a map entitled "Condominium Map For Village Pointe", prepared by Schoor & DePalma, Inc., Engineers and Design Professionals, as recorded with the Master Deed. The Master Deed establishing "Village Pointe, A Condominium" was recorded in the Middlesex County Clerk's Office on December 12, 1995 in Deed Book 4291 Page 001 and being subject to any amendments thereto.

Being known as Lot 6 C0171 in Block 594-B on the Official Tax Map for the Township of Edison.

Commonly known as ~~400~~ Prestwick Way, Edison Township, New Jersey.

  
Gregory Prochoren, P.L.S.  
Lic. No. 27491  
Cert./Auth. #24GA28015500

(c) The condominium association will be responsible for insuring casualty to the common elements of the condominium and liability within those portions of the condominium. The attorney should procure an insurance certificate naming the parties with an interest in the unit, e.g. the purchaser and the lender, if any. The insurance certificate will state the coverage which has been obtained by the Association, the limits of liability, and the date of expiration of the insurance coverage. An insurance certificate appears as Exhibit 114.

In general, the purchaser is responsible for insuring personal property within the unit, liability within the unit and for those portions of the unit referred to as "betterments and improvements" e.g. kitchen cabinets, wall coverings, floor coverings. This is typically effectuated by means of an "HO-6" policy.

(d) A letter should be obtained from the condominium association or its managing agent confirming the status of payment of fees by the current owner of the property to the association. Frequently, the fees are referred to as maintenance or common charges, or common expense assessments. At times, this letter is referred to as an "estoppel certificate". A letter setting forth the status of payments by an owner of a condominium unit appears as Exhibit 115.

In the event that a unit is conveyed subject to unpaid common expense assessments, both the previous owner and the current owner are jointly and severally liable to the Association for the amounts due. Also, there may be additional amounts due to the association representing membership fees, common expense escrows, and prepaid installments of common expense assessments which may be required by the association.

(e) There may be a blanket mortgage encumbering more than one unit within a condominium and, at the time of closing, only the subject unit will be released (with the other units remaining encumbered). The instrument by which this will be accomplished is a partial release of mortgaged property. A release of part of mortgaged property appears as Exhibit 100 and is discussed in Section 6.6.3.

### **Section 7.2.3 Fee Simple Townhouse Developments**

The property which is the subject of the contract may be a townhouse-style dwelling constructed on an individually subdivided lot where the purchaser takes title to both the lot and the improvements constructed thereon. Frequently, such developments are referred to as "fee simple" developments since the owner takes title in fee simple to the lot on which the improvements are constructed. This is unlike the condominium form of ownership where a purchaser does not take title to the lot of land on which the dwelling is constructed. If there are 100 or more lots within the development, the development may be subject to the requirements of the Planned Real Estate Development Full Disclosure Act. Ownership of a home in such development may be subject to the covenants, easements and restrictions imposed by a recorded instrument known as a declaration. The declaration may also provide the creation of a homeowners association responsible for the administration of the affairs of the community. If there is common property in the community available for use by all owners, e.g. open space, clubhouse, the association will be hold title to that property and be responsible for the maintenance, repair and replacement of the common property.

## EXHIBIT 114 - INSURANCE CERTIFICATE

Client#: 81070		VILLPOH	
<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>			DATE (MM/DD/YYYY) 03/22/06
<b>PRODUCER</b> Wachovia Insurance Services 499 Thornall Street, 9th Floor Edison, NJ 08837 732 632-9300		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
<b>INSURED</b> <del>Wachovia</del> Condo Association, Inc. c/o <del>Wachovia</del> Management <del>Wachovia</del> Street Morristown, NJ 07960		<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>
		INSURER A: Mercer Mutual Group	16535
		INSURER B: Zurich American Insurance Company	20443
		INSURER C: Continental Casualty Company	
		INSURER D:	
		INSURER E:	

COVERAGES THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR	ADDITIONAL LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	SMP2930477	12/31/05	12/31/06	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$50,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	SMP2930477	12/31/05	12/31/06	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
B		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10000	AUC297296403150705	12/31/05	12/31/06	EACH OCCURRENCE \$15,000,000 AGGREGATE \$15,000,000 \$ \$ \$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WCP0520976	12/31/05	12/31/06	WC STATUS: <input type="checkbox"/> TOBY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$500,000 E.L. DISEASE - EA EMPLOYEE \$500,000 E.L. DISEASE - POLICY LIMIT \$500,000
C		OTHER Directors &	0250727617	12/31/05	12/31/06	\$1,000,000
A		Building	SMP2930477	12/31/05	12/31/06	\$58,751,200 R/C \$5,000 Deductible

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Re: ~~Wachovia~~ Prestwick Way, Edison, NJ. Certificate Holder is Included as Mortgagee as respects referenced location(s).

CERTIFICATE HOLDER	CANCELLATION
National City Bank of Indiana ISAOA/ATIMA P.O. Box 1024 Dayton, OH 45401-1024	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE For WIS by: <i>Amelia L. Olsza</i>

EXHIBIT 115 - COMMON CHARGES LETTER



March 12, 2000

Please remit copy of HUD statement with payments

Attn: [REDACTED]

RE: [REDACTED] TOWERS

ACCT #: CB/17B

[REDACTED] Ave Unit [REDACTED]

[REDACTED] NJ

[REDACTED] to Kevin & Denise [REDACTED]

Dear Sir or Madam:

Please be advised that with reference to the above captioned property, maintenance fees are current through March 31, 2000. There is a retroactive amount for maintenance increase from January through March, in the amount of \$74.07, which needs to be collected at closing.

The monthly maintenance fee for this unit is \$514.75 as of April 2010 and is due and payable on the first of each month. The April maintenance should be collected at closing and forwarded to our office unless the seller pays it in the meantime.

**Please call our office on the closing date to verify these amounts**  
973-820-4168 or 973-820-4183

Please be advised that all new purchasers are obligated to pay a refundable escrow deposit equal to one time the current maintenance fees totaling \$490.07\* or \$514.75 if unit closes in April 2010, on the unit. At the same time the new unit owner puts up this fee, the old owner is entitled to a refund of \$0 their deposit, without interest, which was paid at the time of their purchase. Please have buyer and seller adjust this issue on their closing statement, with the Association to receive only the difference of the old maintenance fee and the new equaling \$490.07\* or \$514.75 again if unit closes in April 2010.

In addition, as per the By-Laws of the Condominium Association, each new purchaser is required to pay a one-time, non-refundable, non-transferable fee broken down as follows:

Association Membership fee	\$ 250.00
2 Month's Working Capital	\$980.14

Upon closing, please forward separate checks for all monies due. Be sure to indicate the purchaser's Social Security number on the memo portion of the Security Fund Escrow Account check.

1030 Clifton Avenue • Clifton, New Jersey 07013 • Tel: 973.773.6262 Fax: 973.773.4932  
Emergency Phone Number: 973.773.6274 • <http://www.CommunityServices.com>

**Exhibit 115 - Common Charges Letter - Continued**

Please be advised that this amount is payable to the Condominium Association and does not represent maintenance paid in advance for the purchaser's unit. All checks due the association should be made payable to CMC-~~Valerie [REDACTED]~~ Account.

A Certificate of Insurance may be obtained from Marmo & Sons 973- 340-9100 or fax 973-340-2254.

(IF THE SELLER USES AUTOMATIC CHECKING, PLEASE HAVE THEM CANCEL IT BEFORE TIME OF CLOSING AS IT TAKES 48 HOURS TO CANCEL AUTOMATIC DEDUCTIONS)

Very truly yours,

COMMUNITY MANAGEMENT CORPORATION

Valerie ~~[REDACTED]~~

Accounts Receivable

In preparing for closing, there are certain differences which exist as follows:

(a) By reviewing the bylaws of the homeowners association, the coverage provided by the insurance coverage maintained by the homeowners association can be determined. Typically, the homeowners association is responsible for maintaining liability and casualty insurance on the common property, facilities and improvements. Once that coverage has been determined, the individual homeowner will be able to ascertain the coverage which should be obtained by the owner. Usually, the owner will be responsible for obtaining a homeowners policy commonly referred to as an "HO-5" policy, which covers property damage to the building structure and fixtures, and to the personal property of the owner. In the event that each owner is responsible for maintaining coverage, the bylaws should be reviewed to determine if any special requirements exist as to the amount of coverage and the parties with an interest in that coverage that are to be named in the policy, *e.g.* the homeowners association.

(b) As in the closing for a condominium unit, a letter from the association should be obtained setting forth the status of the payment of common charges to the association.

(c) The purchaser should be aware that amounts may be required to be paid to the association as membership fees, escrows, and prepayment of common expense assessments.

#### **Section 7.2.4 Cooperatives**

(a) **The Cooperative Recording Act.** A cooperative is similar in many respects to the condominium, having an administrative association, board, and monthly assessments to be paid by each unit "owner". Unlike the condominium owner, the "owner" of a cooperative unit owns only shares in the apartment corporation, while all of the real property and structures are owned by the apartment corporation. The Cooperative Recording Act of New Jersey, *N.J.S.A. 46:8D-1 et seq.*, defines the term "cooperative" to mean:

any system of land ownership and possession in which the fee title to the land and structure is owned by a corporation or other legal entity in which the shareholders or other coowners each also have a long term propriety lease or other long term arrangement of exclusive possession for a specific unit of occupancy space located within the same structure. *Id.* at §3(f).

When negotiating the contract of sale for a cooperative, the attorney must first determine if the cooperative is subject to the Act. The Act became effective on May 8, 1988, so any cooperative established on or subsequent to that date is subject to its provisions.

(b) **Pre-Act Cooperatives.** Cooperatives that were established prior to May 8, 1988 remain unaffected by the Act's provisions. When an interest in such a cooperative is transferred, it is treated like the purchase of any personalty and there is no public record of the transaction. Instead the cooperative corporation merely maintains a private stock ledger. The purchaser is issued shares of stock in the apartment corporation and the right to live in the apartment is evidenced by a proprietary lease with the apartment corporation.

(c) **Post-Act Cooperatives.** Post-Act cooperatives are subject to a title registration and recordation system and transfers of a cooperative unit are governed by *N.J.S.A. 46:8d-11(a)-(j)*. Note that such transfers cannot occur without the consent of the cooperative board of managers. *Id.* at (g). Under the Act, the transfer of interest in the cooperative is treated more like realty and is thus subject to realty transfer fee. *N.J.S.A. 46:15-5(1)(a)*. The cooperative is created by the recordation of a master declaration and a master register in the county recording office. In addition, the Act requires an instrument to transfer the interest in the unit and may be accomplished by an instrument referred to as a memorandum of transfer. Typically, a memorandum of transfer is used reflecting the transferor and the transferee, the proprietary lease and any assignments, the stock certificates issued including the number of shares, the unit transferred with reference to the master declaration, and the consideration paid by the transferee. The memorandum of transfer also reflects the consent of the board of managers of the apartment corporation and the receipt by the transferee of the transfer documents.

Moreover, the Act requires that the transfer of interest be recorded in the county recording office. Unlike the procedure in standard closings, the transaction remains inchoate until the memorandum of transfer is recorded and cross-indexed in the master register for the cooperative. *N.J.S.A. 46:8D-11*. Moreover, the security interest is not perfected until this has been completed. *N.J.S.A. 46:8D-14(b)*. Therefore, it is in the best interests of all parties that the memorandum of transfer be recorded the same day as the closing takes place.

The Act was designed as enabling legislation, authorizing each individual county to set up its own Torrens recordation system without offering any guidance as to how to do so. The unfortunate result is an unorganized and disjointed system in each of the state's 21 counties. For this reason, it is important to use a reputable title company familiar with cooperative transactions and the recordation systems.

### **Section 7.3 Fair Housing Amendments Act**

The Fair Housing Amendments Act of 1988 (the Act), 24 C.F.R., Part 100 *et seq.* provides that "[n]o person shall be subject to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions." Pursuant to 42 U.S.C. §3605, the term "residential real estate-related transaction" includes: 1) the making or purchasing of loans or providing other financial assistance; 2) the selling, brokering, or appraising of residential real property.

For the most part, the classifications protected by the Act are self-explanatory. However, two need further explanation. First, "handicap" is defined as a "physical or mental impairment which substantially limits one or more of an individual's major life activities. Second, "familial status" applies to individuals under the age of 18 who are domiciled with either a parent, legal guardian, or the designee of the same. Familial status further applies to "any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years." Section 802(k)(2). Although Part 100.10 lists those transactions which are exempt from the Act's provisions, these are extremely limited in scope and basically encompass the selling or renting of a home without the use of a real estate broker or salesperson as well as a narrow class of adult communities specifically created to provide special services and accommodations needed by older persons.

Based on the foregoing, in the majority of situations encountered, the seller will be prohibited by law from refusing to sell or rent on the basis of those classifications enumerated in Part 100. In

addition, neither the seller, the broker, nor the lending institution or their agents can discriminate in the terms, conditions or privileges of the sale or rental or engage in any conduct which "denies dwellings to people." Therefore, any existing covenants or deed provisions precluding sale or rent on the basis of any of these classifications will be unenforceable by either the seller or any other parties with interests in such covenants.

In addition, the Act imposes affirmative duties on builders by establishing design and construction requirements for certain multifamily dwellings to have first occupancy on or after March 3, 1991. Subpart D, section 6, entitled "Discrimination Because of Handicap" provides for "[c]ompliance with the requirement of the American National Standard for buildings and facilities providing accessibility and useability for...handicapped people."

#### **Section 7.4 Properties Subject to Tenancies**

The New Jersey Statute Governing Removal of Tenants, *N.J.S.A. 2A:18-61.1 et seq.* and the regulations promulgated pursuant thereto at *N.J.A.C. 5:24-1.1 et seq.* prevent landlords from summarily removing tenants without good cause and without prior demand and notice. *N.J.S.A. 2A:18-16.1* sets forth the grounds pursuant to which residential tenants may be evicted. The Act's requirements apply not only to landlords but also to mortgagees who take title to a tenant-occupied property by virtue of a foreclosure action irrespective of whether the tenancy was established before or after the execution of the mortgage. *Chase Manhattan Bank v. Josephson*, 135 N.J. 209, 638 A.2d 1301 (1994). The Act does not apply to property where the owner personally occupies the premises and has no more than two rental units.

When representing a purchaser who is purchasing property currently occupied by tenants of the seller and who is purchasing the property with the intent to personally occupy the same, the purchaser should be informed of the requirements that must be satisfied before existing tenants can be legally evicted in compliance with the Act. Subsection 1 of the Act provides in pertinent part that a tenant may be evicted "when the owner has contracted to sell the unit to a buyer who seeks to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing." The attorney for the purchaser should include a clause in the contract requiring the seller to evict the tenant and to deliver the property vacant at closing. Pursuant to *N.J.S.A. 2A:18-16.6(b)*, once the purchaser has purchased the property, the purchaser must then personally occupy the property within six (6) months. If the purchaser does not do so, but instead permits occupancy of the property by another tenant, such purchaser will then be liable to the former tenant for damages.

When representing a seller who is currently leasing the property to be sold, the attorney needs to inform the seller of the conditions which must be met to comply with the Act. Pursuant to *N.J.S.A. 2A:18-61.2 (f)*, the seller must give the tenant two (2) months' notice prior to the institution of the action. If there is a written lease in effect, no action may be instituted until the lease expires. Such notice must specify in detail the cause of the termination of the tenancy and must be served either personally upon the tenant or by certified mail.

If the purchaser intends to take title to the property subject to one or more existing tenancies, the contractual provisions discussed in Section 3.3.17 regarding adjustments at closing and compliance with certain laws, if applicable, should be included in the contract. If the Hotel and Multiple Dwelling Law discussed in that section does apply to the property, the purchaser will be required to submit an amended certificate of registration (amending the previously filed Certificate) upon closing of title reflecting information concerning the new owner. A certificate of registration appears as Exhibit 116.

Also, except in the case of owner-occupied property with not more than three units, the purchaser (as landlord) must file with the clerk of the municipality where the property is located a registration statement setting forth information regarding the property and the new owner. *N.J.S.A. 46:8-28*. Furthermore, if the municipality in which the property is located has imposed controls upon the rents which may be imposed upon a tenant occupying a vacant property or upon the renewal of an existing leasehold, the purchaser must comply with those restrictions as well.

## EXHIBIT 116 - CERTIFICATE OF REGISTRATION



Department of Community Affairs  
Division of Codes and Standards  
Bureau of Housing Inspection  
101 South Broad Street, PO Box 810  
Trenton, New Jersey 08625-0810  
Telephone Number: 609-633-6225

DATE:  
REGISTRATION NO.:  
RE:

## NOTICE OF VIOLATION AND ORDER TO REGISTER

Multiple Dwellings, including condominiums and cooperatives, which contain 3 or more units of dwelling space; Hotels which contain 10 or more units of dwelling space or have sleeping facilities for 25 or more persons or, are commonly regarded as a hotel, motor hotel, motel, or established guesthouse in the community in which they are located, and non-profit Retreat Lodging Facilities must be registered with the Bureau of Housing Inspection as required by the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq.

Bureau records indicate that the above referenced building, owned by you, is subject to these registration requirements.

If this information is correct, you are required by law to file a Certificate of Registration with the Bureau of Housing Inspection, using the attached form, within 30 days of receipt of this notice.

If this information is incorrect, please notify the Bureau immediately.

If any of the information submitted on this form should change, an owner must submit an amended Certificate of Registration within 30 days of such change. No fee shall be charged for the filing of an amended Certificate of Registration, except in the case of a change in ownership wherein the submission of a new Certificate of Registration is required.

Failure to comply with the terms of this notice may subject you to the immediate entry of a docketed judgment against you, for a penalty in the amount of \$200.00 per building, pursuant to N.J.S.A. 55:13A-12(d).

New Jersey Department of Community Affairs  
Bureau of Housing Inspection  
CERTIFICATE OF REGISTRATION

A fee of **\$10.00** is required for **each** building registered. Please complete and submit this form with the required fee of \$10.00, payable by money order, certified check or cashier's check only, to: N.J. Bureau of Housing Inspection, within 30 days of receipt of this notice.

If your property consists of a complex of buildings, you must complete this **Certificate of Registration** for the first building and a **Supplemental Certificate of Registration** for each additional building, and submit with the corresponding fee of \$10.00 for each building registered.

Please refer to the **Marking Instructions** below for the proper completion of this form.

Correct Numbers  
and Letters

1 2 3 A B C

Correct Marks



Incorrect Marks



## FOR OFFICE USE ONLY

1. Is This An Amended Certificate? <input type="checkbox"/> Yes <input type="checkbox"/> No		8. YEAR CONSTRUCTED _____ month _____ year	
2. Previous Registration Number, If Any _____		NOTE: Attach Copy of Certificate of Occupancy if issued after 1/1/1977.	
3. BUILDING No.: _____ of _____ TOTAL BUILDINGS		9. LIFE HAZARD Registered as Life-Hazard Use As per Uniform Fire Code <input type="checkbox"/> No <input type="checkbox"/> Yes If Yes, DFS Reg. No.: _____	
4. BUILDING USE (mark one) 1. <input type="checkbox"/> Multiple Dwelling 2C. <input type="checkbox"/> Guest House/Bed & Breakfast 2A. <input type="checkbox"/> Hotel 2D. <input type="checkbox"/> Dormitory 2B. <input type="checkbox"/> Seasonal Hotel 3. <input type="checkbox"/> Retreat Lodging Facility		10. CONSTRUCTION 1 <input type="checkbox"/> Masonry and Concrete 3 <input type="checkbox"/> Exterior Masonry Wall and Frame 2 <input type="checkbox"/> Masonry and Steel 4 <input type="checkbox"/> Frame	
5. FORM OF OWNERSHIP (mark one) 0 <input type="checkbox"/> Corporation 4 <input type="checkbox"/> Cooperative 1 <input type="checkbox"/> Private (Individual or Family) 5 <input type="checkbox"/> Public Housing Authority 2 <input type="checkbox"/> Legal Partnership 6 <input type="checkbox"/> Limited Liability Company		11. DATE OF TRANSFER _____ month _____ day _____ year OF OWNERSHIP	
6. Number of: Dwelling units _____  Rooming units _____  Total _____		12. TAXES PAID TO: Municipality _____ County _____	
7. STORIES _____		FOR OFFICE USE ONLY  <input type="checkbox"/> Transfer <input type="checkbox"/> Initial <input type="checkbox"/> Transfer amended month _____ day _____ year  Lead exempt <input type="checkbox"/> Yes <input type="checkbox"/> No Number of lead exempt units _____	

863611

127168

## Exhibit 116 - Certificate of Registration - Continued

<b>13.</b> <b>OWNER</b>	NAME: 1		
	NAME: 2		
	FED. ID NO. or SOC. SEC. NO.	COUNTY, if in N.J.	PHONE
	ADDRESS (P.O. Box not acceptable)		
	CITY	STATE	ZIP CODE
<b>14.</b> <b>BUILDING</b> 2nd Address if known by another name	BLOCK NUMBER	LOT NUMBER	
	NAME OF BUILDING (if any)		
	ADDRESS: STREET NUMBER	STREET NAME	
	SECOND ADDRESS		
	CITY	STATE	ZIP CODE
		N J	
<b>15.</b> <b>IN COUNTY AGENT</b> (Must reside in the same county as the property)	NAME: 1		
	NAME: 2		
	COUNTY	PHONE	
	ADDRESS (P.O. Box not acceptable)		
	CITY	STATE	ZIP CODE
<b>16.</b> <b>MANAGER</b>	NAME: 1		
	NAME: 2		
	COUNTY	PHONE	
	ADDRESS		
	CITY	STATE	ZIP CODE

863612

127168

Exhibit 116 - Certificate of Registration - Continued

<b>17.</b> MORTGAGEE	NAME: 1			
	NAME: 2			
	ADDRESS			
	CITY	STATE	ZIP CODE	

<b>18.</b> Net lessee or any other person in control of the property (other than record owner)	NAME: 1			
	NAME: 2			
	PHONE			
	ADDRESS			
	CITY	STATE	ZIP CODE	

<b>19.</b> Corporations, Condominiums and Cooperatives (must list officers or general partners)	NAME			
	TITLE (if any)			
	ADDRESS			
	CITY	STATE	ZIP CODE	
	NAME			
	TITLE (if any)			
	ADDRESS			
	CITY	STATE	ZIP CODE	
	NAME			
	TITLE (if any)			
	ADDRESS			
	CITY	STATE	ZIP CODE	

863613

127168

## Exhibit 116 - Certificate of Registration - Continued

<b>20.</b>	Registered agent (if under corporate, condominium, or cooperative ownership)	NAME: 1			
		NAME: 2			
		PHONE			
		ADDRESS (P.O. Box not acceptable)			
		CITY	STATE	ZIP CODE	

<b>21.</b>	Multiple dwelling Janitor or superintendent (if 9 or more units)	NAME			
		ADDRESS			
		APT./ROOM NUMBER	BUILDING NUMBER	PHONE	
		CITY	STATE	ZIP CODE	

<b>22.</b>	Individual who can authorize emergency repairs and expenditures	NAME: 1			
		NAME: 2			
		PHONE			
		ADDRESS			
		CITY	STATE	ZIP CODE	

<b>23.</b>	Fuel oil supplier	<input type="checkbox"/> Building is not heated by fuel oil. IF THIS BOX IS MARKED, ALL OF THE FUEL OIL SUPPLIER FIELDS MUST REMAIN BLANK.			
		IF FUEL OIL IS USED, PLEASE FILL OUT ALL OF THE INFORMATION BELOW. GRADE OF FUEL OIL USED 2			
		NAME			
		ADDRESS			
		CITY	STATE	ZIP CODE	

**RETURN CERTIFICATE AND \$10.00 FEE FOR EACH BUILDING TO:**

Department of Community Affairs  
 Division of Codes and Standards  
 Bureau of Housing Inspection  
 101 South Broad Street, PO Box 810  
 Trenton, New Jersey 08625-0810

**THIS FORM MUST BE SIGNED AND ALL INFORMATION MUST BE SUPPLIED INCLUDING ALL PHONE NUMBERS. IF THIS APPLICATION IS NOT COMPLETE IT WILL BE RETURNED TO THE OWNER.**

Owner Signature

Date

BHI 4-Rev 4/05

PremierView™ forms by NCS Pearson EM-228636-3:654

Copyright © 2005 NCS Pearson, Inc. All rights reserved.

Print Name

PE03 Printed in U.S.A.

863614

127168

## Exhibit 116 - Certificate of Registration - Continued

BH1 4-C (rev. 2/02)

New Jersey Department of Community Affairs  
Bureau of Housing Inspection  
Application for Certificate of Registration

---

COMPLETE THE ENCLOSED CERTIFICATE AND RETURN WITH REQUIRED FEE OF \$10.00  
(No Fee Required for Amended Certificate)

### INSTRUCTIONS

Enclose a fee of \$10.00 for each Certificate of Registration and Supplemental Certificate of Registration submitted. You may enclose one check or money order to cover several certificates mailed in the same envelope. *Make check or money order payable to the Bureau of Housing Inspection.* DO NOT MAIL CASH. DO NOT USE POST OFFICE BOX NUMBERS FOR ADDRESSES. DO NOT RETURN A COPY OF THE ENCLOSED CERTIFICATE; THE ORIGINAL CERTIFICATE FORM MUST BE COMPLETED AND RETURNED.

- Item 1: If you have previously registered as the owner of this building and are filing a certificate form because you are required to report changed information, you are filing an amended certificate. No fee is required for an amended certificate.
- Item 2: Answer only if you have been given or shown a registration certificate issued by the Bureau of Housing Inspection to the previous owner.
- Item 3: For a building, which is not part of a complex, enter 1 for both the Building No. and Total Buildings. For a building, which is part of a complex, enter the individual building number and the total number of buildings in the complex.
- Item 4: A multiple dwelling containing three or more units must be registered. When determining the total number of units, count both those that are rented as well as those that are owner-occupied. Hotels are buildings with 10 or more sleeping units or facilities for at least 25 people, providing accommodations to transient or permanent guests. Properties commonly regarded in their communities as motels, motor hotels or established guesthouses are "hotels" regardless of the number of units. Guest houses as well as non-state owned dormitories are considered sub-categories of HOTEL in the Hotel and Multiple Dwelling Law; they are further classified as life hazard buildings in the New Jersey Uniform Fire Code (N.J.A.C. 5:18-1.5 and N.J.A.C. 5:18-2-4A (c), (f) & (h), and therefore must also be registered with the local municipal Fire Official or the New Jersey Bureau of Fire Safety. Retreat lodging facilities, as defined in the Hotel and Multiple Dwelling Law, are buildings owned by tax-exempt, non-profit corporations, have sleeping facilities used exclusively on a transient basis by persons participating in programs of a religious, cultural or educational nature. Rooming and boarding houses are subject to the Rooming and Boarding House Act of 1979 (N.J.S.A. 55:13B-1 et seq.) and owners are required to be licensed by the Bureau of Rooming and Boarding House Standards, PO Box 804, Trenton, N.J. 08625-0804. They are not to be registered with the Bureau of Housing Inspection.
- Item 6: Enter the number of dwelling units (apartments), rooming units and, total. Do not count as rooming units those rooms that are part of a dwelling unit (apartment) and not rented separately.
- Item 7: Do not count as a story any level that is wholly or partially below ground.
- Item 8: If Constructed after 1/1/77, enter the month and year in which the Construction Official issued a Certificate of Occupancy and attach a copy of the Certificate of Occupancy.
- Item 9: Multiple dwelling of seven or more stories; hotels/motels and retreat lodging facilities of 2 or more stories, with interior stairways and all guest houses and non-state owned dormitories are classified by the New Jersey Uniform Fire Code as life hazard buildings. As such they must also be registered with the local municipal fire Official or the New Jersey Division of Fire Safety and the registration number then assigned must be entered under item #9.

(Continued on the reverse side)

### Exhibit 116 - Certificate of Registration - Continued

- Item 11: Enter the complete date of closing.
- Item 13: If a corporation, enter the full corporate name and business address. If a condominium, note that all properties in condominium ownership are required by law to have associations. Enter the name of the condominium association c/o the name and address of the individual who maintains the association's records.
- Item 14: Enter block and lot numbers. They can be obtained from the municipal tax office. Enter the name, if any, of the building or project. Enter the full number and street name. For attached houses, enter the complete number (e.g. 234-238 Main Street).
- Item 15: Enter the name and address of an agent, person or corporation, who must reside or maintain an office in the county in which the property is located, authorized to receive service of process on behalf of the record owner and such orders or notices as may be issued by the Bureau of Housing Inspection. If the agent is a corporation, it must be licensed to do business in New Jersey. The owners name and address can be entered here as the agent, if the owner resides or maintains an office in the county.
- Item 16: The manager is the person or firm responsible for the maintenance of the building. If the owner or agent is the manager, so indicate. Otherwise, enter the manager's name, address and telephone number.
- Item 17: Enter the name and address of the first mortgage holder. If there are other mortgage holders as well, list them on a separate sheet of paper.
- Item 18: Enter the name, address and telephone number of any person other than the record owner who exercises control over the property.
- Item 19: Enter the names, addresses and titles (if any) of any corporate officers or general partners. If additional space is needed, use a separate sheet of paper.
- Item 20: If the owner is a corporation, enter the name and registered office address of the registered agent. This information should be the same as that appearing on the records of the New Jersey Secretary of State. This must also be completed for condominiums, cooperatives and Public Housing Authorities that are under corporate ownership.
- Item 21: In multiple dwellings of nine or more dwelling units the owner shall either perform the janitorial services personally, if a resident owner, or provide a janitor, or 24-hour a day janitorial services. If required, enter the name and address, including apartment or room number, of the person or janitorial service responsible for building maintenance.
- Item 22: Enter the name, address and telephone number of an individual authorized to make emergency decisions concerning repairs and expenditures for such repairs.
- Item 23: Enter the name and address of the fuel oil dealer who regularly supplies the building and the grade of fuel oil used. If the building is not heated by fuel oil, so indicate.

To obtain a copy of the N.J. Hotel and Multiple Dwelling Law, send \$1.00 to the N.J. Department of Community Affairs, Division of Codes and Standards, Licensing and Inspection Element, Bureau of Housing Inspection, 101 South Broad Street, PO Box 810, Trenton, New Jersey 08625-0810. Chapter 10 Regulations for the Maintenance of Hotels and Multiple Dwellings is also available at a cost of \$5.00. Please do Not Send Cash.

## CHAPTER VIII

### CONSIDERATIONS IN UNDERTAKING LEGAL REPRESENTATION

#### Section 8.1 Attorney's Fees

The courts and the American Bar Association (ABA) have long recognized and have tried to minimize the unequal bargaining power that exists within the average attorney-client relationship in order to protect unwary clients from being charged exorbitant fees. The ABA has issued a set of Model Rules of Professional Conduct (the Model Rules) for the states to use as a guide for instituting their own such rules. RPC 1.5(a) requires that all lawyers fees be "reasonable"; Disciplinary Rule (DR) 201-6 forbids lawyers from charging fees which are "clearly excessive".

Moreover, a new client is entitled to know at the outset what to expect in terms of the basis upon which the attorney will be charging. RPC 1.5(b) provides that "[w]hen the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation." *See also American Lawyer's Code of Conduct*, Rule 5.2. The rationale behind these rules is articulated in ABA Model Code Ethical Consideration (EC) 2-19 which states that openly communicating fees "will not only prevent later misunderstandings but will also work for good relations between the lawyer and the client."

In New Jersey, the Supreme Court has amended RPC 1.5(b) by making the preference for written communications mandatory in certain instances. Thus, "[t]he basis or rate of a lawyer's fee *must* be set forth in writing to clients who have not been regularly represented by the lawyer." *ABA/BNA, Lawyer's Manual on Professional Conduct* (1986) (emphasis added). *See In re Bzura*, 119 N.J. 91 (1990).

The attorney is not required to include all of the factors which will account for the fee. "It is sufficient...to state that the basic rate is an hourly charge or a fixed amount...[and] [f]urnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is [also] sufficient if the basis or rate of the fee is set forth." *Legislative History of the Model Rules*, Comment to Rule 1.5. If unforeseen circumstances arise which render an estimate substantially inaccurate, the client should be provided with a revised estimate as early as possible to avoid unnecessary surprises. The regular practice of providing a written fee agreement will protect the purchaser in the event of a fee dispute as any ambiguity in fee agreements is likely to be construed against the lawyer. *See e.g. Jacobson v. Sassower*, 1 Law.Man.Prof.Conduct 1134 (NY Ct.App., 1985).

#### Section 8.2 Dual Representation

Circumstances may exist at times which might cause an attorney to consider representing *both* the seller and purchaser in a real estate transaction, such as the sale of property from a parent to a child. In 1964, The Supreme Court's Advisory Committee on Professional Ethics concluded that an attorney attempting to represent both the seller and purchaser necessarily finds himself or herself in "an impossibly equivocal position" because of the interest in a continuing relationship with a valuable client. 87 N.J.L.J. 705 (1964). However, the Committee distinguished the "simple case of a sale and purchase of a single piece of property". In such cases, the attorney may accept dual representation, but only after full disclosure to and express consent from all interested parties. In the case of *In re Kamp*,

40 N.J. 588 (1963), the Supreme Court specified that "full disclosure" requires an explanation "in detail [of] the pitfalls that may arise in the course of the transaction which could make it desirable that the buyer have independent counsel." *Id.* 595-96.

Nevertheless, most authorities agree that due to the inherent conflict of interest in the relationship between the purchaser and seller, such dual representation is generally not in the best interests of all parties. For example, in 1972, the Supreme Court's Advisory Committee on Professional Ethics (the Committee) issued Opinion No. 243, in which the Committee unequivocally denounced the practice, concluding that:

One attorney should not represent both parties in connection with the preparation and execution of a contract of sale...[This is because] the attorney cannot exercise his independent judgment in behalf of one client without adversely affecting the other. DR5-105(A)....[Such] representation of a buyer and a seller...is so fraught with obvious situations where a conflict may arise that one attorney shall not undertake to represent both parties...

The Disciplinary Rules of the Code of Professional Responsibility (cited here by the Committee and often referred to by others disapproving of such dual representation) stand for the principle that "an attorney owes complete and undivided loyalty to the client who has retained him." *In re Dolan*, 76 N.J. 1, 9 (1978).

One of the staunchest opponents of dual representation has been Justice Pashman, who stated that

[b]ecause of the admittedly inherent nature of a buyer-seller situation and the dangers involved, true impartiality is only an ideal and not an actuality. No matter how honest and well-intentioned an attorney is, possibility for conflict always exists. . . Therefore, . . . dual representation in [such a situation] should be totally forbidden.

*In re Lanza*, 65 N.J. 347, 355-57 (1974) (J. Pashman, concurring opinion).

Although the Supreme Court of New Jersey has declined to adopt an inflexible "*per se* rule" (*In re Dolan*, 76 N.J. 1, 12 (1978)) completely barring any dual representation of the purchaser and seller, the Court has made it clear that it "will not tolerate consents which are less than knowing, intelligent, and voluntary." *Id.* at 13.

In the case of *Baldassarre v. Butler*, 132 N.J. 278 (1993), the Supreme Court considered the legal problems which arise from an attorney's dual representation of both the purchaser and seller in a real estate transaction. The Court created a "new bright line rule" prohibiting dual representation in "complex commercial real estate transactions" even if both the purchaser and the seller give their informed consent, while the prohibition against dual representation was limited to "complex" and "commercial" real estate transactions and was not extended to residential real estate transactions, the interest protected in that case by the prohibition against dual representation are, for the most part, the same as those in the residential context.

In the event an assessment of the risk gives rise to the decision to represent both the seller and the purchaser in a transaction, the attorney should be mindful of Opinion No. 212, which provides that

when a serious controversy arises between the purchaser and seller who are represented by the same attorney, that "attorney may no longer represent either party to the transaction." 94 N.J.L.J. 553 (1971).

### **Section 8.3 Attorney Trust Account**

In Opinion 454, the Supreme Court Advisory Committee on Professional Ethics addressed the dilemma often resulting from the immediate disbursement of funds from trust accounts, before checks deposited in such accounts have cleared. [105 N.J.L.J. 441]. The Committee declined to declare such practice unethical because to do so "may lead to severe disruption in the handling of title closings." *Id.* The Committee did, however, suggest a number of other options available, albeit imperfect, that would prevent any problems from materializing. For example, conducting escrow closings in which the closing is not completed and no funds are disbursed until all funds have cleared; informing the parties at an early date of the closing figures so that they may provide the necessary funds, obviating the need for a trust account; establishing an account with the attorneys' funds to use in case of an emergency.

The Committee went on to state that when these solutions are not practical, "the use of bank, certified or cashier's checks should be permitted to avoid disruptions in title closings and in the interest of accommodating all clients." In addition, the Committee subsequently issued an amendment to Opinion 454 approving the use of state and federal savings and loan checks. [114 N.J.L.J. 110]. The fact that "[d]rawing immediately upon their deposit entails a minimal risk" greatly influenced the Committee's decision to condone the immediate disbursement of funds from these kinds of checks. Opinion No. 687 issued by the Advisory Committee on Professional Ethics took effect April 28, 2000. The opinion deals with the ability of attorneys to write trust account checks against funds received in the form of "official checks" for purposes of real estate closings. The general rule is that trust account disbursements may be made only from collected funds. The opinion set forth two criteria for an exception in handling real estate closings where there is a need for immediate disbursements:

1. The check must be drawn by a licensed banking institution on itself or another such banking institution.
2. The attorney must ascertain that the funds from the check will be made available by the depository bank no later than the next business day after the day of deposit.

There also appears to be a third criteria:

Before making any disbursement on the deposited funds prior to the time they actually become available, the attorney must determine that the contemplated disbursements related to the deposited funds, taken together with all other actual and reasonably anticipated disbursements during the period prior to such actual availability, will not exceed the total funds that the attorney's trust account drawee bank will make available during that period.

It appears from the Opinion that a "cashier's check" (a check drawn by a bank on itself) or a "teller's check" (a check drawn by a bank on another bank, or payable through another bank) are acceptable for these purposes. However, the Opinion stated that "[u]ltimately it is the actual substance of the instrument, not its label, which must control." It is, therefore, important to notify the purchaser and the lender that all monies to be deposited into and disbursed from an attorney's trust account at closing must be in one of the acceptable forms listed above.

## Section 8.4     Opinion 26

On March 19, 1995, the New Jersey Supreme Court rendered its decision in *In re: Opinion No. 26 of the Committee on the Unauthorized Practice of Law*, 139 N.J. 323 (1995). The Court's holding was that it is in the public interest to permit the purchaser and seller of residential real estate to choose whether or not to incur the cost of hiring a lawyer. If they choose not to hire a lawyer, then real estate brokers and title agents can provide certain assistance in the title closing process as long as the broker has provided a mandatory notice to the purchaser and seller advising them of their right to hire a lawyer. The decision of the court permitted what is known as the South Jersey practice, whereby real estate brokers and title agents have provided assistance to the purchaser and seller in South Jersey who have not retained an attorney to represent them in the title closing process as long as there was a disclosure to the purchaser and the seller about their right to hire an attorney.

The Court emphasized that its decision to permit brokers and title agents throughout New Jersey to assist purchasers and sellers who choose not to hire a lawyer is based upon the "public interest." In holding that it is in the public interest to permit the South Jersey Practice to continue, the Court stated that "the parties must continue to have the right to decide whether those savings are worth the risks of not having lawyers to advise them in what is almost always the most important transaction they will ever undertake."

A cornerstone of the Court's decision was its requirement that, beginning May 12, 1995, a written notice be provided by the broker to every purchaser and seller before they sign a broker-prepared contract of sale. The notice appears as Exhibit 12. The notice must be attached to the contract of sale as its cover page whenever a broker prepares the contract. If the written notice is not given, then the broker will be deemed to have engaged in the unauthorized practice of law, which can subject the broker to criminal sanctions and civil liability for any damages. The broker must "personally advise the buyer or seller at that point that he or she must read it before executing the contract. If the contract is not personally delivered by the broker to the purchaser or seller, the broker must make certain, prior to such delivery, that the purchaser and seller have been so informed, and must do so by speaking to them personally or by phone." A separate notice which must be given by the title company as part of the title commitment is discussed in Section 4.3.2 and appears as Exhibit 47.

In order to ensure that the purchaser and seller timely received the mandatory notice, the Court also required that the title agent conducting the settlement ask the purchaser and seller at the commencement of the settlement whether, how and when the notice was given and to make a record of the inquiry and the response. In addition, anyone who participates in the transaction, other than the purchaser and seller, knowing or having reason to know that the notice was not properly provided, will be engaged in the unauthorized practice of law and, with regard to an attorney, will be subject to discipline for unethical conduct.

Citing *N.J.A.C. 11:5-1.23*, the Court also reiterated that a broker has a duty to identify and inform the purchaser and the seller of any situation where independent counsel is needed. That same duty presumably applies to title officers and attorneys. "[T]heir failure to inform exposes them to the risk of civil liability for resulting damages."

If the mandatory notice is given properly, brokers and title agents throughout New Jersey can provide assistance to purchasers and sellers that historically only has been provided in South Jersey. A broker may order title commitments and title policies. In addition, a broker may arrange for the seller's

attorney to draft a deed and/or affidavit of title for the seller, but the attorney must personally consult with the seller. Similarly, an attorney who has been recommended by the broker or is acting for the title company may draft any of the documents involved in the transaction upon written request of the respective party, whether that be the purchaser, seller, lender, mortgagee, bank or some other party.

The Court also held that brokers and title agents may continue to participate in clearing up minor title exceptions, which are known as Type 1 exceptions (preprinted exceptions in all title insurance policies, concerning such issues as marital status and name changes) and Type 2 exceptions (mortgages, tax liens and other money liens). However, neither brokers nor title agents can assist the seller in addressing what are known as Type 3 exceptions (covenants, easements and the like) or Type 4 exceptions (other serious legal objections to title).

**This page intentionally left blank**

### About the Panelists...

**Daniel Barli** is the Managing Partner of Barli and Associates LLC in Clifton, New Jersey, where he concentrates his practice in real estate and litigation.

Admitted to practice in New Jersey and New York, Mr. Barli has been a member of the New Jersey State and Passaic County Bar Associations. He has lectured for professional organizations and is the recipient of several honors.

Mr. Barli received his B.S., *cum laude*, from Lehigh University and his J.D from Seton Hall University School of Law. He interned for the Honorable Claude Coleman, Essex vicinage.

**Michael J. Fichera, Jr.** is a Senior Associate at Avenue Law Firm in New York City, where he concentrates his practice in residential real estate transactions.

Mr. Fichera received his law degree from New York Law School.

**Paula M. Zwiren**, MBA, CTP, the Law Office of Paula M. Zwiren in Livingston, New Jersey, is a licensed attorney and Title Agent, and holds the Certified Title Professional (CTP) designation. Concentrating her practice in representing borrowers in closing commercial loans, with a focus in SBA loans, she is also President of the Zwiren Title Agency. Her expertise in the title industry comes from her understanding of the law and more than 20 years of experience in the industry.

Admitted to practice law in New Jersey and New York, Ms. Zwiren is also a Title Insurance Producer in New Jersey and Pennsylvania, a Director of the New Jersey State Bar Association Solo & Small Firm Section and a member of the American, New Jersey and Pennsylvania Land Title Associations. She is a former Trustee of the New Jersey Land Title Association (NJLTA), served on the NJLTA *Amicus* Committee and is Past Chair of the Association's Section Sponsorship Committee.

A Title Insurance Pre-Licensing Instructor in New Jersey, Ms. Zwiren has also served as a CE Instructor for the New Jersey Department of Banking and Insurance's Real Estate Commission. She has lectured for ICLE, the New Jersey State Bar Association, Lawline, ALTA and other organizations; and her articles have appeared in the NJLTA's *Advocate* and other publications.

Ms. Zwiren received her associate degree from the County College of Morris; her B.B.A. from Pace University; her J.D. from Rutgers University School of Law-Newark, where she competed in the Nathan Baker Moot Court Competition; and her M.B.A. from Rutgers University Business School.

**This page intentionally left blank**