

Florida Real Estate Sales Contracts

A Collection of Forms for Lawyers

James W. Martin

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PREFACE

This book assists lawyers in drafting contracts for sale of Florida real estate by the use of example forms. The lawyer should consult Florida Statutes and case law in every case before using any form.

Also, no form should be used and no procedure should be followed unless the lawyer understands it and decides that it applies to his or her law practice and to the facts in the particular case. Each lawyer's practice differs in some respects, and all transactions differ, so the lawyer should plan to make changes to these forms accordingly.

Tax matters are outside the scope of this book. Real estate sales may have federal, state and local tax aspects. For example, issues concerning income, gift, estate, property, excise, documentary, intangible, sales, and other taxes may arise in sales of real estate. The lawyer may want to advise the client to seek tax advice from a tax attorney, tax accountant, or other tax professional.

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DEDICATION

The author dedicates this book to his wife Cathy Martin, Assistant Dean for Career and Professional Development at Stetson University College of Law, for her encouragement and motivation in writing this book.

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CHAPTER 1. GENERAL INFORMATION

1.1 Introduction.

The information to be obtained from various sources and matters to be discussed with one's client prior to the contract are voluminous. Many attorneys use checklists to make certain that the necessary data have been covered. Some of it is for the lawyer's information or for the enlightenment of the client and will not be covered in the contract unless it is specially required by the other party or the needs of the client.

This chapter provides examples for lawyers to possibly include in checklists for real estate sales transactions. These checklist items are not used in every sale, and many may be omitted. Similarly, sales in the real world will include other matters that are not listed in these example checklist items.

This chapter is not intended to be a legal treatise on Florida real estate law. Instead, it is provided to prompt the reader with ideas to possibly include in checklists for contracts for sale of real estate.

1.2 Preparing to Represent the Seller.

A seller's attorney would be wise to ask the client to send the following: the deed into the seller, if title was taken by deed; a copy of the survey, if any; the seller's title insurance policy, if any; copies of any outstanding leases; a copy of any signed brokerage contract; and any other papers relating to the property involved. Information useful in the preparation of the contract will be gleaned from each of these sources, as suggested below.

Deed: The deed will furnish the legal description of the property that the parties have been dealing with so far only as an address or by brief description. The deed is, usually, controlling as to what the client is in a position to sell, irrespective of any contracts, promises etc. Care should be taken to ascertain that all of the property described in the seller's deed may be the subject of the contract for sale to be drafted. There may have been a street widening, a taking of a portion by eminent domain, or the seller may have conveyed, or may wish to retain, a part of the property. The description in the seller's deed then, should not be incorporated into the contract blindly.

The seller's deed and title insurance policy will also disclose the exact name in which the property is held and must be sold and conveyed. It might be in the seller's maiden name, a

misspelled name, or in the name of a corporation, LLC, or partnership which the seller had forgotten.

The deed will also possibly contain references to encumbrances, restrictions, exceptions, or reservations about whose existence the seller might not know, or which the seller did not understand or forgot to mention. For example, there might have been a purchase-money mortgage which the seller satisfied long ago. The attorney should ask whether the client received a release or satisfaction before obligating by contract to sell free and clear of it.

Naturally, the contract must be made subject to outstanding encumbrances. Covenants and restrictions will occasionally be set forth in full in the seller's deed, but will usually be merely incorporated by reference. A buyer's attorney would never, of course, approve of a "subject to" provision in the contract without knowing the provisions of the restrictions. The seller's attorney should obtain a copy of the instrument in which they are contained, either from the recording office or, more easily, from the title insurance company which insured the seller's title. At very least, the buyer's attorney should inquire of these matters prior to the signing of the contract, if possible. However, where the provisions of such covenants and restrictions are not readily obtainable and either or both of the parties for good reason do not wish to defer entering into the proposed contract, the possible effect of the covenants and restrictions should be limited by a provision to the effect that they do not prohibit the erection, maintenance or present use of the improvements on the premises, or by other similar language of limitation appropriate to the needs of the buyer.

The seller's deed will indicate to the attorney the nature of estate held by the seller, and whether there are any other owners (a fact occasionally overlooked by a seller). Naturally the kind of deed which the seller took will be disclosed. If the seller holds a warranty deed, for example, it would not be quite so hazardous to give such a deed to the buyer, should the buyer insist upon it in the contract. However, the kind of deed which the seller will be obligated by the contract to deliver to the purchaser is a matter of bargaining between the parties.

The seller might not have a deed because the seller might have taken title by inheritance or devise. In such a case, the records of the probate court will have to be consulted.

Survey: The quest for a survey should not end with the seller. If the seller does not have a print, one might be obtained from a title company which insured the title, or perhaps from the holder of a mortgage on the property.

In addition to giving the seller's attorney a better general idea of the property involved, the survey may show encroachments of neighboring buildings upon the land being sold, or of the seller's buildings upon neighboring land. It might show electric wires, or the like, running over the property for which there are no easements of record. It could indicate that a neighbor is using a part of the land as a driveway, while the seller did not realize that the property line was being encroached. There might thus be encroachments or claims of easements or titles by prescription,

or violations of covenants and restrictions which the seller will have to clear up or subject to which it will have to sell the property.

If a recent survey discloses any problems that the seller is unable or unwilling to remedy, the contract will need to be made subject to any state of facts shown thereon. If the survey is not recent, as is likely to be the case, the physical situation might well have changed; a new garage might have been added, or a bay window; or an encroaching structure might have been erected. The contract will then need to be made subject to any state of facts an accurate survey would show. A similar provision would be used if no survey is available.

The importance of the seller's attorney reading the survey before drafting the contract is clear. The survey will also be helpful at the contract signing. The buyer's attorney, comparing the legal description in the contract with the survey, can show his or her client a graphic portrayal of the property that is being sold, in order to verify that the correct parcel has been described.

Title Insurance Policy: The seller's title policy will list any outstanding encumbrances upon, or defects in, the title which the seller received. It will to that extent give the attorney information as to the desirability of the client's providing a warranty deed upon the forthcoming sale if the purchaser should insist upon it. The defects and encumbrances listed are, of course, not covered by the policy.

It is useful for the seller's attorney to be able to furnish the buyer's lawyer with the name of the title insurer and its title policy number, preferably prior to the contract signing. It is possible that the buyer's title will be insured with the same company, making for speed in the examination and perhaps a reduced cost. And, as mentioned previously, the title company is a convenient source of information as to applicable covenants and restrictions, the survey, and so forth.

Leases: Outstanding leases must be reviewed as the contract will probably have to be made subject to them. All such leases could be listed in the contract and perused by the buyer's attorney and initialed before the contract signing.

Brokerage Agreement: If a brokerage contract already exists, there is little the seller's attorney can do but to note the name and address of the broker for inclusion in the contract of sale. But if the arrangement with the broker is oral, a nebulous sort of thing, this allows for some negotiation particularly as to when the commission shall be deemed earned and payable.

Other Considerations: No two real estate transactions are identical, no matter how similar they may appear to be. It is obviously impossible to catalog every problem that a prospective seller's attorney must consider. Every contract has at least one of its own peculiar details, and the dangers of approaching any closing in a mechanical way, as by having one's secretary or assistant copy a contract out of the file, cannot be overemphasized.

For example, among the many details for a lawyer to consider before the client enters into a contract is the contractual capacity of the proposed other party. The substantive law governing the capacity of either of the parties to contract, hold or convey real property should be given close attention.

There might be an existing mortgage that the seller intends to satisfy at the closing. It would be prudent to read this mortgage to see whether its terms permit the proposed prepayment. The holder of the mortgage may have to be asked whether it will accept a prepayment and, if so, upon what terms. A "penalty" is often charged for the privilege of paying a mortgage debt not yet due. It would clearly be unwise for the seller to contract to convey free of the mortgage lien without first pursuing this inquiry.

Problems often arise, in the case of residential property, as to whether the seller will be able to vacate prior to closing. Perhaps the seller has contracted to purchase another house and requires the proceeds of the present sale before closing on the new premises. And the buyer might be selling a home of his or her own and be faced with a similar problem. Possession will have to be provided for in some mutually satisfactory way in the contract.

The seller should be carefully questioned as to any liens or encumbrances which the seller might have created itself, as references to these would not appear in the papers already discussed. Owners, particularly when in possession over an extended period of years, often forget or fail to mention agreements, consents, and the like which may arise later.

In short, the seller's attorney, before preparing the contract of sale, should be in a fair position to predict almost every item that a title examination will unearth. Surprises furnished by the exception pages of title commitments are never welcome ones.

1.3 Preparing to Represent the Buyer.

The job of the buyer's attorney is, of course, somewhat different from that of the seller's attorney. The best beginning is to arrange an interview with the client soon after the decision to buy. Buyers of new homes in particular seem to become spellbound with the prospect of a home and the enthusiasm of the salesperson and are in a poor frame of mind for the realities of the matter. A "cooling off" period is helpful, but buying in a "hot market" might make that impractical.

The prospective buyer should furnish the buyer's attorney with a copy of any contract or other paper which he or she might have signed and any sales literature. It is the better part of wisdom for the attorney to refrain from expressing any opinions upon the business aspects of the transaction; whether the price is a good one, whether the house is well built, and questions of this kind are not only not the lawyer's job but are generally beyond the scope of the lawyer's competence. A prospective buyer might be advised to engage the services of a competent

appraiser, and to order an engineer's report on the premises. The client can be reminded that there are such things as taxes, assessments, insurance premiums and other considerations.

The interview should disclose whether the buyer has any special purposes in mind in making the purchase. Does the buyer intend use as a residence or for the conduct of a business? Does the buyer intend to alter the existing structures to further this purpose? Either or both of these may be violative of covenants and restrictions in prior deeds of the premises, and, even if there are no such covenants and restrictions, the purpose may violate local zoning ordinances. It should be borne in mind that zoning ordinances or violations thereof will ordinarily not show up in a title report.

If the buyer intends to use the premises in a manner different from that of the seller and which would constitute a zoning violation, a variance application might be needed. Hence, the applicable zoning regulations might need to be consulted. Covenants and restrictions will show up in the title report, but, depending on how carefully the contract had been drawn, that might be too late. The prospective buyer's attorney would do well to consult the seller's lawyer for details as to covenants and restrictions affecting the property and for a survey print. If not, they might be able to furnish the name of the last title company which insured the title and its title policy number, who might be able to furnish a copy of the survey.

In the interview the client should be advised to make another thorough inspection of the premises and to engage inspection experts. Such inspections might disclose tenancies, "apparent" easements, or claims of adverse possession or prescription. It might be noticed that there have been recent public improvements in the neighborhood, which could suggest a future assessment. Even if a buyer procures title insurance, the policy will ordinarily except from coverage "any state of facts an inspection of the premises would disclose."

The buyer might need a purchase money mortgage loan. Suppose that, after contracting, the buyer is not successful in obtaining one from a reputable lender on reasonable terms. Will the buyer nevertheless be held to the contract? Appropriate contract protection should be planned here.

Does the property have access to a public thoroughfare? Do not overlook the fact that new developments and even their well-paved streets are initially the private property of the developer. Appropriate legal means of ingress and egress needs to be considered and provided.

1.4 Information as to Parties.

1. Ascertain and list the name of everyone whose interest will or may be affected in any way by the transaction. Watch for fictitious names.

2. Determine who are necessary parties.

3. Ascertain the business and home address and the phone numbers and email addresses of all necessary parties and ascertain where and when they will be available.

4. What addresses are to be agreed upon for service of demands? If any party is a nonresident, should provision be made for local service?

5. Determine the status of each party; i.e., whether a natural person, a corporation, an LLC, a partnership, an unincorporated association, an agent, an attorney in fact, a fiduciary, a governmental agency or corporation, or a political subdivision.

1.5 Identification of Parties.

1. Identify all persons interested in the transaction and, as far as practicable, in the chain of title.

2. Clear up any uncertainties by affidavits or other proof.

3. Check the genuineness of the signatures on any existing contract or other instrument.

1.6 If Natural Persons, Ascertain.

1. Full name of each party, as it appears on driver's license, and any other name before marriage or divorce.

2. The name, real or fictitious, commonly used in a business or a profession.

3. The name or names used in the chain of title.

4. Whether each party is of age and competent; and if any party is incapacitated, who has been or will be appointed guardian?

5. Whether married or unmarried. If married, ascertain the name, interest and residence of the spouse and the spouse's legal rights under the laws of Florida. If divorced, obtain proof of that fact and ascertain the rights of the former spouse.

1.7 If Party Is a Corporation or LLC, Ascertain.

1. The exact entity name, and if the name has been changed after title was taken, obtain a certified copy of the certificate of amendment changing the name.

2. The state and date of formation; whether a profit or nonprofit entity; the location of the principal office or place of business; whether it has power, express or implied, to buy and sell real estate; and whether it has a corporate seal.

3. Whether, if a nonprofit entity, the provisions of the general law apply, or whether there are any special provisions of the Florida Statutes regulating the acquisition and conveyance of real estate.

4. Whether, if a foreign entity, it has qualified to do business in Florida. If not qualified in Florida, is qualification necessary or desirable in connection with the proposed transaction?

5. The names of the managers, members, agents and officers acting or planning to act on behalf of the entity and proof of their authority and of the regularity of their appointment or election.

6. Whether the entity has been dissolved, or whether its articles have been cancelled and its right to do business terminated.

7. Whether it has the power to act as contemplated. Is its power to act subject to any conditions or limitations contained in the articles of incorporation, articles of organization, bylaws, operating agreement, leases, mortgages, etc.?

8. Whether the proposed transaction constitutes a sale of all, or substantially all, of the entity assets.

9. Whether, if required by the Florida Statutes, articles, bylaws, or operating agreement, the transaction has been or will be authorized by due action on the part of the shareholders, directors, members, or managers.

1.8 If Party Is an Executor, Personal Representative, an Administrator, a Guardian, a Trustee, a Trustee in Bankruptcy, a Receiver, or an Assignee for the Benefit of Creditors, Ascertain.

1. Date of appointment. Procure the original or a certified copy of the instrument or order of appointment.

2. Whether the party has power and authority to act. If appointed by will or other instrument, examine the instrument to determine the nature and extent of the powers conferred. Consider whether it is necessary or desirable to obtain a court order authorizing or approving the sale, and consult the statutes as to the procedure and requirements for real property sales.

3. Whether ancillary proceedings are necessary to authorize action by a fiduciary or a receiver in foreign jurisdiction.

4. Whether the personal liability of the fiduciary is limited and whether it is properly bonded and by whom.

5. Whether the estate is liable for acts of the fiduciary.

1.9 If Party Is an Heir or Devisee, Ascertain.

1. Whether the administration of the estate from which he or she takes title is regular.

2. Have estate taxes been paid?

3. Have the debts been paid?

4. Have legacies been paid?

5. Are legacies a charge upon the real estate?

6. Are court proceedings necessary to authorize the proposed transaction?

7. Must the fiduciary join in the instrument?

8. Is a proceeding to determine heirship necessary?

9. Get list of heirs and proof that they are sole heirs.

10. Has the time expired for a contest of the will?

11. Has the spouse elected to take or not to take under the will?

12. Whether any children were born after the date of the will or posthumously.

13. Whether the property is homestead property.

1.10 If Party Is an Unincorporated Association or Business Trust, Ascertain.

1. Whether a common law association or trust or whether there is statutory authorization therefor. Whether, if there is statutory authorization, the statutory conditions and requirements have been met. Obtain and examine a copy of the articles of association or trust agreement.

2. Whether real property can be acquired or conveyed in the association name or whether it must be acquired or conveyed in the names of the members or in the names of the trustees.

3. The powers and authority of the managers or trustees. Do they have discretionary power to acquire or convey real estate? Or do the beneficiaries or members have the right to

direct and control the action of the managers or trustees and the right to give or withhold consent to the acquisition or conveyance of real estate?

4. If a business trust, whether action by less than all the trustees is authorized or permitted by the trust agreement.

1.11 If Party Is a Partnership, Ascertain.

1. The nature of the partnership. Is it a general partnership or a limited partnership? If a general partnership, has it elected limited liability status?

2. The names, addresses and interests of all the partners and the name or names of the person or persons in whom legal title is vested or is to be vested.

3. Whether there is statutory authority for its acts and powers.

4. Whether there is a written partnership agreement. If there is an agreement, does it contain any restrictions on the authority of the partner or partners assuming to act for the partnership?

5. Whether the proposed transaction is for apparently carrying on in the usual way the business of the partnership. If not, or if the proposed transaction constitutes a sale of substantially all of its assets, includes a disposal of the goodwill or will make it impossible to carry on the ordinary business of the partnership, has the transaction been authorized or will it be ratified by all the partners?

6. Whether any of the partners are married.

1.12 If Parties Are or Are to Be Tenants in Common, Joint Tenants or Tenants by Entirety, Ascertain.

1. The exact interest that each party has or will have in the property.

2. Whether the parties can legally acquire or convey the particular estate or interest contemplated.

3. The exact legal language or terminology required to convey or create the interest intended.

1.13 If Any Party Is Acting or Is to Act by Agent or Attorney in Fact, Ascertain.

1. Whether the agent is fully authorized to act.

A power of attorney to convey, mortgage or lease real estate must be executed and separately recorded in the same manner as a deed, mortgage or lease, and should be recorded prior to the execution of the deed, mortgage or lease.

A deed, mortgage or lease executed by an attorney in fact must contain the name of the grantor, mortgagor or lessor.

2. Whether the principal is alive and whether the power is unrevoked at the time the agent acts.

3. Whether there has been a disclosure to the principal, if it appears that the agent is acting for or receiving compensation from anyone other than the principal or that the agent is otherwise dealing for its own profit.

4. Whether the agent is to be bound personally if acting for an undisclosed principal.

1.14 Common Description of Property.

1. Street number alone is unsatisfactory and may be inaccurate.

2. Do not use or rely on the description in the tax records.

3. If the legal description is not available for the contract, identify as accurately as possible and provide that the description is subject to a survey or further investigation.

1.15 Legal Description.

1. Be careful not to describe more or less land than intended.

2. If the quantity of land is important do not use the words "more or less."

3. If a lot number is used, check the actual dimensions.

4. If dimensions are referred to in the description, tie in with monuments or boundary lines.

5. Note whether dimensions are measured from center of road or from curb line or side of highway, as the depth of property and also the frontage may be affected. And where a description is given by metes and bounds and a highway or street is used as a boundary, if the vendor owns the fee in the highway or street, the description should expressly include or exclude the vendor's interest in the highway or street, depending on the intention of the parties.

6. Be careful as to riparian rights and lands under water.
7. Is the land subject to change due to accretion or erosion? If so, check measurements.
8. Check the description against the survey and against any recorded contracts with adjoining owner fixing corners or boundary lines; and check the description against the deed under which the seller claims title and against the seller's title insurance policy.

1.16 Identification of Property; Survey.

1. Ask the seller and buyer to check on the ground to establish identity, dimensions, buildings, location, adjoining parcels, distances from monuments or permanent identifiable objects.
2. Obtain photographs and have the same identified by the photographer and the seller.
3. If a survey is to be made, who is to pay for the same? Agree upon a responsible Florida-licensed surveyor and arrange for delivery of the survey in time for use in checking the abstract or title commitment.
4. Require the surveyor to check and certify the description.
5. Require the surveyor to establish corners and boundaries. Require corners to be monumented and referenced.
6. Require the surveyor to certify as to the location of buildings and driveways with reference to the property lines, as to encroachments on property and as to encroachments of buildings on adjoining property above or below ground.
7. Require the surveyor to indicate and certify as to whether building restrictions or ordinances have been violated or complied with, such as distance of buildings from property line.
8. Require first floor elevation, for flood insurance purposes.
9. Is a topographical survey necessary or desirable?
10. Should provision be made for an adjustment of the purchase price according to the quantity of land or the frontage shown by the survey?
11. Check the description in the abstract or title commitment and contract against plat.

1.17 Streets, Roads and Alleys.

1. Has any previous owner been compensated, or has it waived compensation for a contemplated widening of a road or street?
2. Has the seller or any previous owner agreed to street, sewer or other improvements chargeable against the property?
3. Has there been a dedication of any streets or alleys through or adjoining the property?
4. Are there any rights to use or occupy any portion of any alley, sidewalk, or street upon which the property abuts, or the space above or underneath the surface thereof?
5. Do signs, stoops, fire escapes, bay windows or balconies encroach on a highway or street?

1.18 Easements and Licenses.

1. Obtain and examine copies of any agreements creating or granting easements, licenses or profits a prendre and determine the assignability, duration, scope and revocability thereof.
2. Determine the rights and obligations of the owners of the dominant and servient tenements, and whether the easements are appurtenant or in gross.
3. Is the owner of the dominant or the servient tenement under an obligation to pay for the maintenance or repair of the easement? Who assumes the risk of injuries to persons and of damage to property?
4. Inspect premises for quasi-easements to determine whether under the doctrine of implied grant and implied reservation a conveyance of the property will operate to create an easement in favor of the grantee or grantor such as a way of necessity, the right to maintain a drain, the right to support from another building or a wall, the right to use a common stairway or hall or the right to light and air. Inquire as to whether the user of the quasi-easement has been continuous and as to the necessity therefor.
5. If there is a party wall, is it entirely on the property or partly on the adjoining property? Obtain and examine a copy of any agreement for a party wall. What are the rights and obligations of the parties with respect: to use, maintenance and repair; changes or extensions in length, height, depth and thickness; chimneys, chimney backs and flues; demolition or destruction and rebuilding; openings for windows or doors; the insertion of beams, columns, joists or posts; and outlets or space for sewage and other pipes?
6. Is there an agreement with the adjoining owner for the construction of foundation footings or piers? If so, what are the provisions of the agreement as to the size, location, repair or reconstruction of the piers?

7. Are there involved or to be considered any common hallways, stairways or driveways?

8. Is there an easement for light and air in, to and over any part of the property? Is it necessary for the protection of the property that such an easement be obtained over a strip of land on the adjoining property?

9. Does any building on the property derive support from the adjoining property or from an adjoining building?

10. If there is a railroad right of way through or adjoining the property, does the railroad have a fee or an easement?

11. If there is a side track agreement, obtain and examine a copy of the agreement to determine assignability and the rights and obligations of the parties with respect to use and maintenance and with respect to liability for injuries to persons and for damage to property.

12. Have any easements or licenses been granted or acquired for the maintenance of utility poles, cables, conduits, and pipes?

13. Has the seller executed any leases or licenses for the extraction of coal, gas, oil, water, or other minerals? Are any mineral or other sub-surface rights to be excepted or reserved from the sale?

14. Has any disposition been made of hunting or fishing rights?

1.19 Parties in Possession — Purchasers Under Land Contracts.

1. Consider interviewing all parties in possession as to their claims.

2. Obtain a copy of each contract and check the provisions thereof. Does the contract authorize the vendor to mortgage the property in excess of any balance owing on the contract?

3. Verify the amounts paid and to be paid by each purchaser.

4. Is any purchaser in default? Have there been any waivers of past defaults which might extend to subsequent or other defaults?

5. If any purchaser has constructed a building or made alterations or repairs, obtain proof that all bills for labor and material have been, or will be paid.

1.20 Parties in Possession — Tenants.

1. Obtain names, addresses and full information as to tenants.
2. Obtain and examine leases held by tenants and sub-tenants.
3. Does any lease contain an option to purchase or to renew or other rights exercisable in the future?
4. Are the leases properly executed?
5. Are there any understandings with tenants not set forth in the leases or which are set forth in unrecorded supplements? Have there been any waivers of past defaults which might extend to subsequent or other defaults?
6. Are the leases to be assigned?
7. Obtain the rental account of each tenant and verify. Have there been any rental concessions or allowances of free rent?
8. Are current rents to be assigned or apportioned?
9. What arrangement is to be made for the collection of past due rents? If the purchaser is to collect the same as the agent of the vendor, are the back rents to be paid out of the first moneys received by the purchaser?
10. If the payment of rental has been secured by a chattel mortgage or other lien, arrange for the assignment thereof.
11. Has any tenant made a deposit of cash or securities with the vendor or a third party trustee to secure the payment of rent or the performance of other provisions of the lease? What are the duties and liabilities of the vendor as to the management, care and investment of the deposit? Is the deposit assignable to a purchaser of the demised premises? If assignable, is the vendor relieved from liability? If the vendor is not relieved from liability, will the purchaser indemnify the vendor against any claim on the part of the tenant? If the purchaser does not wish to assume responsibility for the deposit, is it possible to place the deposit with a third party depository to be held for the benefit of the purchaser?
12. Is there any deferred real estate commission payable out of future rents?
13. Are tenants violating any provisions of the leases or using the property for unlawful purposes or for a hazardous business which insurance does not adequately cover?

14. If any leases expire or are terminated prior to closing, who shall have the right to negotiate and to make new leases? What, if any, restrictions are to be imposed as to rental and term?

15. Notify tenants of change in ownership and where and to whom rents are to be paid.

1.21 Signs.

1. Obtain and examine any contracts under which signs have been or may be erected. Are accrued or prepaid sign rentals to be apportioned?

2. What means of ingress and egress has been, or should be, reserved for the purpose of repairing or changing signs?

3. Are the signs wholly on the property? Check against the survey.

4. Are the signs partly on public property in violation of any ordinance?

5. Have signs examined for safety.

1.22 Condition of Land and Buildings.

1. Ascertain area and frontage of land; and if important, ascertain the quality of the soil.

2. Should borings be made to determine sub-surface conditions?

3. Should the contract provide that the purchaser, its agents, architects or engineers, may enter upon, examine and test the property and building at all reasonable times prior to closing?

4. Are there any encroachments above or below ground?

5. Have the buildings been inspected to ascertain condition, age and adaptability? Are the buildings safe for tenants and invitees? Are there any attractive nuisances?

6. Should the steel be tested for corrosion and the concrete tested, as well?

7. Has an examination been made of the elevators, HVAC, furnace, boilers, electrical wiring, and of all other mechanical appliances and equipment? Have tests been made of the gas, water, sewer and other utility lines in the buildings and underground to determine the age and condition and whether there are any leaks?

8. Should tests be made to determine floor loads?

9. Examine state and local building codes and zoning ordinances to determine whether the intended use is permitted, what uses are prohibited, and what alterations or repairs are permitted or may be required.

10. Have public authorities issued any order requiring repairs, fire escapes, or changes in sanitary facilities?

11. If alterations or repairs are or may become necessary, procure an estimate of the cost thereof.

12. Have the buildings been appraised for insurance purposes?

13. If possible, obtain a set of the as-built plans and specifications.

14. If any building permits have been issued in recent years, it may be desirable to examine the same to check the nature and extent of previous alterations and repairs.

15. Obtain termite inspection.

16. Obtain Phase I and possibly Phase II environmental site assessment from a qualified geologist or consulting firm.

1.23 Service and Employment Contracts.

1. Obtain and examine all contracts for electric current, gas, heat, elevator repair service, sprinkler supervisory service, landscape service, cable television, internet, termite treatment, vermin exterminator service and janitor service. Are the contracts to be assigned or terminated? If the contracts are to be assigned, from and after what date is the purchaser to assume the obligations of the vendor thereunder?

2. Obtain a list of employees with their rates of pay. Obtain and examine any labor union contracts.

3. If any service or other contracts expire prior to the date of closing, are the same to be renewed? If so, in whose name and subject to what restrictions?

4. What, if any, restrictions are to be imposed upon the purchaser by the vendor of fuel and supplies?

1.24 Growing Crops.

1. Are growing crops to be reserved by the vendor, or are they to pass to the purchaser?

2. Obtain and examine any cropping contracts. If the contracts are oral, interview the parties to ascertain the terms thereof.

3. When do the contracts terminate? If notice to terminate is required, how and when must notice be given?

1.25 Use of Property by Vendor Prior to Closing.

1. Is the seller to agree to keep the property in its present state of repair up to the date of closing?

2. Is the seller to have the right to negotiate and to make new leases or is the purchaser's approval to be required?

3. If any vacant apartments or rooms are rented, is the seller to have the right to paint and decorate the same and to furnish the necessary supplies therefor at the purchaser's expense?

4. If alterations or improvements are in progress, what arrangements are to be made for the completion of the same?

1.26 Delivery of Possession to Purchaser.

1. When and subject to what occupancies and tenancies is possession to be delivered?

2. If the property is or may become vacant prior to the closing of title, consider what effect the vacancy may have upon the insurance. Should provision be made for a caretaker or watchman? At whose expense?

3. If the purchaser is to have possession prior to the closing of title, consider the following matters:

Whether the taking of possession may constitute an acceptance by the purchaser of the vendor's title or a waiver of the right to object to defects in the title.

Who is to pay taxes and insurance and to pay the cost of repairs?

Is the purchaser to be permitted to commence alterations and improvements?

Who is to assume the risk of condemnation, and the risk of loss by fire or other casualty?

Who is to be entitled to the rentals? If the purchaser is to receive the rentals, shall the purchaser be required to pay interest to the date of closing?

What are to be the rights and obligations of the parties if title is not closed? Due to the fault of the vendor? Of the purchaser?

1.27 Personal Property.

1. Obtain and set forth in the contract a complete description of all personal property to be included in the sale. Are any of the following items to be included or excluded: Air conditioning equipment, awnings, bookcases, cabinets, carpets, chandeliers and lighting fixtures, curtains, curtain rods, draperies and other interior decorations, dryers, electric fans, electrical equipment and fixtures, fireplace grates and andirons, fuel, furniture, garage door opener, gas logs, ironing boards, kitchen cabinets, lamps, floor coverings, pool equipment, radiant heaters, refrigerators and refrigerating equipment, rugs, screen doors, shelves, sprinkling equipment, stationary tubs, storm doors and windows, stoves and heaters, supplies, tools and equipment, trade fixtures, blinds, ventilators, washing machines, wash tubs, water heaters, water meter, window shades, or window screens.

2. Personal property held under a lease. What are the terms of the lease? Is the lease assignable?

3. Personal property held under a conditional sale contract or subject to a chattel mortgage.

Examine the contract or mortgage to ascertain the rights and liabilities of the parties.

Is the contract or mortgage in default?

What is the unpaid balance?

4. Are there any creditors', judgment creditors', factors', or warehousemen's liens against the property?

5. Is any litigation pending or threatened involving title or possessory rights to any of the property?

6. If the sale or use of any of the personal property is subject to a license under a patent, examine the license agreement to determine the rights and obligations of the licensee and whether the agreement is assignable.

7. Is there to be a lump sum purchase price for both the real estate and personal property, or is some amount to be allocated to the personal property?

8. Is an inventory of merchandise or supplies to be taken?

Who is to make the inventory?

When is the inventory to be completed?

By whom and how priced?

9. How is other property to be valued?

Is an appraisal to be made?

Who are to act as appraisers?

How appraised? Are any methods or standards of valuation to be prescribed or followed?

When is the appraisal to be completed?

10. Is there to be any adjustment of the purchase price as of date of closing or as of some other date on account of any increase or decrease in inventories, or for any other reason? Is cost, market or some other basis to be used in making the adjustment?

11. When and how is the purchase price for personal property to be paid? If purchase price for the real estate and personal property must be secured by a chattel mortgage or a conditional sale contract?

12. When is title to personal property to pass? Consider whether it is desirable to evidence the sale by a bill of sale and whether any particular documents of title are necessary.

13. What, if any, warranties are to be made by the vendor in addition to those implied by statute? Are any of the statutory implied warranties to be negated?

14. Sales tax. A vendee of a stock of merchandise or a business may be required to withhold from the purchase price an amount sufficient to cover sales tax due from the vendor upon previous sales.

1.28 Purchase Price in General.

1. Is any deposit to be made by the purchaser on account of the purchase price? If so, is the deposit to be held by the vendor or by an escrow agent?

2. Be careful to see that the total purchase price is accurately stated.

Is provision to be made for an adjustment of the price, if it is determined that the quantity of land is less than that specified?

If land being purchased for so much per acre is bounded by a highway, is the purchaser to pay for the land in the highway?

3. Medium, time and place of payment? Period of grace, if any?

4. To whom is payment to be made? If there is more than one vendor, is payment to be made to their joint order? Or is it to be provided that payment made to one of the vendors or to an agent shall be a complete acquittance?

5. If closing is delayed or postponed, is interest to be paid on the purchase price?

6. Is the purchase price to be paid at one time, or in installments? If the purchase price is payable in installments, ascertain:

The amount and due date of each installment.

Whether the unpaid installments are to be evidenced by a note or notes and secured by a mortgage.

From what date and when is interest to be computed or credited, i.e., monthly, quarterly, semi-annually or annually.

How the installments are to be applied with respect to principal and interest. Are they to be applied entirely on principal with the interest payable separately, or are they to be applied first on the interest and then on the principal?

Whether the purchaser is to have the right to prepay at any time the unpaid principal or any installment or installments thereof, or whether prepayment in any year or for any period is to be limited to a specified percentage of the unpaid balance or to a specified number of installments.

If the purchaser is to have the right to prepay the unpaid balance, is any premium to be payable? Is notice of prepayment to be required?

Whether, if the purchaser shall default in the payment of any installment of interest or principal, the vendor shall have the option to declare the entire principal immediately due and payable, or whether provision shall be made for alternative remedies by the vendor.

Whether it shall be provided that any waiver of default by the vendor in the punctual payment of any installment of interest or principal shall not extend to or affect any subsequent default or impair any right consequent thereon.

7. Are any of the following items to be apportioned, to be deducted from the purchase price or to be added thereto:

Abstract expense.

Alterations or repairs.

Attorneys' fees and expenses.

Commissions on the sale.

Condemnation awards.

Employees' salaries or wages.

Escrow agent's fees and expenses.

Fuel and supplies.

Insurance premiums on existing policies.

Interest and principal on mortgages.

Maintenance charges.

Recording and transfer fees.

Rents, accrued or prepaid (agent's commission for collection).

Service contracts, accrued or prepaid.

Stamp taxes on deeds and other instruments.

Survey expense.

Taxes and assessments.

Title insurance premiums.

Title expense and the expense of curing defects.

Utility charges for electric current, gas, power or steam.

Water meter.

Water charges.

8. Is the purchaser to assume an existing mortgage or to take subject thereto?

Obtain and examine a copy of the mortgage and note whether it contains any unusual provisions to which attention should be called; e.g., provisions assigning rents, making the mortgage due upon the actual or threatened demolition of the building, or giving the mortgagee the option to declare the mortgage due upon a change in ownership or upon a change in the tax laws.

Have there been or are there any defaults? Has the mortgagee made any advances which may be added to the debt such as advances for taxes, insurance or the discharge of liens?

Check the balance due for principal and interest, obtain proof as to the date to which the interest has been paid, compute the amount which will be due for principal and interest on the closing date and obtain from the mortgagee a certificate as to the amount paid and the amount for which the mortgage is a lien.

How are the principal and interest to be apportioned as between the vendor and the purchaser? If any installments of principal are required to be paid between the date of the contract and the date of closing, who is to pay the same?

If the mortgagee is entitled to be paid an assumption fee, who is to pay the same?

Can the mortgage be paid prior to maturity? If a premium will be charged for prepayment, who is to pay the same?

9. If the purchaser is not assuming the mortgage, the contract should so state, and the amount of the mortgage should not be included in computing the purchase price.

10. For closing, prepare a detailed statement showing how the purchase price is to be disbursed and have the parties verify and approve the disbursements.

1.29 Options.

1. What consideration is to be paid for the option? If the option is exercised, is the consideration therefor to be applied to the purchase price?

2. The option should set forth the terms of the sale and comply in all respects with the requirements for a real estate contract. If anything is left to future negotiations, the option, even though it be exercised, may not be enforceable.

1.30 Exchange of Property.

1. As far as practicable, treat each side of the transaction as a separate sale?
2. Consider the advisability of establishing a value for each property, and advise the client to engage a tax lawyer or other tax professional to consider carefully all federal income tax questions involved in the transaction.
3. Is cash to be paid by either party to adjust any difference in value?
4. Of particular importance upon an exchange of properties, are adjustments and questions in connection with commissions, insurance, taxes and assessments, tenants and rentals and existing encumbrances.?

1.31 Title to Be Conveyed.

1. What kind of deed is to be delivered?

Statutory or general warranty.

What exceptions?

Taxes, assessments after what date?

Mortgages?

Easements?

Restrictions?

Rights of way?

Zoning ordinances?

Special warranty.

What exceptions?

Quitclaim.

Fee simple.

Local custom as to form of deed.

If a personal representative's, trustee's or fiduciary's deed, see that the deed fully states the authority of the grantor and the actual consideration.

2. What title is to be conveyed?

Insurable?

Good title?

Free, clear and unencumbered?

Marketable?

Right, title and interest?

To approval or satisfaction of counsel?

Subject to what covenants, exceptions, reservations or restrictions?

Be careful not to contract to convey a better title than the owner has.

3. How is title to be exhibited?

Abstract?

Statement of title?

Opinion of title?

Title insurance?

What amount?

What exceptions?

What abstractor or title company is to be employed and who is to bear the expense of the title search and of continuing the abstract?

4. Examination of title.

When is the abstract or commitment to be delivered to the purchaser's attorney for examination?

Is a time to be fixed within which examination of the abstract or commitment must be completed and objections made to the title?

How and to whom are objections to the title to be communicated?

Is it to be provided that if objections to the title are not made within the time and in the manner specified, the purchaser shall be held to have waived all objections?

5. Defects in the title.

Obtain proof by affidavit of any special facts not disclosed by the abstract, e.g., identity of persons or property, deaths, marriages, heirship, or assets and payment of debts of a decedent.

Is the vendor to be obligated to cure defects or is the vendor to have an option to cure defects or to rescind the contract? What if a suit to quiet title shall be necessary?

Is the purchaser to have an option to require the vendor to cure defects at the vendor's expense or to rescind the contract?

If the purchaser takes possession before the closing of title, should it be provided that defects in the title are not thereby waived?

If the time of closing is adjourned to permit the vendor to cure defects, are adjustments of interest, rentals, taxes and other items to be made as of the original date or on the date title is closed?

6. Title papers.

Provide for the delivery to the purchaser of all deeds, abstracts and other title papers in the possession of the vendor.

1.32 Mortgages.

1. What, if any, representations are to be set forth in the contract as to existing mortgages? Obtain full information as to all existing mortgages including dates, names and address of the mortgagees, principal amounts, interest rates and the dates to which interest has been paid, amortization payments, and the amounts paid and to be paid on the principal.

2. Obtain and examine copies of the mortgages to ascertain the terms thereof and whether they contain any unusual clauses. Can the mortgages be paid prior to maturity? Are any assumption fees required to be paid to the mortgagees?

3. If the property is encumbered by more than one mortgage and the senior mortgage becomes due first, does the junior mortgage contain a subordination clause so that a new senior mortgage can be placed on the property without obtaining a subordination agreement from the junior mortgagee?

4. Is the purchaser to assume or take subject to existing mortgages?

5. If any mortgages appear to have been paid, examine the records to see that the mortgages have been properly released.

1.33 Construction Liens.

1. If the property is being purchased while alterations and improvements are in progress, anticipate and provide for construction liens.

2. Obtain full information as to any construction liens that have been filed including the names and addresses of the claimants, the amounts for which filed and whether for labor or materials.

3. Have any suits for the foreclosure of liens been instituted or threatened or has the owner notified any lienholder to commence suit?

4. Obtain full information as to rights to file liens by contractors, subcontractors, materialmen and laborers including names and addresses, the work done or materials furnished, the time of the completion of the work or of the furnishing of the last materials, the amounts paid and claimed, and the date or dates of the expiration of the ninety-day period within which claims for liens may be filed.

5. If the amounts for which any liens were filed have been paid, examine the records to see that the liens have been properly released and cancelled.

1.34 Judgments and Pending Suits.

1. If there are any unsatisfied judgments against the vendor or any previous owner of the property rendered by a state court or a federal district court, obtain full particulars including the names and addresses of the parties, the dates the judgments were rendered, the sums recovered and the courts by which the same were rendered.

2. Has any judgment become a lien by the recording of a certified copy?

3. If any judgments appear to have been paid, examine the court records to see that the same have been properly released and to see that all court costs have been paid. Check the authority of the persons who executed the releases.

4. If there are any suits pending by or against the vendor or if title of the property is involved in any other action or proceeding, obtain all the facts and determine whether a lis pendens has become operative.

1.35 Taxes and Assessments.

1. Is the listing on the tax bill exactly the same as the parcel involved in the contract? Check to see whether other parcels may be included, or whether the parcel involved covers several listings on the tax bill. Will it be necessary to divide a parcel on the tax rolls?

2. Obtain the tax appraisal, and if the purchaser contemplates any alterations or improvements consider what effect the same may have upon taxes.

3. Check to be sure that all taxes and assessments for previous years have been paid and are not merely being paid on a deferred payment plan.

4. Inquire as to whether any improvements have been made or are to be made for which assessments may be subsequently levied.

5. From and after what date is the purchaser to pay taxes and assessments?

6. Are taxes and assessments to be apportioned for the calendar year or for some other period? If at the time fixed for closing, the current tax rate will not have been fixed, what method of apportionment is to be used? Is the tax rate for the preceding year to be applied to the latest assessed valuation, or is it to be provided that an adjustment will be made when the new tax rate is known?

7. What method of apportionment is to be used if the contract involves a building recently constructed, or in the process of construction, which has not been appraised for tax purposes? Is some amount of tax to be agreed upon for purposes of the contract or is provision to be made for a future adjustment when the property has been appraised for tax purposes?

1.36 Maintenance Charges.

1. Is the property subject to assessments or charges for street cleaning, lighting streets, collecting and disposing of garbage, employing watchmen, or similar services?

2. Obtain and examine a copy of the agreement or restrictions providing for maintenance charges and verify the charges due or to become due.

3. Are current or prepaid charges for maintenance to be apportioned?

1.37 Building, Zoning and Other Restrictions.

1. Check the zoning regulations applicable to the property. Ascertain how the property is zoned, whether the purchaser's intended use is permitted, what uses are prohibited, and whether there has been any "spot zoning" in the neighborhood.

2. Consider whether it is desirable to include in the contract a statement of the purpose for which the property is purchased and a representation by the vendor that zoning regulations do not prohibit such use.

3. Are there any ordinances establishing setback building lines? Are the ordinances violated by an existing building or will they be violated by a building proposed to be constructed?

4. Ascertain whether there are any covenants or restrictions affecting the property and determine the nature, scope and duration thereof. Are any covenants or restrictions violated by an existing building or the manner of the occupancy thereof?

5. Consider whether for the protection of the vendor or for adjoining property it is necessary or desirable to impose restrictions on the property to be conveyed.

1.38 Notice of Equities.

1. Has the purchaser knowledge or notice of any claims or equities such as leases, tenancies, options or other agreements respecting the ownership, possession or use of the property?

2. Are there any persons in possession who have or may assert rights as occupying claimants?

1.39 Risk of Loss or Damage Prior to Closing.

1. Are the existing policies of insurance satisfactory as to companies, amounts and types of coverage?

2. If additional insurance is necessary or desirable, or if any existing policies expire prior to closing, who is to obtain the insurance, determine the amount and pay the premiums?

3. Provide in the contract that the insurance policies will be endorsed to cover the respective interests of the parties and arrange for endorsement prior to the execution and delivery of the contract.

4. What provisions shall be included in the contract with respect to loss or damage due to avulsion, collapse, earthquake, explosion, fire, flood, lightning, riot, strikes, tornado, hurricane, windstorm, water and other casualties?

Is the risk of loss to be assumed by the vendor or by the purchaser?

Is the purchaser to have one or more of the following options:

To rescind without liability and upon rescission to become entitled to restitution of payments;

To require the vendor to repair or rebuild at the vendor's expense;

To proceed with the contract and thereby become entitled to the insurance moneys; or

To proceed with the contract and thereby become entitled to an abatement of the purchase price to the extent of the loss or damage or to the extent same is not covered by insurance?

Shall the vendor have one or more of the following options:

To rescind without liability except for restitution of payments made by the buyer;

To repair or rebuild; or

To require the purchaser to proceed upon an abatement of the purchase price to the extent of the loss or damage or to the extent not compensated for by insurance?

5. Are any special provisions in the contract as to assumption of risk, abatement of purchase price, or rescission necessary or desirable for or on account of the following: abandonment or changes in railroad facilities or other utility services essential for the conduct of the purchaser's business; condemnation proceedings pending or threatened; changes in zoning laws; changes in use or occupation of adjoining premises; or litigation pending or threatened?

1.40 Insurance.

1. If existing insurance policies are to be assigned, obtain a list of all policies and binders showing the amounts of coverage, expiration dates and premiums; and if the property consists of

a going business, obtain information as to Workers' Compensation coverage including number of employees, classifications and rates. Also obtain information as to social security and unemployment compensation rates and claims—withholding and payroll tax-licenses, etc.

2. Examine policies and endorsements and ascertain whether the insurance companies are acceptable and authorized to do business in the states where the properties are located; whether the policies have been properly issued, i.e., countersigned by a duly authorized agent; whether the policies have been issued in the correct name or names; whether the property intended to be covered is accurately and sufficiently described; whether the coverage is satisfactory as to amount, hazard and limits of liability; and whether the policies are assignable.

3. Ascertain to what date or dates premiums have been paid and whether any premiums are due and payable. If premiums rates are subject to adjustment and revision, obtain information as to the adjustment dates, prior adjustments and the next probable adjustment.

4. If any policies contain a co-insurance clause, ascertain when and for what amount the property was last appraised. If the coverage seems inadequate, consider whether a new appraisal is necessary or desirable.

5. Has the insured complied with the provisions of the policies? Have there been any events or occurrences of which the insurance companies are entitled to notice, such as: additions, changes or improvements in the property, increasing the risk; foreclosure proceedings; vacancy or non-occupancy of the premises; or changes in the ownership, use or possession of the premises?

6. Are premiums to be apportioned on a pro rata basis or on some other basis? If any existing policies expire prior to the time of closing, who is to obtain the insurance, determine the amount, and pay the premiums?

7. Consider what interests in addition to those of the purchaser should be covered by endorsements on the policies. To whom is the loss to be paid, and who is to have the right to adjust and settle losses?

8. If the policies or any of them are to be surrendered, who is to be entitled to the return premiums?

9. If new or additional insurance is to be procured, obtain information as to types and amounts of coverage and the effective dates.

1.41 Remedies.

1. Consider what remedies will or should be available in the event of breach of the contract, including specific performance, rescission and restitution, forfeiture of payments, liquidated damages, ejection, foreclosure and the appointment of a receiver.

2. Are there to be any special provisions in the contract as to remedies, e.g., a provision prohibiting the vendor or purchaser from bringing an action for specific performance.

3. Consider whether provision should be made for alternative remedies.

4. Is either party to have an option to rescind or the right to require an abatement of adjustment of the purchase price if there is more or less land than agreed, if there are any encroachments, if there are any title defects which cannot be readily cured, or if the vendor is unable to obtain or to convey title.

1.42 Commissions.

1. Avoid disputes by obtaining a written agreement.

2. Is the broker to receive compensation at the usual Multiple Listing Service (MLS) rate or is there to be a special arrangement? Is the broker's compensation to be based upon the gross or net amount of the purchase price? If upon the net amount what deductions are to be made in computing the net amount?

3. If both real and personal property are included in the sale, is the broker to be paid a commission upon the value or purchase price of the personal property?

4. When and subject to what conditions is the commission payable? Upon the execution of the contract between the vendor and purchaser or upon closing of the title?

5. If the commission is payable upon closing of title, is there to be any liability if title is not closed for any reason whatsoever, or are there to be any exceptions such as the willful default of the party employing the broker?

6. If the commission is payable upon closing of title, is interest to be paid thereon if the date of closing is adjourned?

7. If the purchase price is payable in installments, is all or any part of the commission to be deferred and paid out of future installments?

8. Is the commission to be paid by the vendor, the purchaser, or is it to be apportioned?

9. Ascertain the agencies with which the property has been listed and whether more than one broker has a claim to all or part of the commission.

10. In case of an exchange of properties, how is the commission to be computed? Is the commission to be apportioned, or is each party to pay a commission?

1.43 Form of Contract.

There are a number of methods of transferring title to real estate and securing protection for the vendor in the collection of the purchase price. The method selected and consequently the form of the contract will depend partly upon local custom. The Florida Realtors and The Florida Bar provide various forms of contracts for sale of real estate that are in use throughout the state, but their use is generally not a requirement of law.

1.44 Description of Parties.

Preferably the parties should be designated as "vendor" and "purchaser" or as "seller" and "buyer," but this is not essential, and where the contract covers not only the sale of real estate but also other matters, it may be desirable to select descriptive terms which do not give rise to legal implications.

1.45 Consideration.

The contract should clearly express an agreement on the part of the vendor to sell and the purchaser to purchase.

1.46 Description of Property.

There are several methods of describing property; and, in the contract, as distinguished from the deed, it is generally immaterial which method is used provided the property is sufficiently identified and can be located. Among the various methods are: by lot number; description by metes and bounds; by lands of adjoining owners; and by reference to previous title instruments. If the contract combines two or more methods, care should be taken to see that there is no conflict.

Though perhaps unnecessary, it is possible to state, "with the buildings and improvements thereon."

The right to damage and condemnation awards and the vendor's interest in an abutting street should be specifically covered.

1.47 Encumbrances and Defects.

The contract should specify all encumbrances and title defects subject to which the property is sold, including: mortgage and other liens; taxes and assessments; ordinances

establishing setback lines or other building restrictions; zoning regulations; covenants and restrictions of record; encroachments; leases; party wall agreements; gas, electricity, telephone and other utility easements.

Consider whether the contract should provide that the property is sold subject to any state of facts an accurate survey may show provided the survey does not show facts rendering the title unmarketable, or whether the contract should provide that the property is sold subject to a survey which shall show a state of facts satisfactory to the purchaser.

1.48 Purchase Price.

It is advisable to state the actual consideration and the terms of payment. If nothing is said as to terms, it might be presumed that payment is to be made in cash.

If any deposit is to be made on account of the purchase price, it may be wise to provide for a stakeholder other than the vendor. If the deposit is made by check it may be desirable to provide that the contract is subject to its collection.

If there is to be a purchase money mortgage, the terms thereof should be specified in the contract. If the terms of the mortgage are left to future negotiations, the contract may be insufficient to satisfy the Statute of Frauds.

1.49 Apportionment of Rents, Interest and Other Items.

Though in the absence of any provision therefor, it is the custom or practice to apportion rents and interest, these and all other items to be apportioned should be covered in the contract.

1.50 Title and Deed.

In the absence of express provisions in the contract, the vendor generally need not furnish an abstract of title or title policy and is not obliged to give a warranty deed.

If the vendor does not have title, consider what provisions are necessary or desirable to cover vendor's inability to convey, and to protect both parties.

1.51 Time and Place of Closing.

The time and place of performance of closing should be fixed in the contract otherwise neither party can put the other in default without seeking them out, making a tender and demanding performance. Consider whether it should be stated that time is of the essence or whether provision should be made for extensions of time.

1.52 Entire or Severable Contract.

If the contract covers several parcels of property or includes both real and personal property, consider whether it should be provided that the contract is entire or severable.

1.53 Assignability.

Is each party to be free to assign its interest in and its rights under the contract or is the right of assignment to be restricted? Is notice of assignment to be required and are all provisions of the contract to be binding upon the assignee? Is the assignor to remain liable or to be released of all its obligations?

Any provision permitting assignment by the vendor should be considered in connection with the provisions of the contract as to the form of deed. If a warranty deed is to be delivered, it should be made clear whether upon assignment by the vendor, the purchaser will be entitled to the personal covenants of the vendor or only those of the vendor's assignee.

1.54 Conditions.

Is the sale or purchase to be subject to any conditions, such as the construction, repair or alteration of a building; the purchase of adjoining or other property; the completion of arrangements for the construction of a party wall; the draining of adjoining property; or the procurement of any easements, railroad sidings, franchises, licenses or changes of zoning permits or restrictions?

Is any date or period of time to be fixed for the performance of a condition or happening of a contingency?

What are to be the rights and liabilities of the parties if a condition is not performed or a contingency does not occur?

1.55 Miscellaneous Provisions.

Tenancies, leases, security on leases and collection of past due rents.

Purchaser's right to possession.

Default, cancellation, liquidated damages, alternative remedies.

1.56 Execution.

The contract should be in writing and signed by all parties. Though the contract is not required to be witnessed, it is all right to have two subscribing witnesses to each signature.

1.57 Escrow.

1. Is the transaction to be completed by an escrow of the documents and the purchase price?

2. What documents are to be deposited? Prepare a list of documents.

3. When is such deposit to be made?

4. What amount of money is to be deposited — in what form — cashier's check, wire transfer, or what?

5. Who is to be the depositary?

6. What conditions are to be met or satisfied before the depositary delivers the documents and pays the purchase price?

Approval of title. By whom? By joint order?

Compliance with conditions. By whose order? By joint order?

Execution of policy of title insurance.

Discharge of liens by either the depositary or the vendor.

Clearing defects in title. To satisfaction of whom?

Recording of documents and subsequent approval of title.

Payment to the depositary of the purchase price in installments or deposit of receipt showing payment to the vendor. With or without interest? Right of the vendee to prepay the purchase price or any installment thereof.

7. What are to be the rights and liabilities of the parties before the escrow conditions are satisfied?

Who is to have the right to possession and the right to receive the rents and profits?

Are rents and profits to be apportioned?

Who is to pay taxes and assessments?

Who is to pay electricity, water, gas and other charges?

Who is to have the right to petition for improvements and to incur future tax and assessment obligations?

What are to be the rights of the parties in the event of damage to or destruction of the property?

What are to be the rights and obligations of the parties as to insurance? Consider the following matters: types of coverage; apportionment of premiums; endorsement of policies to protect all interests; notices, if any, required to be given insurance companies; adjustment and settlement of losses; the risk of loss and the right to the proceeds of policies.

8. What is to be done before the depository completes the transaction by delivery of the documents or payment of the purchase money?

Continuation of the abstract or statement of title.

Execution of a policy of title insurance.

Approval of title.

Receipt by the depository of the purchase price or other documents.

Payment to the vendor of the purchase price or installments thereof as received or otherwise.

Discharge of liens.

Clearing defects in title.

Purchase of outstanding interests.

Recording of documents and subsequent approval of title.

Payment of commissions and expenses such as transfer and recording fees, expense of continuing abstract or statement of title, title insurance premium, and the cost of a survey.

9. What is to be done concurrently with the delivery of the documents and payment of the purchase price?

Affixing documentary stamps.

Payment of the purchase price to the vendor.

Payment of depositary's compensation for services.

Reimbursement of depositary's expenses either by payment thereof or by deduction from the purchase price.

Settlement of accounts for rents and profits, expenses and liabilities incurred.

10. What is to happen if the terms and conditions of the escrow are not satisfied?

Is time to be of the essence? Is either party or the depositary to have the right to extend the time?

Are the deposited documents or funds to be returned immediately?

Is the party in default to be under any liability or is all liability to be waived?

When is the purchaser to relinquish possession of the property to the vendor? Upon what terms? Who is to be entitled to growing crops?

Who is to be entitled to the rents and profits accruing prior to default?

Who is to pay or be liable for taxes and assessments accruing or becoming due and payable prior to default?

Who is to be liable for electricity, gas, water and other charges accruing prior to default?

Is any adjustment to be made for improvements made by the purchaser or for taxes or other obligations accruing during the purchaser's possession?

Is any adjustment to be made for damage, deterioration or destruction of the property prior to default?

Is any adjustment to be made with respect to insurance premiums paid and insurance proceeds received by either party prior to default?

Who is to assume the risk of loss of the escrowed funds or documents while in the custody of the depositary?

11. Delivery to the depositary must be irrevocable.

12. What if the vendor marries before the escrow conditions are satisfied?

13. What, if any, provisions are to be included in the escrow agreement as to the liability of the depositary?

14. What is to be the compensation of the depositary and who is to pay the same?

15. Are the rights and benefits under the escrow agreement to be assignable by either party?

Is the assignee to assume the obligations of the assignor?

Is the assignor to be released of all liability to the other party upon assignment and upon assumption of obligations by the assignee?

What provision is to be made for notice of an assignment?

16. If the rights and benefits under the escrow agreement are not to inure to the benefit of either party's heirs, it should be so stated.

17. To avoid disputes and to save any question as to the application of the Statute of Frauds, the escrow agreement and instructions should be in writing.

1.58 Preparation for Closing.

Prepare a schedule listing all items and matters requiring attention and listing all instruments and papers to be delivered or exhibited at the time of closing, including:

1. The deed from the vendor to the purchaser.
2. Deeds or other title papers in the possession of the vendor including the deed to the vendor.
3. Unrecorded instruments affecting the title including extension agreements and leases.
4. Affidavits required to supply facts not disclosed by the abstract, e.g., affidavits regarding death, intestacy, payment of the debts of a decedent, heirship and identity of persons or property.
5. Proof of authority to execute and deliver deed if vendor is a corporation or if vendor is acting through an agent.
6. Releases of any real estate mortgages, chattel mortgages, construction liens or judgments which are to be paid or released at the time of or prior to closing.

7. Copies of any existing mortgages.
8. A certificate from each mortgagee showing the amount paid, the amount for which the mortgage is a lien and the date to which interest has been paid.
9. The purchase money mortgage and the note or notes to be executed by purchaser.
10. Bill of sale for any personal property covered by the contract.
11. Executed copies of all leases.
12. A list or statement showing the names of tenants, rent paid and unpaid, and the dates on which the rents are due.
13. Assignments of the leases and of the unpaid rents.
14. Letters to tenants informing them of the change in ownership and directing that rents be paid to the purchaser.
15. Insurance policies and assignments thereof.
16. The latest tax and water bills.
17. The latest water meter reading and a meter transfer.
18. Receipts for the papers and cash to be delivered and paid.

Compute to the date of closing all items to be adjusted or apportioned and prepare a closing statement showing all amounts with which the purchaser is to be charged or credited on the RESPA form as required by the Real Estate Settlement Procedures Act.

1.59 Closing.

1. Examine all instruments to see that the provisions thereof conform to the contract, that the dates have been inserted and that the names of the grantor and grantee are properly spelled.

Compare the description of the property in the deed with the description in the abstract or title insurance commitment and the contract.

2. Have the parties execute and deliver deed, bill of sale, purchase money mortgage and any other instruments required to effect closing, being careful to see that the signatures conform to the names as stated in the instruments and acknowledgments.

3. Have parties approve and sign closing statement and exchange receipts for papers and cash delivered and paid.

1.60 Transactions Subsequent to Closing.

1. Record in the order of their priority the deed, purchase money mortgage and releases of liens.

2. Notify insurance companies that change in ownership has become effective and have any necessary changes made in the policy endorsements and loss payable clauses.

3. Transfer water meter and other utility services.

4. Have the abstract or title insurance continued to show recordation of the deed and other instruments and, when continued and examined, deliver the same to the purchaser.

1.61 Radon Disclosure.

Florida Statutes § 404.056 requires that notification shall be provided on at least one document, form or application executed at the time of, or prior to, a contract for sale and purchase of any building or execution of a rental agreement for any building. The notification must contain the following language:

“RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.”

The parties may want to include a provision assessing the risks of the presence of radon gas in a building. The following is a paragraph placing the risk on the buyer:

“Seller hereby represents that it has no knowledge concerning the existence of radon gas upon the property being sold to Buyer. Buyer hereby agrees that Seller has no duty to investigate whether radon gas is now or ever was present upon the property being sold to Buyer. Buyer hereby releases and discharges Seller from any any claims, demands, fees, expenses and liability if it is found that radon gas is present upon the property. Buyer hereby agrees to indemnify, defend and hold Seller harmless from any claims, demands, attorney's fees, expenses and liability if it is found at any time that radon gas is present upon the property.”

The following is a paragraph placing the risk on the seller:

“Seller hereby warrants and represents that it has no present knowledge concerning the existence of radon gas upon the property being sold to Buyer. Seller shall investigate whether radon gas is now or ever was present upon the property being sold to Buyer by having an inspection performed by an engineer qualified to undertake such inspections. Seller shall furnish the inspection report to Buyer. Seller hereby releases and discharges Buyer from any claims, demands, fees, expenses and liability if it is found that radon gas is present upon the property. Seller hereby agrees to indemnify, defend and hold Buyer harmless from any claims, demands, attorney's fees, expenses and liability if it is found at any time that radon gas was present upon the property prior to closing.”

1.62 Executing Documents To Be Recorded.

Florida Statutes § 695.26 states that instruments that convey, assign, encumber or otherwise dispose of the title to or any interest in real property must contain the following information in order to be recorded:

(a) The name of each person who executed such instrument is legibly printed, typewritten, or stamped upon such instrument immediately beneath the signature of such person and the post-office address of each such person is legibly printed, typewritten, or stamped upon such instrument;

(b) The name and post-office address of the natural person who prepared the instrument or under whose supervision it was prepared are legibly printed, typewritten, or stamped upon such instrument;

(c) The name of each witness to the instrument is legibly printed, typewritten, or stamped upon such instrument immediately beneath the signature of such witness;

(d) The name of any notary public or other officer authorized to take acknowledgments or proofs whose signature appears upon the instrument is legibly printed, typewritten, or stamped upon such instrument immediately beneath the signature of such notary public or other officer authorized to take acknowledgment or proofs;

(e) A 3-inch by 3-inch space at the top right-hand corner on the first page and a 1-inch by 3-inch space at the top right-hand corner on each subsequent page are reserved for use by the clerk of the court; and

(f) In any instrument other than a mortgage conveying or purporting to convey any interest in real property, the name and post-office address of each grantee in such instrument are legibly printed, typewritten, or stamped upon such instrument.

This law does not apply to an instrument executed before July 1, 1991, or a decree, order, judgment, or writ of any court, or an instrument executed, acknowledged, or proved outside of

Florida, or a will, or a plat, or an instrument prepared or executed by any public officer other than a notary public.

There is a potential trap in that the clerk may reject a document presented for recording if the document does not comply with this law, unless the document fits within one of the exemptions. The clerk's rejection of a document for recording could alter the order of recording documents, which could cause unintended results and loss of priority of mortgages and other instruments.

1.63 Form of Signature, Witness and Notary Acknowledgment Lines for Documents To Be Recorded Per F.S. § 695.26 and F.S. § 117.05(16).

IN WITNESS WHEREOF, the parties have signed this document on this _____ day of _____, 20_____.

Witnesses:
sign _____
print _____
sign _____
print _____

Party A:
sign _____
print _____
address _____

Witnesses:
sign _____
print _____
sign _____
print _____

Party B:
sign _____
print _____
address _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of (check one) ___ physical presence or ___ online notarization, this _____ day of _____, 20_____, by

Notary Public-State of Florida: sign _____
print _____

Personally Known _____; OR Produced Identification _____
Type of Identification Produced: _____

Affix Seal Below:

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of (check one) ___ physical presence or ___ online notarization, this ___ day of _____, 20____, by _____.

Notary Public-State of Florida: sign _____
print _____

Personally Known _____; OR Produced Identification _____

Type of Identification Produced: _____

Affix Seal Below:

1.64 Notary Public Law.

Florida Statutes Chapter 117 sets forth the Florida notary public law, including provisions for appointment of notaries, the manner of acting as a notary, online notarizations, and forms for use by notaries. Other forms are contained in Florida Statutes § 695.25.

1.65 Forms of Notarial Certificates.

A. Oath or Affirmation — Per F.S. § 117.05

STATE OF FLORIDA

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me by means of (check one) ___ physical presence or ___ online notarization, this ___ day of _____, 20____, by _____.

Notary Public-State of Florida: sign _____
print _____

Personally Known _____; OR Produced Identification _____

Type of Identification Produced: _____

Affix Seal Below:

B. Acknowledgment In an Individual Capacity — Per F.S. § 117.05

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of (check one) ___ physical presence or ___ online notarization, this ___ day of _____, 20____, by _____.

Notary Public-State of Florida: sign _____
print _____

Personally Known _____; OR Produced Identification _____

Type of Identification Produced: _____

Affix Seal Below:

The foregoing instrument was acknowledged before me by means of (check one) ___ physical presence or ___ online notarization, this ___ day of _____, 20___, by _____, as _____ of _____, a ___ limited liability company, on behalf of the company, who is personally known to me or has produced _____ as identification.

Notary Public-State of Florida: sign _____
print _____

Affix Seal Below:

G. Acknowledgment For a Partnership — Per F.S. § 695.25

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of (check one) ___ physical presence or ___ online notarization, this ___ day of _____, 20___, by _____, partner (or agent) on behalf of _____, a partnership. He/she is personally known to me or has produced _____ as identification.

Notary Public-State of Florida: sign _____
print _____

Affix Seal Below:

H. Acknowledgment For an Individual Acting as Principal By an Attorney in Fact — Per F.S. § 695.25

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of (check one) ___ physical presence or ___ online notarization, this ___ day of _____, 20___, by _____, as attorney in fact, who is personally known to me or has produced _____ as identification, on behalf of _____.

Notary Public-State of Florida: sign _____
print _____

Affix Seal Below:

I. Acknowledgment By Public Officer, Trustee, or Personal Representative — Per F.S. § 695.25

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of (check one) ___ physical presence or ___ online notarization, this ___ day of _____, 20___, by _____, as _____, who is personally known to me or has produced _____ as identification.

DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING."

1.68 Energy Efficiency Disclosure - Per F.S. § 553.996.

F.S. § 553.996 states that a "prospective purchaser of real property with a building for occupancy located thereon shall be provided information at the time of or before the purchaser's execution of the contract for sale and purchase which notifies the purchaser of the option for an energy-efficiency rating on the building." The contract drafter may want to include a clause dealing with this statute.

1.69 Ad Valorem Tax Disclosure - Per F.S. § 689.261.

The contract drafter may want to include a clause dealing with F.S. § 689.261, which states:

"(1) A prospective purchaser of residential property must be presented a disclosure summary at or before execution of the contract for sale. Unless a substantially similar disclosure summary is included in the contract for sale, a separate disclosure summary must be attached to the contract for sale. The disclosure summary, whether separate or included in the contract, must be in a form substantially similar to the following:

PROPERTY TAX
DISCLOSURE SUMMARY

BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

"(2) Unless included in the contract, the disclosure summary must be provided by the seller. If the disclosure summary is not included in the contract for sale, the contract for sale must refer to and incorporate by reference the disclosure summary and include, in prominent language, a statement that the potential purchaser should not execute the contract until he or she has read the disclosure summary required by this section."

1.70 Homeowner Association Disclosure - Per F.S. § 720.401.

The contract drafter may want to include a clause dealing with F.S. § 720.401, which states:

“(1)(a) A prospective parcel owner in a community must be presented a disclosure summary before executing the contract for sale. The disclosure summary must be in a form substantially similar to the following form:

DISCLOSURE SUMMARY

FOR

(NAME OF COMMUNITY)

1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS’ ASSOCIATION.
2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS COMMUNITY.
3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$ PER . YOU WILL ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$ PER .
4. YOU MAY BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT. ALL ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.
5. YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS LEVIED BY A MANDATORY HOMEOWNERS’ ASSOCIATION COULD RESULT IN A LIEN ON YOUR PROPERTY.
6. THERE MAY BE AN OBLIGATION TO PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS’ ASSOCIATION. IF APPLICABLE, THE CURRENT AMOUNT IS \$ PER .
7. THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE RESTRICTIVE COVENANTS WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.
8. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING DOCUMENTS BEFORE PURCHASING PROPERTY.
9. THESE DOCUMENTS ARE EITHER MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE PROPERTY IS LOCATED, OR ARE NOT RECORDED AND CAN BE OBTAINED FROM THE DEVELOPER.

DATE: PURCHASER:

PURCHASER:

The disclosure must be supplied by the developer, or by the parcel owner if the sale is by an owner that is not the developer. Any contract or agreement for sale shall refer to and incorporate the disclosure summary and shall include, in prominent language, a statement that the potential buyer should not execute the contract or agreement until they have received and read the disclosure summary required by this section.

(b) Each contract entered into for the sale of property governed by covenants subject to disclosure required by this section must contain in conspicuous type a clause that states: IF THE DISCLOSURE SUMMARY REQUIRED BY SECTION 720.401, FLORIDA STATUTES, HAS NOT BEEN PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE EXECUTING THIS CONTRACT FOR SALE, THIS CONTRACT IS VOIDABLE BY BUYER BY DELIVERING TO SELLER OR SELLER'S AGENT OR REPRESENTATIVE WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS AFTER RECEIPT OF THE DISCLOSURE SUMMARY OR PRIOR TO CLOSING, WHICHEVER OCCURS FIRST. ANY PURPORTED WAIVER OF THIS VOIDABILITY RIGHT HAS NO EFFECT. BUYER'S RIGHT TO VOID THIS CONTRACT SHALL TERMINATE AT CLOSING.

(c) If the disclosure summary is not provided to a prospective purchaser before the purchaser executes a contract for the sale of property governed by covenants that are subject to disclosure pursuant to this section, the purchaser may void the contract by delivering to the seller or the seller's agent or representative written notice canceling the contract within 3 days after receipt of the disclosure summary or prior to closing, whichever occurs first. This right may not be waived by the purchaser but terminates at closing.

(2) This section does not apply to any association regulated under chapter 718, chapter 719, chapter 721, or chapter 723; and also does not apply if disclosure regarding the association is otherwise made in connection with the requirements of chapter 718, chapter 719, chapter 721, or chapter 723."

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CHAPTER 2. OTHER CHECKLISTS FOR REAL ESTATE SALES

2.1 Checklist — Preliminary to Contract.

1. Clients' full names:

Address:

Phone: (home) _____ (bus.) _____ (cell) _____

2. Other parties' full names:

Address:

Phone: (home) _____ (bus.) _____ (cell) _____

3. Other parties' attorney:

Address:

Phone:

4. Broker:

Address:

Phone: (home) _____ (bus.) _____ (cell) _____

5. Date and time contract to be signed:

6. Place contract to be signed:

7. Date title to be closed:

8. Place title to be closed:

9. Kind of property (two-family, etc.):

10. Is building completed?

11. Any tenants? _____ If so, info re tenancies:

12. Terms:

(a) Purchase price _____

b) Down payment _____

(c) Mortgage details (purchase-money mortgage to be obtained, subject to existing mortgage lien, buyer to assume mortgage debt?) _____

Amount:

Interest rate:

Term:

Name of lender:

How payable:

Prepayment privileges:

FHA, etc?:

(d) If a new or second mortgage is to be obtained:

Inspection fees:

Origination fees:

FHA or other "mortgage insurance" fees:

Lender's attorney's fee:

Other fees:

Will lender specify the title company to be used?

_____ Name:

Cost of mortgage title insurance:

Will lender require escrow fund for taxes and fire insurance?

13. Survey:

(a) Has seller a survey to furnish to buyer?

(b) Is there a charge? _____ Amount: _____.

(c) Surveyor's name:

(d) Surveyor's address:

(e) Surveyor's job no.:

14. Name of title company which insured seller's title:

Title no.:

15. Are there to be any maintenance charges after closing of title, as for public areas, lawns, or sewers? Details:

16. Are the following in and paid for:

(a) Sewers? Public or private?

(b) Streets?

(c) Curbs?

(d) Sidewalks?

17. Has street been dedicated?

18. Is there a likelihood of assessments after closing of title for recent improvements?

19. What are applicable zoning regulations?

20. What are applicable covenants and restrictions?

21. What covenants and restrictions does seller intend to create in his deed?

22. Do buyers intend any construction which might violate zoning, covenants or restrictions?

23. Are there any gas, water or electric meters which must be paid for by buyer or upon which a deposit must be made?

24. Amount of real estate taxes: _____

25. Does present assessment of taxes cover more than the parcel being sold? If so, on what basis will an apportionment be made?

26. If vacant land is being purchased, are the following available:

(a) Water?

(b) Electricity?

(c) Gas?

(d) Mail delivery?

(e) Garbage disposal?

27. If contract covers a home to be constructed, will seller furnish warranties?

Details:

28. Request seller to deliver to his attorney:

(a) Deed.

(b) Survey.

(c) Title insurance policy.

(d) Copies of any outstanding leases.

(e) Copies of any mortgages or other liens on the premises.

(f) Copy of any brokerage contract or other agreement which he might have signed.

29. Discuss with seller:

(a) Present fire insurance coverage.

(b) Any liens which he might have created on the premises.

30. Exact names and manner in which title is to be taken (joint tenants, etc.?)

31. Will transaction be conditioned upon any special contingencies, as buyer's ability to obtain a specified mortgage commitment, buyer's sale of present home, buyer's ability to cancel present tenancy, etc.?

2.2 Opening File Checklist.

File Name: _____

Date Opened: _____

Opened By: _____

_____ Put new matter report in file

_____ Create electronic file

_____ Create paper file?

_____ Add to cross-reference and conflicts index and check for conflicts

_____ Add to time and billing system

_____ Send thank you letter for referral

_____ Send engagement letter to client

2.3 Real Estate Closing Interview Sheet.

Client Name _____ Date: _____

1. Other party's Name: _____

Home Address: _____

Home Phone: _____

Cell: _____

Business Address: _____

Bus. Phone: _____

2. Legal description of property: _____

3. Street address of property: _____

4. List personal property included in sale: _____

5. Property zoned to be used for: _____ single family dwelling; other: _____

6. Price: \$ _____
Deposits to be held by: _____
Mortgages to be assumed: _____
Mortgage to seller: _____
Other: _____
Cash at closing: _____

7. Closing date (on or before): _____

8. Title insurance: _____

9. Restrictions: _____

10. Agent: _____ Commission _____ % \$ _____

11. Documents needed from Seller: _____ deed; _____ base TI policy

12. Estimated closing costs:
Doc. stamps on deed: _____
Record deed: _____
Doc. stamps on mortgage note: _____
Intangible tax on mortgage: _____
Record mortgage: _____
Title search: _____
Title insurance: _____
Attorneys fees: _____
Survey: _____
Broker: _____
Tax proration: _____
Pest inspection: _____

13. To Do:

1. Prepare contract
2. Order title search
3. Mortgage assumption on new mortgage figures
4. Set closing

5. Prepare closing documents

6. Hold closing

7. Record documents

2.4 Checklist — Attorney for Buyer or Mortgagor.

Client: _____

Closing Date: _____

Seller's Attorney: _____

A. Before Closing

_____ Check mortgage commitment.

_____ Review contract.

_____ Order survey, if required.

_____ Advise buyer to obtain termite inspection.

_____ Request seller's attorney or broker to arrange for municipal inspection, if required.

_____ Comply with any applicable RESPA requirements.

_____ Check municipal offices re pending amendments to zoning, etc.

_____ Report mortgage commitment & results of inspections to seller's attorney.

_____ Check marital and judgment status of buyers.

_____ Check for recent improvements made.

_____ Make arrangements with seller's attorney & lending institution re place and time of closing.

_____ Obtain copy of buyer's resolution to buy and mortgage.

_____ Review title commitment and call to attention of seller's attorney any title matters to be cleared.

_____ Check payoff data on existing mortgage, if any.

_____ Explain to client all title exceptions to remain in effect.

_____ Arrange for insurance policy or binder to be available at closing.

_____ Request and examine seller's deed, affidavit of title and closing statement in advance of closing.

_____ Receive survey if ordered.

_____ Send copy of survey to title company with request for approval.

_____ Review note and mortgage, if purchase to be financed

_____ Check mortgagee memo re closing requirements.

_____ Advise buyer to prepare for payments due at closing.

_____ Submit to mortgagee copies of proposed closing documents.

_____ Order updated title report for morning of closing.

_____ If assuming existing mortgage, get mortgagee's consent to title transfer, if required.

_____ If building new, check for issuance of building permit and certificate of occupancy.

- _____ Examine entity status papers prior to closing.
- _____ If seller must clear old mortgage, determine amount needed, including interest to date of receipt of payment by mortgagee.
- _____ Check sales contract for other items.

B. At Closing

- _____ Check deed execution for dates, signatures, witnesses, notary.
- _____ Check affidavit of no liens.
- _____ Are further proofs required: entity status, entity documents, entity resolutions?
- _____ Review any matters in contract to survive closing.
- _____ Get copies of invoices for closing statement items.
- _____ Adjustments: taxes, rents, mortgage interest, mortgage payoffs, utilities, personal property purchased, points.
- _____ Check loan documents execution.
- _____ Deliver purchase money and closing documents.
- _____ Obtain copies of all closing documents.
- _____ Obtain title policy.
- _____ Obtain keys, codes, and clickers.

C. After Closing

- _____ Obtain original of recorded deed.
- _____ Obtain original owner's policy of title insurance.
- _____ Obtain copies of recorded mortgage.
- _____ Advise client regarding homestead exemption application process.

2.5 Checklist — Attorney for Seller.

Client: _____
 Closing Date: _____
 Buyer's Attorney: _____

A. Before Closing

- _____ Check marital status of sellers and inquire as to any judgments.
- _____ Get copies of deed, title insurance policy, and survey from seller.
- _____ Get copies of entity resolutions.
- _____ Prepare contract for sale.
- _____ Comply with applicable RESPA requirements.
- _____ Post to closings calendar.
- _____ Check amount due on existing mortgage to date of closing and per diem rate.
- _____ Make arrangements with buyer's attorney for closing date, place and time.
- _____ Arrange for transfer of utilities.
- _____ Have taxes been paid, and what are assessments, etc.?
- _____ Check as to naming spouse of grantee in deed.

- _____ Clear any title items revealed by search or report.
- _____ Get municipal inspection if required.
- _____ Prepare or review closing documents for seller.

B. At Closing

- _____ Check deed execution for dates, signatures, witnesses, notary.
- _____ Check affidavit of no liens.
- _____ Are further proofs required: entity status, entity documents, entity resolutions?
- _____ Review any matters in contract to survive closing.
- _____ Get copies of invoices for closing statement items.
- _____ Adjustments: taxes, rents, mortgage interest, mortgage payoffs, utilities, personal property purchased, points.
- _____ Check loan documents execution.
- _____ Delivery of deed, purchase money and other closing documents.
- _____ Obtain copies of all closing documents.
- _____ Deliver title policy or marked-up commitment.
- _____ Deliver keys, codes, and clickers.

C. After Closing

- _____ Send original of recorded deed to buyer.
- _____ Send original owner’s policy of title insurance to buyer.
- _____ Send copies of recorded mortgage to buyer.

2.6 Real Estate Closing — Documents Checklist.

- Date: _____
- Date Closing Held: _____
- Closing Place: _____
- Present: _____
- Seller: _____
- Buyer: _____
- Lender: _____
- Title Company: _____
- Closing Agent: _____
- Property Address: _____
- Property Legal: _____
- Property Parcel: _____
- Price: _____
- Loan: _____
- Contract Date: _____
- Inspection Period Due Date: _____
- Loan Commitment Due Date: _____
- Title Insurance Due Date: _____

Title & Survey Objection Due Date: _____

Insurance Cancel Due Date: _____

Closing Due Date: _____

A. Signed:

_____ Contract for Sale of Real Estate

_____ Deposit Receipt

_____ Amendment

B. Before closing:

_____ Boundary survey meeting minimum technical standards and certified to buyers and lenders

_____ Termite inspection

_____ Building inspections:

General contractor or building inspector

HVAC, roofing, electrical, plumbing specialty contractors

Wind mitigation

Mold

Radon

Lead paint

Drywall

Other

_____ Title insurance commitment naming buyers and lenders and exception docs and survey endorsement and base policy

_____ City searches for assessments, open permits, codes compliance citations, zoning and land use, setbacks

_____ Utilities check (electric, City water, sewer, trash, phone, cable, natural or LP gas)

_____ Property, liability, sink hole, and flood insurance certificates with lenders named as loss payees

_____ Survey and elevation certificate

_____ Building inspection

_____ Condo/homeowner's association approval

_____ Sales tax & tangible personal property tax

C. Closing Docs:

_____ Settlement statement

_____ Title insurance commitment marked up

_____ Closing protection letter from title insurance company (insured closing letter)

_____ Exception Documents

_____ Deed

_____ Seller Affidavit

_____ Loan Documents:

Promissory note

- _____ Mortgage
- _____ Insurance loss payee
- _____ Loan payoff letter
- _____ Bill of sale
- _____ Non-foreign affidavit
- _____ Seller's taxpayer ID certification and 1099 substitute
- _____ Certification for no information reporting on the sale or exchange of a principal residence
- _____ 1099 designation agreement
- _____ Closing statement agreement
- _____ Assignment of warranties
- _____ Homeowner warranty
- _____ Escrow instruction letter to closing agent
- _____ Cashier's checks or wire transfer
- _____ Keys and clickers

D. After closing:

- _____ Recorded deed
- _____ Recorded mortgage
- _____ Satisfaction of mortgage
- _____ Title insurance policy (owner and lender)
- _____ Insurance policies with loss payee
- _____ Homestead application

2.7 Real Estate Closing Statement Worksheet.

Client: _____ (Seller) (Buyer)

Other Party: _____ (Seller) (Buyer)

Today's Date: _____ Closing Date: _____

TAX PRORATION

Last year's taxes (20__):

\$ _____ /365 = \$ _____ per diem

Any increase in assessment or loss of homestead? _____

Closing date is _____ day of year.

Proration: \$ _____ per diem × _____ days = \$ _____

(Credit buyer if taxes for year not paid; credit seller if paid)

CLERK OF COURT

Documentary stamps — deed:

\$ _____ price (round up to \$100)/100 × _____ = \$ _____

Record deed

Page 1 @ \$ _____ + _____ pages @ \$ _____ = _____

Plus _____ names over 4 @ \$ _____ each = _____ \$ _____

Documentary stamps — mortgage note:

\$ _____ princ. (round up to \$100)/100 × _____ = \$ _____

Intangible tax — mortgage:

\$ _____ princ. (no round) × _____ = _____ \$ _____

Record mortgage:

Page 1 @ \$ _____ + _____ pages @ \$ _____ = _____

Plus _____ names over 4 @ \$ _____ each = _____ \$ _____

Record satisfaction of mortgage:

Page 1 @ \$ _____ + _____ pages @ \$ _____ = _____

Plus _____ names over 4 @ \$ _____ each = _____ \$ _____

Other clerk costs:

_____ \$ _____

_____ \$ _____

TOTAL TO CLERK: \$ _____

MORTGAGE PAYOFF:

Lender:

Loan #: _____

Principal Due: \$ _____

Interest Due through (date) _____ : \$ _____

Interest Due through closing:

_____ days plus \$ _____ per diem = \$ _____ \$ _____

MORTGAGE PAYOFF:

Lender:

Loan #: _____

Principal Due: \$ _____

Interest Due through (date) _____ : \$ _____

Interest Due through closing:

_____ days plus \$ _____ per diem = \$ _____ \$ _____

OTHER:

_____ \$ _____

_____ \$ _____

_____ \$ _____

2.8 Real Estate Closing — Disbursements.

Client: _____ (Seller) (Buyer)

Other Party: _____ (Seller) (Buyer)

Today's Date: _____ Closing Date: _____

Fees: _____ \$ _____

Costs: _____ \$ _____

O-TI: _____ \$ _____

M-TI: _____ \$ _____ \$ _____

Payoff mortgage to:

_____ \$ _____

_____ Net Sale Proceeds to Seller \$ _____

Other:

_____ \$ _____

_____ \$ _____

_____ \$ _____

TOTAL: \$ _____

2.9 Real Estate Closing — Figures Worksheet.

Client: _____

Other Party: _____

Date: _____

I. Tax Proration

Last year's taxes (20__): \$ _____ ÷ 365 = \$ _____ per diem

No increase in assessment?

Closing date is _____ day of year.

(Credit buyer if taxes for year not paid; credit seller if taxes for year paid.)

Proration: \$ _____ per diem × _____ days = \$ _____

II. Title Insurance — Amount: \$ _____

Minimum risk rate: \$ _____

III. Clerk of Court

A. Documentary stamps — deed

(\$ _____ price) ÷ 100 × \$ _____ = \$ _____

B. Documentary stamps — mortgage note

(\$ _____ mortgage) ÷ 100 × \$ _____ = \$ _____

C. Intangible tax—mortgage

(\$ _____ mortgage) × _____ = \$ _____

D. Recording deed

(1st page \$ _____ + (_____ add'l pages × \$ _____) = \$ _____

E. Recording mortgage

(1st page \$ _____ + (_____ add'l pages × \$ _____) = \$ _____

IV. Other:

2.10 Real Estate Closing — Representation of Seller.

Client's Name: _____

Address: _____

Phone Numbers: _____

Date of Closing: _____ Place of Closing: _____

Buyer(s): _____ Attorney: _____

Lender: _____ Representative: _____

Title Company: _____ Representative: _____

DOCUMENTS PREPARED AND REVIEWED:

- ___ 1. Deed
- ___ 2. Affidavit of No Liens
- ___ 3. Title Insurance (Commitment)
- ___ 4. Title Insurance (Owner's Policy — Mortgagee, etc.)
- ___ 5. Closing Statement
- ___ 6. Note (No prepay penalty)
- ___ 7. Mortgage
- ___ 8. Truth In Lending Statement
- ___ 9. Disclosure Statement
- ___ 10. Other
 - A) _____
 - B) _____
 - C) _____
 - D) _____

ITEMS ORDERED:

- ___ 1. Title Search
- ___ 2. Judgment Search (order with title search)
- ___ 3. Survey
- ___ 4. Termite Inspection

___ 5. Title Search Update

___ 6. Other

A) _____

B) _____

CHECKLISTS:

___ 1. _____

___ 2. _____

2.11 Real Estate Closing — Representation of Buyer.

Client's Name: _____

Present Address: _____

New Address: _____

Present Phones: _____ New Phones: _____

Date of Closing: _____ Place of Closing: _____

Seller: _____ Attorney: _____

Lender: _____ Representative: _____

Title Company: _____ Representative: _____

DOCUMENTS REVIEWED:

A. LOAN:

___ 1. Loan Closing Statement

___ 2. Truth In Lending Statement

___ 3. Note (No prepay penalty)

___ 4. Mortgage

___5. Affidavit of no Liens

B. SALE:

___1. Deed

___2. Affidavit of no Liens

___3. Title Insurance (Remove exceptions)

___4. Survey

___5. Termite Inspection

___6. Closing Statement

___C. Get two copies of all documents (file & client)

___D. Request copy of recorded mortgage

REMARKS: _____

2.12 Real Estate Closing Checklist for Representation of Buyer.

_____1. Mortgage

_____2. Note

_____3. Corporate Resolution of Seller

_____4. Survey

_____5. Loan Closing Statement

_____6. Purchase Closing Statement

_____7. Affidavit of No Lien

_____8. Title Insurance Commitment

_____9. Closing Costs

- _____ 10. Taxes
- _____ 11. Assessments
- _____ 12. Zoning
- _____ 13. Deed
- _____ 14. Secretary of State re Seller being valid Corporation
- _____ 15. Terms of Contract for Sale
- _____ 16. Advise Client to bring Cashier's Check

2.13 Real Estate Closing Checklist — Third Person Matters.

- 1. Termite Inspection
- 2. Survey
- 3. Title Search
- 4. Condominium Association Approval
- 5. Mortgage Assumption Approval
- 6. Insurance Assumption

2.14 Loan Closing — Documents.

Client: _____ (Lender) (Borrower)

Other Party: _____ (Lender) (Borrower)

Today's Date: _____ Closing Date: _____

Present: _____ Closing Place: _____

- 1. Commitment Letter
- 2. Title Ins. Commitment

3. Update TI-C at closing
4. Termite inspection
5. Survey
6. Note
7. Mortgage
8. Security Agreement
9. UCC-1 Clerk
10. UCC-1 Sec.St.
11. Assignment of Rents
12. Affidavit of Borrower
13. Insurance Anti-Coercion Statement
14. Loan Disbursement Statement
15. Escrow Instructions to Record Docs.
16. Hazard and flood ins.:
Proof of payment
Loss payee endorsement

OTHER:

17. Affidavit of Seller
 18. Estoppel letter on mort. to be paid off
 19. Other: _____
-

After Closing

1. Received all recorded originals

2. Received title insurance policy

2.15 Loan Closing — Worksheet.

Client: _____ (Lender) (Borrower)

Other Party: _____ (Lender) (Borrower)

Today's Date: _____ Closing Date: _____

CLERK OF COURT

Documentary stamps—mortgage:

\$ _____ princ. (round up to \$100)/100 × _____ = \$ _____

Intangible tax — mortgage:

\$ _____ princ. (no round) x _____ = \$ _____

Record mortgage:

Page 1 @ \$ _____ + _____ pages x \$ _____ = _____

Plus _____ names over 4 x \$ _____ each = _____ \$ _____

Record assignment of rents:

Page 1 @ \$ _____ + _____ pages x \$ _____ = _____

Plus _____ names over 4 x \$ _____ each = _____ \$ _____

Record UCC-1:

Page 1 @ \$ _____ + _____ pages ---- \$ _____ = _____

Plus _____ names over 4 x \$ _____ each = _____ \$ _____

Other clerk costs:

_____	\$ _____
_____	\$ _____
_____	\$ _____

TOTAL TO CLERK: \$ _____

OTHER:

1. File UCC-1 with Sec.St.

UCC-1: _____

Attached pages: _____ pages x \$ _____ : _____

Names over 4: _____ names x \$ _____ : _____ \$ _____

2. UCC-11 Sec.St. search: \$ _____

3. Mortgagee title insurance

Title Agent: _____

Premium: \$ _____

4. Attorneys fees \$ _____

5. _____ \$ _____

6. _____ \$ _____

7. _____ \$ _____

2.16 Check List for Seller's Attorney.

1. Names and addresses of persons present at closing.

2. Seller's new address.

3. Have all checks been noted?
4. Purchase-money note and mortgage properly executed and delivered?
5. If existing mortgage was satisfied, have original instruments, fire policy, certificate of occupancy, etc., been picked up from mortgagee?
6. Broker's bill receipted?
7. Receipt from title company for recording fees for mortgage satisfaction, etc.?
8. Name and address on back of all instruments to be returned to me after recording?
9. Has copy of closing deed been conformed for file?

2.17 Check List for Buyer's Attorney.

(1) Names and addresses of persons attending closing: _____ .

Seller's new address: _____ .

(2) Title continuation clear?

(3) Deed:

(a) Check carefully.

(b) Endorsed to be returned to buyer's attorney after recording?

(c) Does it contain easement if street has not been dedicated?

(4) Note & mortgage:

(a) Check carefully.

(b) Does it contain agreed prepayment privileges?

(c) Obtain conformed copies.

(d) Lender's mortgage number.

(e) VA, FHA serial number.

- (5) Computation of adjustments carefully noted?
- 6) Pick up, or make note of, fire insurance policy and:
 - (a) Receipted bill for premium;
 - (b) Policy number and amount;
 - (c) Name of company; and
 - (d) Expiration date.
- (7) Pick up letter from seller re work not yet completed on new building or grounds.
- (8) Pick up keys, codes, and clickers.
- (9) Pick up, if agreed to be furnished, warranties on:
 - (a) Plumbing;
 - (b) Heating system;
 - (c) Roofing;
 - (d) Foundation; and
 - (e) Others.
- (10) Pick up, or make note of:
 - (a) Certificate of Occupancy;
 - (b) Others.
- (11) Pick up from lender statement of mortgage origination charges, receipts for first month's interest and escrow deposits, etc.
- (12) Have title report properly marked off, re-certified, re-dated and signed.
- (13) Pick up receipted title bill.
- (14) Make record of all checks.

(15) Pick up, where applicable, assignment of mortgage escrow fund in duplicate.

(16) Pick up, where applicable, copy of any escrow agreements entered into at closing.

(17) Has buyer or his agent executed Department of Revenue transfer form?

2.18 IRS Form 1099 Checklist.

File Name: _____

Matter: _____

Seller's Name: _____

Seller's Address: _____

Seller's Tax ID Number: _____

Date of Closing: __/__/__

Contract Sales Price: \$_____

Seller's Principal Residence? _____ Yes; _____ No

Brief Description of Property: _____

2.19 Checklist for Recording Documents With Clerk.

1. Date of instrument
2. "Prepared by" stamp
3. "Return to" stamp
4. Signed by all parties (check with first paragraph of document) and addresses of all parties
5. Signed by at least 2 witnesses
6. Notary clause dated
7. Notary's signature
8. Notary's seal and expiration

- 9. All names printed under signatures
- 10. Room for stamps and recording information on first page
- 11. If mortgage, conformed copy of note attached
- 12. If deed, address of grantee

2.20 Names, Liens and Judgments Checklist.

Name checking on: _____

Date: _____

- _____ Corporations and LLC: <http://www.sunbiz.org/corinam.html>
- _____ Partnerships: <http://www.sunbiz.org/genipart.html>
- _____ Fictitious names: <http://www.sunbiz.org/ficinam.html>
- _____ Judgments: <http://www.sunbiz.org/jlilist.html>
- _____ Federal tax liens: <http://www.sunbiz.org/lienlis.html>
- _____ UCC liens: <http://www.floridaucc.com/UCCWEB/Search.aspx>
- _____ Florida licenses: <https://www.myfloridalicense.com/wl11.asp?mode=0&SID=>
- _____ Florida criminal information database: <http://www.dc.state.fl.us/appcommon/searchall.asp>
- _____ _____ County Clerk:
 - _____ Official Records: _____
 - _____ Court cases civil: _____
 - _____ Court cases criminal: _____
 - _____ Court cases probate: _____
- _____ _____ County Sheriff arrests jail bookings:

CHAPTER 3. LISTING AND BROKER AGREEMENTS

3.1 Introduction.

The first legal document to be signed in a real estate transaction is often an agreement listing the property for sale with a real estate broker. Most owners sign the broker's standard form without the advice of a lawyer. However, once in a while a lawyer is called upon to prepare a listing agreement or commission agreement.

The two most important provisions of the agreement are those relating to the commission and authority. These two subjects generate the most litigation. Therefore, it is important that the agreement clearly specify the amount of the commission; if it is a percentage, on what amount it is computed; when it is earned; when it is payable. Similarly, the scope of authority of the broker should be clearly specified; whether the broker is the agent of the owner; how far the broker may go in obtaining a buyer and contract; what representations the broker may make; etc.

Of course, the agreement should clearly and correctly specify the owner's name, property address, property legal description, term of listing, and similar matters. The agreement should be dated and signed by the broker and all owners.

There are a few important statutes and cases that should be mentioned in conjunction with this chapter:

Florida Statutes § 475.25(1)(h). A broker may not share a commission with an unlicensed broker or salesperson. This has been interpreted in some cases to require a licensed broker who enters into an agreement to share a fee with an unlicensed broker or salesperson to totally forfeit the fee.

Florida Statutes § 475.278. A licensee cannot represent both the prospective buyer and the prospective seller. The licensee must either be a transaction broker or a single agent. A transaction brokerage is presumed unless the licensee enters into a written single agent or no brokerage relationship with the customer.

Florida Statutes § 475.41. Contracts for commissions on the sale of land are not valid if made by unlicensed brokers.

Florida Statutes § 475.42(1)(d). A sales associate cannot collect any type of fee in conjunction with the sale of real estate. Only through a broker that is the registered employer is the sales associate entitled to do so.

3.2 Agreement for Exclusive Right to Sell.

Date: _____
Owner: _____
Broker: _____
Property: _____

1. In consideration of Broker's agreement to use its best efforts to sell the above property in _____ County, Florida, Owner hereby agrees that, for a period of _____ days from this date, Broker shall have the sole and exclusive right and authority to find and procure a purchaser for said property at the following price and terms, or any other price and terms acceptable to Owner: _____. Even if Owner finds a purchaser during this time period, Owner shall pay Broker the commission herein agreed upon.

2. If Broker finds such a purchaser during the period of this listing, Owner shall enter into a written contract of sale containing the price and terms above set forth.

3. As Broker's consideration for finding such a purchaser, Owner shall pay Broker a commission of _____% of the sales price of said property, said commission to be paid at the closing of the sale. The commission is due whether the sale is closed during the listing period or afterwards, as long as the purchaser was found and a contract was signed during the listing period.

4. Owner agrees: to refer all leads and inquiries to Broker; to provide Broker and prospective purchasers access to the property for inspection and showing; to allow Broker to place "for sale" signs on the property; and to cooperate with Broker in the sale of the property, except that Owner shall not incur any expense in doing so.

5. Broker agrees to advertise and show the property and to hold open houses at the property on a regular basis, all at Broker's expense.

6. Owners represent and warrant to Broker that Owners are the fee simple absolute owners of the property.

In Witness Whereof, etc.

3.3 Nonexclusive Listing Agreement — General Form.

Date: _____

To: _____ [Name and address of broker]

I hereby list my property for sale with you as follows: [here describe property] for the sum of _____ dollars (\$_____).

Terms: _____

Balance: _____

Included in the purchase price are the items listed on inventory attached hereto and made a part hereof.

This listing is a nonexclusive one.

I reserve the right to sell the property myself or through any other broker, but not to a prospect submitted directly or indirectly by you.

I reserve the right to cancel this listing at any time before you have found a buyer.

This listing shall continue until you have sold the property or until I have notified you that it is cancelled.

If you sell the property directly or indirectly, I will pay you a commission of _____ dollars, and will furnish the buyer with the usual evidence of title, and convey the same by warranty deed, and upon the closing of the deal all the usual items are to be prorated.

All deposits made shall be retained by you in a trust account and if forfeited by the buyer, shall first apply to your commission; the balance, if any, shall belong to the undersigned.

This contract shall remain in force until _____, 20__.

Owner signature: _____

The above contract is hereby accepted this _____ day of _____, 20__.

Broker signature: _____

3.4 Nonexclusive Listing Agreement — Another Form.

Know All Men by These Presents, that the undersigned, having a principal place of business at the address hereinbelow indicated, does hereby certify and agree:

1. **Warranty.** The undersigned is duly licensed as a real estate broker under the laws of the State of Florida.

2. **Engagement.** The undersigned is hereby engaged as such real estate broker by _____ hereinafter called "Owner," in connection with the sale of premises known as _____.

3. **Terms and Conditions.** The terms and conditions of the contract of brokerage between the undersigned and the Owner in connection with the premises above referred to are as follows:

(a) No commissions shall be deemed earned on the part of the undersigned until:

(1) a contract of sale has been executed by the Owner and the purchaser upon the terms and conditions acceptable to the Owner in its sole and absolute judgment;

(2) such contract of sale shall have been negotiated and consummated solely through the efforts of the undersigned as broker; and

(3) the deed conveying title be delivered pursuant to the terms, covenants and conditions of the said contract of sale and the full purchase price be paid.

(b) In the event the Owner shall fail to have a good title to said premises so as to be able to convey the same in accordance with the contract of sale, no commission shall be deemed earned on the part of the undersigned.

(c) If after the Owner has entered into the contract of sale with the purchaser, title does not close whether due to the fault or default of the Owner or purchaser or for any other reason whatsoever except Owner's willful default in the performance of said contract of sale, no commission shall be deemed earned on the part of the undersigned, and in the event title does not close because of the purchaser's default, the Owner shall not be obligated or required to resort to any legal remedy for the enforcement of the purchaser's obligations under the said contract of sale and the Owner shall not be obligated to the broker for the payment of any commission.

(d) In any event this Agreement may be terminated by the Owner at any time by either oral or written notice to the undersigned; this engagement and the listing of the premises with the undersigned shall in no event be deemed to be an exclusive listing thereof with the undersigned, and the Owner may engage and retain other and additional brokers to sell the premises; the premises may be withdrawn from sale by the Owner at any time, upon either oral or written notice, without liability of any kind on the part of the Owner to the undersigned; the purchase price at which the premises were listed with the undersigned may be changed at any time by the Owner without liability of any kind to the undersigned; and the Owner shall in no event be liable

or responsible to the undersigned for any expenses, fees or disbursements paid or incurred by the undersigned in connection with its endeavors to sell the premises.

(e) The commission payable to the undersigned, if earned pursuant to the provisions hereof, shall be paid upon the delivery of the deed and the payment of the purchase price, and such commission shall be the sum of \$_____.

4. **Entire Contract.** This contains all the terms of such engagement and shall not be varied, changed or amended except by a written agreement signed by both the Owner and the broker.

In Witness Whereof, this agreement was signed on the _____ day of _____, 20_____.

3.5 Listing Agreement — Exclusive Right of Sale.

This Agreement is made this _____ day of _____, 20_____, by and between _____, herein called "Owner" and _____, herein called "Broker."

Now, therefore, the parties agree as follows:

1. **Employment.** Owner (which term shall include both the singular and plural) employs Broker to find a purchaser for Owner's property legally described on Exhibit A attached to and incorporated herein by this reference, and list the property with other Brokers in accordance with the program outlined below. Owner hereby gives Broker for an unlimited period, subject to notice of cancellation by Broker or Owner, the exclusive right and authority to find a purchaser for said property of the Owner as may be determined whenever Owner may choose to place the property on the market for sale, at which time the price and terms shall be made more specific and incorporated in this Agreement. Taxes, rents and interest on encumbrances shall be adjusted pro rata at date of closing. Improvement liens are to be paid by Owner.

2. **Owner's Covenants.** Owner agrees that:

A. When a purchaser is found for said property on the terms acceptable to Owner, Owner agrees to enter into a written sales contract with the purchaser.

B. Owner agrees to pay Broker a fee of _____ percent (_____%) of the gross sales price, payable at closing.

C. Such compensation shall be paid if property is sold, conveyed, or otherwise transferred within _____ days after the termination of this authority or any extension thereof to anyone with whom Broker has had negotiations prior to final termination. However, Owner shall not be obligated to pay such compensation if a valid listing agreement is entered into during the term of

said protection period with another licensed real estate Broker and the sale, lease, or exchange of the property is made during the term of said protection period.

D. Negotiation for lease or rent of the above property during the term of this agreement shall be conducted through Broker only, and the fee shall be paid to Broker.

E. In the event Owner decides, because of a change in circumstances, not to sell the above described property, then Owner may, by first signing a withdrawal agreement and simultaneously paying a fee of \$_____, cancel this agreement. In the event the property is sold within _____ days of such cancellation, then the cancellation will be considered void and the Owner will be obliged to pay Broker a _____ percent (_____%) fee in addition to the cancellation fee previously paid.

F. Owner hereby gives Broker the right to use supra-lock. Risk of loss resulting from use of supra-lock shall be responsibility of _____.

G. Owner hereby gives Broker the right to show property at reasonable times. If rented, Owner shall have the responsibility to arrange with tenant Broker's right to show property.

3. **Broker's Covenants.** In consideration of this Listing Agreement, Broker agrees:

A. To carefully inspect said property and secure adequate information regarding it.

B. To market said property as Broker deems advisable.

C. To furnish a photo listing and any additional information when requested by any co-operating Broker, and to assist co-operating Brokers in closing a sale of said property when requested to do so.

D. To promptly pay a fee to any co-operating Broker who effects a sale of said property when said fee is received by Broker.

4. **Referrals.** In consideration of the above, the Owner agrees to refer immediately to Broker for attention all inquiries of Brokers or others interested in purchasing said property.

5. **Authority.** Owner certifies full right and authority to sell and convey the above property, and this agreement shall be binding and obligatory on the heirs, executors, administrators and assigns of Owner.

6. **Commission Due on Any Sale.** Owner agrees that any sale or agreement for sale of the property which is made during the term of this agreement shall result in Broker being entitled to a commission.

7. No Discrimination. Owner acknowledges that Federal, State and local laws forbid discrimination on the basis of race, color, creed, religion, ethnic background, sex or disability and Owner shall not so discriminate among any prospective purchasers.

In Witness Whereof, the parties hereto have executed this Listing Agreement as of the day and year first above written.

3.6 Real Estate Broker's Commission Agreement.

_____, hereby certifies that he or she is the sole broker who is negotiating the sale of premises known by street number _____, _____, and more particularly described in a certain proposed contract for the sale of said premises between _____, as seller, and _____, as purchaser, and that he or she heretofore agreed and hereby ratifies and agrees, in consideration of the premises, and of the payment to him or her by the seller of the sum of one dollar (\$1.00), the receipt whereof is hereby acknowledged, and of the execution and delivery of the foregoing contract, that the full brokerage commission in connection with said sale shall be the amount of \$_____, and such commission is not to be considered as earned and is not to be due or payable unless and until the full purchase price is paid to the seller and deed delivered to the purchaser, all as provided in said contract. If the said full purchase price is not paid, or if the said deed is not delivered and accepted, for any cause or reason whatsoever, including, but without limiting the generality of the foregoing, the unmarketability of seller's title or the failure to perform said contract by either the seller or the purchaser, the said commission is not to be considered as earned and is not to be due and payable, and the broker shall not have any claim whatsoever against the seller for commission, or other compensation, in connection with this transaction. The broker further agrees to hold the seller, its successors and assigns, harmless from the claims of any other real estate broker, licensed or otherwise, or attorney, in connection with the said contract of sale or the sale of said premises to the purchaser named in said contract or his assigns.

In Witness Whereof, this agreement was signed on the _____ day of _____, 20_____.

3.7 Real Estate Broker's Commission Agreement — Payable on Consummation.

If and when title to premises Nos. _____ Street, City of _____, State of Florida, is passed and the full consideration paid, pursuant to the contract for sale between _____ and _____, dated _____, 20____, we agree to pay to _____ the sum of _____ percent on the first _____ dollars of the purchase price and _____ percent on the balance thereof, as its commission for effecting the consummation of the sale and payment of the consideration for said premises, pursuant to the terms of said contract, it being distinctly understood that we shall not be under any obligation whatsoever to pay the above sum or any other sum or sums of money hereunder, if for any reason not due to our default title to said

premises is not closed, and the full consideration paid as aforesaid, and we shall be liable only in the event of passing of title or in the event of failure to pass title through our default.

In Witness Whereof, this agreement was signed on the _____ day of _____, 20____.

3.8 Commission Agreement.

To: _____

Date: _____, 20__

In consideration of the disclosure by you to _____ ("Owner") of the name of a certain individual, owner hereby agrees as follows:

1. Upon signing of this agreement, _____ ("Broker") shall disclose to Owner by writing on the line at the bottom of this agreement the name of a certain individual (the "Representative") who represents one or more individuals, entities, or groups of individuals and entities (the "Buyers") who are interested in buying real estate.

2. Owner hereby agrees to pay Broker a real estate commission equal to _____ percent (_____%) of the sales price of all interests in real estate purchased, exchanged, leased, optioned, or otherwise acquired by the Representative or Buyers from Owner or from any corporation, limited partnership, LLC, partnership, joint venture, or other entity in which Owner is an investor, manager, partner, broker, salesman, or consultant. If more than one interest is acquired over a period of time, then a separate _____% commission shall be paid for each interest purchased. There is no dollar limit on the total commissions payable under this agreement, except that the commissions shall always be _____% of the sales price of each interest acquired.

3. The term of this agreement commences on _____, 20__, and shall be effective at all times thereafter.

4. The commission for each real estate interest acquired shall be paid by Owner to Broker in cash at the closing of each respective acquisition. Payment of the commission shall not be delayed or postponed for any reason. Time is of the essence of this agreement.

5. Broker shall have the right at all times to an accounting from Owner and any other entity involved and shall have the right to receive from them upon request accurate information relating to the matters contained in this agreement.

6. Owner acknowledges that it does not presently know the name of the Representative and that the disclosure of the name will be material and valuable information. Owner also acknowledges and agrees that it shall be conclusively presumed that Broker found a ready,

willing and able buyer if the Representative or Buyers acquire any real estate interest as described herein. After Broker discloses the name of the Representative, no further acts or services shall be required of Broker in order to earn the commissions. Furthermore, Broker shall have no advisory, evaluative or decision-making function with regard to the Representative, Buyers, Owner, or anyone else and Broker shall not be required to negotiate, participate in or otherwise consummate any acquisition or other deal in order to earn the commissions.

7. Owner agrees to indemnify Broker, defend Broker, and hold Broker harmless of and from any and all losses, claims, demands, damages, liabilities and expenses, including attorneys fees, arising out of any transactions, negotiations, contracts or other matters involving the Representative or the Buyers or arising out of any other matter relating to this agreement in any way.

8. The payment of the commissions shall be disclosed as required by law.

9. Owner acknowledges and agrees that the names of the Representative and Buyers are valuable information. Owner agrees and covenants with Broker to keep this information strictly confidential and not to disclose, orally or in writing, directly or indirectly, the names or other information about the Representative or Buyers to any other person, firm, corporation, or other entity without the prior written consent of Broker. Owner also agrees not to allow anyone else under its control (such as employees, officers, agents, associates, partners, venturers, consultants) to make such disclosures. Owner also agrees to refer to Broker all requests from others for disclosure of the names or other information about the Representative or Buyers.

10. Broker shall have the right to enforce this agreement and all of its provisions by injunction. Broker shall have the right to recover damages, interest at the highest lawful contract rate, and attorneys fees in case of the breach or violation of this agreement.

In witness whereof, etc.

3.9 Notice of Submittal.

To: _____

Date: _____

Please be advised that we have shown and submitted your property, listed with us, and located at _____ to _____. Please treat this information as confidential. Should the above named party or parties contact you, kindly refer them to the undersigned. In event of sale, exchange or lease to said prospect(s) or their representatives, the undersigned shall be recognized as the procuring broker.

Broker signature: _____

CHAPTER 4. CONTRACTS FOR SALE AND PURCHASE

4.1 Contract for Sale and Purchase — Florida Realtors - Florida Bar Forms.

Forms prepared by the Florida Realtors and The Florida Bar for state-wide use have been available for decades. They have been updated many times and are constantly revised to reflect the current state of the law and practice in Florida.

These forms may be purchased from various vendors, such Florida Lawyers Support Services, Inc. flssi.org and Alta Star Software altastar.com.

These contract forms are very detailed and tend to favor buyers. As a result, it is common for the parties to negotiate revisions to these contract forms prior to signing and to include those revisions in an addendum to be signed as part of the contract and at the same time as the contract is signed.

4.2 Contract for Sale and Purchase of Real Estate — Seller's Form; Sale to Tenant.

AGREEMENT made this _____ day of _____, 20____, between _____, hereinafter referred to as "Sellers", and _____, hereinafter referred to as "Buyers", of _____.

WHEREAS, Buyers presently lease from Sellers certain real property in _____ County, Florida, which Buyers desire to purchase from Sellers, and Sellers desire to sell to Buyers upon the terms and conditions set forth herein;

NOW, THEREFORE in consideration of their mutual promises made herein, and in consideration of the deposit paid by Buyers to Sellers as described herein, the parties hereby agree as follows:

1. **Purchase and Sale.** Sellers agree to sell to Buyers, and Buyers agree to purchase from Sellers, upon the terms and conditions set forth herein, the following described real property in _____ County, Florida, hereinafter called the "Property":

2. **Purchase Price.** Buyers shall pay Sellers the purchase price of _____ Dollars (\$_____) for the Property, which price shall be payable as follows:

a. Buyers shall pay Sellers _____ Dollars (\$_____) upon execution of this Contract.

b. Buyers shall assume the existing mortgage in favor of _____ bearing interest at the rate of _____% per annum and having an approximate present principal balance of \$_____.

Buyers shall use reasonable diligence to obtain approval of the assumption and to furnish _____ with all information necessary for the assumption. The amount of any escrow deposits held by _____ shall be credited to Sellers. If _____ refuses to approve the assumption by Buyers and release of Sellers, either party may cancel this Contract.

c. Buyers shall execute and deliver to Sellers a purchase money second mortgage and note in the principal amount of _____ Dollars (\$_____) bearing interest at the rate of _____ percent (_____%) per annum for the first five (5) years with the interest rate increasing to prime rate every five years, being payable in equal monthly payments of _____ Dollars (\$_____) each over a period of fifteen (15) years, with a final balloon payment of all unpaid principal and interest due at the end of fifteen years. Said mortgage shall be due upon sale or other disposition of the property by Buyers. The mortgage and note shall be prepared by Sellers' attorney and shall be in a form approved by Sellers' attorney.

d. Buyers shall execute and deliver to Sellers a purchase money third mortgage and note in the principal amount of \$_____ bearing interest at the rate of _____ percent (_____%) per annum being payable in one lump sum payment of principal and interest on or before _____.

Said mortgage shall be due upon sale or other disposition of the property by Buyers. The mortgage and note shall be prepared by Sellers' attorney and shall be in a form approved by Sellers' attorney.

e. Buyers shall pay the Sellers the balance of the purchase price, subject to adjustments and prorations as described herein, by cashier's check at the closing.

3. Title Insurance. Sellers shall deliver to Buyers at the closing a title insurance commitment issued by a qualified title insurer agreeing to issue to Buyers, upon recording of the deed to Buyers, an owner's policy of title insurance in the amount of the purchase price, insuring title of the Buyers to the Property, subject only to liens, encumbrances, exceptions or qualifications set forth in this Contract and those which shall be discharged by Sellers at or before the closing. Buyers shall have _____ () day from the date of receiving the title insurance commitment to examine it. If the title is found defective, the Buyers shall, within _____ () day thereafter, notify Sellers in writing specifying the defects. If said defects render the title unmarketable, Sellers shall have 120 days from receipt of notice within which to remove said defects, and if Sellers are unsuccessful in removing them within said time, Buyers shall have the option of either (1) accepting the title as it then is, or (2) demanding a refund of all monies paid hereunder which shall forthwith be returned to Buyers and thereupon Buyers and Sellers shall be released of all further obligations under this Contract.

4. Time for Acceptance and Effective Date. If this Contract is not executed by both of the Sellers and both of the Buyers on or before _____, this Contract shall not be binding but shall

be null and void. The date of this Contract shall be the date when the last one of the Sellers and Buyers have signed this Contract.

5. **Closing Date.** This transaction shall be closed, and the deed and other closing papers shall be executed and delivered, on or before the _____ day of _____, unless extended by other provisions of this Contract. The closing shall be held at the office of Sellers' attorney in _____, Florida, although the documents may be mailed to the Buyers for signature and returned to Sellers' attorney by the closing date.

6. **Deed.** Sellers shall convey title to the Property by special warranty deed, subject only to the following items: zoning, restrictions, prohibitions and other requirements imposed by governmental authorities; restrictions and matters appearing on the plat or otherwise common to the subdivision; public utility easements of record; taxes for _____ and subsequent years; assumed mortgages and purchase money mortgages.

7. **Occupancy.** Because Buyers presently have possession of the Property under a lease agreement, Buyers assume all risks of loss to the Property and shall be responsible for maintenance of the Property and shall be deemed to have accepted the Property in its existing condition.

8. **Not Assignable.** The Buyers may not assign this Contract because Sellers are relying upon the Buyers personally with regard to the purchase money second mortgage.

9. **Closing Costs.** Buyers and Sellers shall equally pay the following closing costs: documentary stamps on deed and purchase money note and mortgage, intangible tax on mortgages, title insurance on deed and second mortgage, and Sellers' attorneys fees. All other closing expenses shall be paid by the respective party who incurs the expense. Buyers shall pay any assumption fee on the mortgage to be assumed.

10. **Time.** Time is of the essence of this Contract. Any reference herein to time periods of less than six (6) days shall exclude Saturdays, Sundays and legal holidays. Any time period provided herein which ends on a Saturday, Sunday or legal holiday shall extend to 5:00 P.M. of the next full business day.

11. **Proration of Taxes.** Ad valorem real estate taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount and homestead or other exemptions if allowed for said year. If closing occurs at a date when the current year's millage is not fixed, and the current year's assessment is available, taxes will be prorated based upon such assessment and the prior year's millage. If the current's year's assessment is not available, then taxes will be prorated on the prior year's tax.

12. **Default.** If Buyers fail to perform this Contract within the time specified, the deposit paid by the Buyers may be retained by the Sellers as liquidated damages, consideration for execution of

this Contract and in full settlement of any claims, whereupon all parties shall be relieved of all obligations under the Contract; or Sellers, at their option, may proceed at law or in equity to enforce their legal rights under this Contract. If Sellers fail to perform this Contract, the deposit paid by Buyers shall be returned to Buyers. The prevailing party in any litigation arising out of this Contract shall be entitled to recover reasonable attorneys fees and costs.

13. **Prorations.** Taxes and interest shall be prorated as of the date of closing.

14. **Miscellaneous.** Neither this Contract nor any notice hereof shall be recorded in any public records. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their successors in interest. This agreement is the entire understanding of the parties and no prior agreements or representations shall be binding upon any of the parties hereto unless incorporated in this Contract. No modification or change in this Contract shall be valid or binding upon any of the parties unless in writing and executed by the parties to be bound thereby. Each party represents to the other that there is no broker or real estate agent involved in this transaction.

15. **Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

In witness whereof, etc.

4.3 Contract for Sale and Purchase of Real Estate — Another Seller's Form.

AGREEMENT made this ____ day of ____, 20____, between _____, hereinafter referred to as "Seller", and _____, jointly and severally, hereinafter collectively referred to as "Buyer".

In consideration of their mutual promises made herein, and in consideration of the escrow deposit to be paid by Buyer as described herein, the parties hereby agree as follows:

1. **Purchase and Sale.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions set forth herein, the following-described property in _____ County, Florida, hereinafter called the "Property":

The real property and building sometimes known as the _____ Building located at _____, Florida, and legally described as Lots _____ and _____, Block _____, according to plat thereof recorded in Plat Book _____, Page _____, Public Records of _____ County, Florida, of which _____ County was formerly a part.

2. **Purchase Price.** Buyer shall pay Seller the purchase price of _____ DOLLARS (_____) for the Property, which price shall be payable as follows:

a. Buyer shall pay to _____, as Seller's broker and escrow agent, the sum of _____ DOLLARS (\$_____) upon execution of this Contract as an escrow deposit, to be applied toward the purchase price at closing, or otherwise in accordance with this Contract. The escrow deposit shall be paid to the closing agent at closing by local cashiers check.

b. Buyer shall execute and deliver to Seller a promissory note secured by a purchase money first mortgage on the Property in the principal amount of _____ DOLLARS (\$_____) bearing interest at the rate of _____ percent (_____%) per annum commencing _____, 20___. The note shall be payable in _____ () equal monthly payments of _____ (including principal and interest) each beginning on _____, 20__, and a final balloon payment of all unpaid principal and interest shall be due and payable on _____, 20__. Said note and mortgage shall be due upon the sale, lease with option to purchase, contract for deed, or other disposition of the property by Buyer. The note and mortgage shall be prepared by Seller's attorney and shall be in the forms attached hereto as Exhibits "A" and "B". In addition to any other terms required by Seller's attorney, the mortgage shall provide that Buyers shall provide Seller financial information on a monthly basis and shall maintain a bank account just for the operation, maintenance and debt service of the Property with an initial balance of at least \$_____ and subsequent monthly balances averaging on a daily basis at least \$_____.

c. Buyer shall pay the Seller the _____ DOLLARS (\$_____) balance of the purchase price, subject to adjustments and prorations as described herein, by local cashier's check at the closing.

3. **Title Insurance.** Seller shall deliver to Buyer on or before _____, 20__, a title insurance commitment issued by a qualified title insurer agreeing to issue to Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price, insuring title of the Buyer to the Property, subject only to taxes for the year of closing and the other standard exceptions. Buyer shall have three days from the date of receiving the title insurance commitment to examine it. If the title is found defective, the Buyer shall, within said three-day period, notify Seller in writing specifying the defects. If said defects render the title uninsurable, Seller shall have one hundred twenty days from receipt of notice within which to remove said defects, and if Seller is unsuccessful in removing them within said time or if it is not possible to remove them within said time, Buyer shall have the option of either (1) accepting the title as it then is (without an adjustment in price); or (2) demanding a refund of all monies paid hereunder which shall forthwith be returned to Buyer and thereupon Buyer and Seller shall be released of all further obligations under this Contract.

4. **Time for Acceptance and Effective Date.** If this Contract is not executed by both the Seller and the Buyers on or before _____, 20__, this Contract shall not be binding but shall be null and void. The date of this Contract shall be the date when the last one of the Seller and Buyer have signed this Contract.

5. **Closing Date.** This transaction shall be closed, and the deed and other closing papers shall be executed and delivered, on or before _____, 20___, unless extended by other provisions of this Contract. The closing shall be held at the office of Seller's attorney in _____, Florida.

6. **Deed.** Seller shall convey title to the Property by special warranty deed, subject only to the following items: zoning, restrictions, prohibitions and other requirements imposed by governmental authorities; restrictions and matters appearing on the plat or otherwise common to the subdivision; public utility easements of record; taxes for 20___ and subsequent years; easements and restrictions of record.

7. **Occupancy.** Buyer shall receive occupancy at closing, subject to existing tenancies, the rent from which shall be paid to Seller until and through _____, 20___, even if the closing is held prior to said date; provided however, that Seller shall have the right to continue to store tangible personal property of Seller on the Property, without charge, until and through _____, 20___, in order to provide Seller an opportunity to move said items to another storage area, and a written agreement evidencing this right shall be prepared by Seller's attorney and shall be signed by Buyer and Seller at closing. Any such tangible personal property which still remains on the Property after _____, 20___, may be discarded or taken by Buyer if Seller fails to remove said property within ten days after written notice to Seller from Buyer.

8. **Not Assignable.** The Buyers may not assign this Contract without Seller's prior written consent, because Seller is relying upon the Buyers, jointly, severally, and personally with regard to the purchase money note and mortgage.

9. **Closing Costs.** Seller shall pay the following closing costs: documentary stamps on deed, owners title insurance, and Seller's attorneys fees. Buyer shall pay the following closing costs: documentary stamps and intangible tax on note and mortgage, recording deed, recording mortgage, mortgagee title insurance, and Buyer's attorneys fees. All other closing expenses shall be paid by the respective party who incurs the expense.

10. **Time.** Time is of the essence of this Contract. Any reference herein to time periods of less than six (6) days shall exclude Saturdays, Sundays and legal holidays. Any time period provided herein which ends on a Saturday, Sunday or legal holiday shall extend to 5:00 P.M. of the next full business day.

11. **Proration of Taxes.** Ad valorem real estate taxes shall be prorated as of closing date based on the tax for the year of closing with due allowance made for maximum allowable discount. If closing occurs at a date when the current year's millage is not fixed, and the current year's assessment is available, taxes will be prorated based upon such assessment and the prior year's millage. If the current year's assessment is not available, then taxes will be prorated on the prior year's tax.

12. **Default.** If Buyer fails to perform this Contract within the time specified, the escrow deposit paid by the Buyer may be demanded by the Seller as liquidated damages, consideration for execution of this Contract and in full settlement of any claims, whereupon the escrow agent shall disburse said deposit to Seller and the parties shall be relieved of all obligations under the Contract; or Seller, at its option, may proceed at law or in equity to enforce its legal rights under this Contract or to collect damages from Buyer. If Seller fails to perform this Contract and Buyer fully performs this Contract, the deposit paid by Buyer shall be returned to Buyer upon Buyer's demand, whereupon the parties shall be relieved of all obligations under the Contract; or Buyer, at its option, may proceed at law or in equity to enforce its legal rights under this Contract or to collect damages from Seller. Both Seller and Buyer shall have the right to specific performance in case of default by the other party. The prevailing party in any litigation arising out of this Contract shall be entitled to recover reasonable attorneys fees and costs.

13. **Commission to Realtor.** Seller agrees to pay _____ at closing from the closing proceeds the sum of _____ Dollars (\$ _____), being _____ percent (_____%) of the purchase price, as the full commission due any and all brokers for this sale. Any arrangement for sharing of the commission with another realtor shall not be an agreement with Seller, and Seller shall have no obligation to pay any other broker a fee or commission of any kind. If Buyer defaults on this Contract and forfeits the escrow deposit, no part of said escrow deposit shall be paid to any broker owned by or related to any of the Buyers.

14. **Buyer's Conditions Precedent.** The following are conditions precedent to closing; and if Buyer does not give to Seller before _____, 20____, either written notice of satisfaction of these conditions or written notice of waiver of these conditions, then either party may cancel this Contract within five days after said date by giving written notice to the other party, in which case the escrow deposit shall be returned to Buyer and the parties shall be relieved of all obligations under the Contract; but if neither party so cancels this Contract before _____, 20____, then this Contract shall remain in full force and effect and these conditions shall be deemed waived by Buyer:

a. The roof, walls, floors, plumbing, electrical system, building structure, load-bearing capacity and other elements, systems and capabilities of the Property shall be inspected by Buyer and by licensed contractors, pest control operators, architects or engineers at Buyer's expense and the results of said inspections shall be satisfactory to Buyer for Buyer's purposes. Seller makes no warranties or representations of any kind. The Property is being sold "as is". Seller makes no warranties or representations with regard to the existence or nonexistence of termites or other wood destroying organisms or damage caused by such organisms. This inspection period is being provided so that Buyer can fully investigate the Property since no representations, statements, assurances, guarantees, warranties or other encouragement is being given by Seller in any way with regard to the quality or fitness of the Property. Seller shall not be responsible to replace or repair any items found by Buyer to be deficient. Buyer's inspection shall be conducted in a reasonable manner and shall not disturb the Property or its present tenants. Buyer shall give Seller reasonable notice before entering the Property each time. Buyer hereby agrees to

indemnify, defend and hold Seller harmless from any and all claims, losses, expenses, liability, and damages to person or property which may arise out of the inspection of the Property by Buyers or their agents, employees, or inspectors.

b. Seller shall furnish Buyer such historical information concerning the income and expenses of the Property as Seller has reasonably available and as Buyer requests to examine, including but not limited to the real and personal property tax bills, and Buyer shall find such information acceptable to Buyer.

15. Information Regarding Conditions. Buyer shall proceed expeditiously to satisfy the conditions precedent set forth in Paragraph 14. Buyer shall keep Seller regularly informed of the progress and shall furnish Seller copies of all information obtained, including but not limited to reports and correspondence.

16. Seller's Conditions Precedent. The following are conditions precedent to closing; and if Seller does not give to Buyer by _____, 20____, either written notice of satisfaction of these conditions or written notice of waiver of these conditions, then either party may cancel this Contract within five days after said date by giving written notice to the other party, in which case the escrow deposit shall be returned to Buyer and the parties shall be relieved of all obligations under the Contract; but if neither party so cancels this Contract before _____, 20____, then this Contract shall remain in full force and effect and these conditions shall be deemed waived by Seller:

a. Buyers shall, by _____, 20____, furnish Seller with a current financial statement prepared by each Buyer's certified public accountants showing income, assets and such other information about each Buyer, containing such information as is usually found on personal financial statements submitted to institutional lenders, and each Buyer shall thereafter promptly furnish Seller such other information concerning the assets, income and expenses of each Buyer as Buyer has reasonably available, as is usually requested by institutional lenders for commercial and residential lending purposes, and as Seller requests to examine, and Seller finds such information acceptable to Seller. Such financial statements of Buyers shall not show the income or assets which are held or earned either by the wife of any Buyer or in the joint names of any Buyer and his wife, it being the intent of the financial statements to show the true financial condition of the individual Buyers since their wives will not be signing the note and mortgage.

b. Seller may obtain credit reports on Buyers and the partnership (each Buyer hereby consents to Seller obtaining a credit report), and this contract is contingent upon Seller finding the reports favorable to Seller.

17. Miscellaneous. Neither this Contract nor any notice hereof shall be recorded in any public records. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their successors in interest. This agreement is the entire understanding of the parties and no prior agreements or representations shall be binding upon any of the parties hereto unless

incorporated in this Contract. No modification or change in this Contract shall be valid or binding upon any of the parties unless in writing and executed by the parties to be bound thereby.

18. **Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

In Witness Whereof, etc.

4.4 Contract for Sale and Purchase of Real Estate — "As-Is" Sale.

AGREEMENT made this _____ day of _____, 20____, between _____, hereinafter referred to as "Seller", and _____, as joint tenants with full rights of survivorship, of _____, _____, Florida, hereinafter collectively referred to as "Buyer".

In consideration of their mutual promises made herein, and in consideration of the escrow deposit to be paid by Buyer as described herein, the parties hereby agree as follows:

1. **Purchase and Sale.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions set forth herein, the following-described real property in _____ County, Florida, hereinafter called the "Property":

Lot _____, Block _____, according to the plat thereof recorded in Plat Book _____, Page _____, Public Records of County, Florida.

The Property is located at _____, _____, Florida.

This sale includes the existing refrigerator and stove.

2. **Purchase Price.** Buyer shall pay Seller the purchase price of _____ DOLLARS (\$ _____) for the Property, which price shall be payable as follows:

A. Buyer shall pay to _____ (Seller's attorney) the sum of _____ DOLLARS (\$ _____) upon execution of this Contract as an escrow deposit, to be applied toward the amount due from Buyer at closing, or otherwise in accordance with this Contract.

B. Buyer shall assume the existing mortgage on the Property, which is a mortgage to _____ ("_____") having an approximate present principal balance of \$_____. Buyer shall immediately apply for approval of the assumption of the mortgage, shall proceed in good faith to obtain any necessary approval expeditiously, and shall have Seller released from personal liability on the mortgage by a written instrument signed by the holder of the mortgage at closing.

Buyer shall pay any and all costs and fees relating to assumption and approval of assumption and release as to the mortgage. This sale is subject to and conditioned upon both approval of the assumption by _____ and release by _____ of Seller's liability on the note and mortgage.

Either party may cancel this Contract by written notice to the other party if these conditions are not satisfied by _____, 20____.

C. Buyer shall pay the Seller the balance of the purchase price (\$_____ less \$_____ less the principal balance of the mortgage assumed), subject to adjustments and prorations as described herein, by local cashier's check at the closing.

3. Title Insurance. Seller shall furnish to Buyer at closing a title insurance commitment issued by a qualified title insurer agreeing to issue to Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price, insuring title of the Buyer to the Property. If the title is found to be uninsurable, Buyer shall have the option of either (1) accepting the title as it then is (without any adjustment in price); or (2) demanding a refund of all monies paid hereunder which shall forthwith be returned to Buyer and thereupon Buyer and Seller shall be released of all further obligations under this Contract.

4. Time for Acceptance; Effective Date. If this Contract is not executed by both the Seller and the Buyer on or before _____, 20____, this Contract shall not be binding but shall be null and void. The date of this Contract shall be the date when the last of the Seller and Buyer have signed this Contract.

5. Closing Date. This transaction shall be closed, and the deed and other closing papers shall be executed and delivered, not later than _____, 20____, unless extended by other provisions of this Contract. The closing shall be held at the office of Seller's attorney in _____, Florida.

6. Deed. Seller shall convey title to the Property by special warranty deed, subject to the following items: zoning, restrictions, prohibitions and other requirements imposed by governmental authorities; restrictions and matters appearing on the plat or otherwise common to the subdivision; public utility easements of record; taxes for 20____ and subsequent years; easements and restrictions of record; the mortgage to be assumed; encroachments, overlaps, boundary line disputes or other matters which would be disclosed by an accurate survey or inspection of the Property; easements or claims of easements not shown by the public records.

7. Buyer's Right to Inspect — Property Sold "As Is". Buyer acknowledges that Buyer has had the right to have inspections performed with respect to the Property at Buyer's own expense prior to signing this Contract. Buyer hereby acknowledges that Seller does not intend to conduct its own inspection of the Property and that Seller is under no duty to discover any defects prior to the closing. The Property is being sold "as is", with no express or implied representation or warranties by Seller as to physical conditions, quality of construction, workmanship, or fitness in general or for any particular purpose. Buyer hereby acknowledges and agrees that the Property is being sold with certain known defects, including, but not limited to the following:

_____. The parties agree that the above-mentioned list of known defects is not intended to be exhaustive and that the Property may contain other defects which might be discovered through the exercise of Buyer's right to inspect the Property before signing this Contract.

8. **Not Assignable.** The Buyer may not assign this Contract without Seller's prior written consent.

9. **Closing Costs.** Seller shall pay the following closing costs: owner's title insurance premium, documentary stamps on deed and Seller's attorneys fees. Buyer shall pay the following closing costs: mortgage assumption and release fees and costs, documentary stamps and other taxes on assumed mortgage, recording deed, recording mortgage documents, mortgagee title insurance, survey (if desired), termite inspection (if desired), and Buyer's attorneys fees. All other closing expenses shall be paid by the respective party who incurs the expense. Buyer shall be responsible for ordering and obtaining a termite inspection and a survey if Buyer desires either of these.

10. **Time.** Time is of the essence of this Contract. Any reference herein to time periods of less than six (6) days shall exclude Saturdays, Sundays and legal holidays. Any time period provided herein which ends on a Saturday, Sunday or legal holiday shall extend to 5:00 P.M. of the next full business day.

11. **Proration of Taxes.** Ad valorem real estate taxes shall be prorated on the closing statement as of the date of closing based on the tax for the year 20____.

12. **Default.** If Buyer fails to perform this Contract in any respect, the escrow deposit shall be paid to Seller to apply toward Seller's expenses, and Seller may also obtain specific performance of this Contract and may also proceed at law or in equity to enforce its legal rights under this Contract and to collect damages from Buyer, and may proceed with these remedies alternatively or concurrently.

13. **No Broker.** The parties hereby acknowledge that no broker is involved in this transaction and that no commission is due anyone on this sale.

14. **Miscellaneous.** This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their successors in interest. This agreement is the entire understanding of the parties and no prior agreements or representations shall be binding upon any of the parties hereto unless incorporated in this Contract. No modification or change in this Contract shall be valid or binding upon any of the parties unless in writing and executed by the parties to be bound thereby. Each Buyer is jointly and severally obligated under this Contract.

15. **Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over

time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

In Witness Whereof, etc.

4.5 Real Estate Sale Contract — Basic Form.

AGREEMENT made this _____ day of _____, 20____, between _____, hereinafter referred to as "Sellers", of _____, and _____, hereinafter referred to as "Buyers", of _____.

IN CONSIDERATION of their mutual promises made herein, and in consideration of the deposit paid by Buyers to Sellers as described herein, the parties hereby agree as follows:

1. **Purchase and Sale.** Sellers agree to sell to Buyers, and Buyers agree to purchase from Sellers, upon the terms and conditions set forth herein, the following described real property in _____ County, Florida, hereinafter called the "Property", which is located at _____:

[Type legal description here]

2. **Purchase Price.** Buyers shall pay Sellers the purchase price of _____ Dollars (\$_____) for the Property, which price shall be payable as follows:

a. Buyers shall pay Sellers _____ Dollars (\$_____) upon execution of this Contract.

b. Buyers shall assume the existing mortgage in favor of _____ bearing interest at the rate of _____% per annum and having an approximate present principal balance of \$_____.

Buyers shall use reasonable diligence to obtain approval of the assumption and to furnish the mortgage holder with all information necessary for the assumption. The amount of any escrow deposits held by the mortgage holder shall be credited to Sellers. If the mortgage holder refuses to approve the assumption by Buyers and release of Sellers, either party may cancel this Contract.

c. Buyers shall execute and deliver to Sellers a purchase money second mortgage and note in the principal amount of _____ Dollars (\$_____) bearing interest at the rate of _____ percent (_____%) per annum for the first _____ (_____) years with the interest rate increasing to prime rate every _____ years, being payable in equal monthly payments of _____ Dollars (\$_____) each over a period of _____ (_____) years, with a final balloon payment of all unpaid principal and interest due at the end of _____ () years. Said mortgage shall be due upon sale or other disposition of the property by Buyers. The mortgage and note shall be prepared by Sellers' attorney and shall be in a form approved by Sellers' attorney.

d. Buyers shall execute and deliver to Sellers a purchase money third mortgage and note in the principal amount of \$_____ bearing interest at the rate of _____ percent (_____%) per annum being payable in one lump sum payment of principal and interest on or before _____. Said mortgage shall be due upon sale or other disposition of the property by Buyers. The mortgage and note shall be prepared by Sellers' attorney and shall be in a form approved by Sellers' attorney.

e. Buyers shall pay the Sellers the balance of the purchase price, subject to adjustments and prorations as described herein, by cashier's check at the closing.

3. Title Insurance. Sellers shall deliver to Buyers at the closing a title insurance commitment issued by a qualified title insurer agreeing to issue to Buyers, upon recording of the deed to Buyers, an owner's policy of title insurance in the amount of the purchase price, insuring title of the Buyers to the Property, subject only to liens, encumbrances, exceptions or qualifications set forth in this Contract and those which shall be discharged by Sellers at or before the closing.

Buyers shall have _____ () days from the date of receiving the title insurance commitment to examine it. If the title is found defective, the Buyers shall, within _____ () days thereafter, notify Sellers in writing specifying the defects. If said defects render the title unmarketable, Sellers shall have one hundred twenty (120) days from receipt of notice within which to remove said defects, and if Sellers are unsuccessful in removing them within said time, Buyers shall have the option of either (1) accepting the title as it then is, or (2) demanding a refund of all monies paid hereunder which shall forthwith be returned to Buyers and thereupon Buyers and Sellers shall be released of all further obligations under this Contract.

4. Time for Acceptance and Effective Date. If this Contract is not executed by both of the Sellers and both of the Buyers on or before _____, this Contract shall not be binding but shall be null and void. The date of this Contract shall be the date when the last one of the Sellers and Buyers have signed this Contract.

5. Closing Date. This transaction shall be closed, and the deed and other closing papers shall be executed and delivered, on or before the _____ day of _____, unless extended by other provisions of this Contract. The closing shall be held at the office of Sellers' attorney in _____, Florida, although the documents may be mailed to the Buyers for signature and returned to Sellers' attorney by the closing date.

6. Deed. Sellers shall convey title to the Property by statutory warranty deed, subject only to the following items: zoning, restrictions, prohibitions and other requirements imposed by governmental authorities; restrictions and matters appearing on the plat or otherwise common to the subdivision; public utility easements of record; taxes for the year _____ and subsequent years; assumed mortgages and purchase money mortgages.

7. Occupancy. Buyers shall be entitled to occupancy at closing.

8. **Not Assignable.** The Buyers may not assign this Contract because Sellers are relying upon the Buyers personally with regard to the purchase money mortgage.

9. **Closing Costs.** Buyers and Sellers shall equally pay the following closing costs: documentary stamps on deed and purchase money note and mortgage, intangible tax on mortgages, title insurance on deed and second mortgage, and Sellers' attorneys fees. All other closing expenses shall be paid by the respective party who incurs the expense. Buyers shall pay any assumption fee on the mortgage to be assumed.

10. **Time.** Time is of the essence of this Contract. Any reference herein to time periods of less than six (6) days shall exclude Saturdays, Sundays and legal holidays. Any time period provided herein which ends on a Saturday, Sunday or legal holiday shall extend to 5:00 P.M. of the next full business day.

11. **Proration of Taxes.** Ad valorem real estate taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount and homestead or other exemptions if allowed for said year. If closing occurs at a date when the current year's millage is not fixed, and the current year's assessment is available, taxes will be prorated based upon such assessment and the prior year's millage. If the current's year's assessment is not available, then taxes will be prorated on the prior year's tax.

12. **Default.** If Buyers fail to perform this Contract within the time specified, the deposit paid by the Buyers may be retained by the Sellers as liquidated damages, consideration for execution of this Contract and in full settlement of any claims, whereupon all parties shall be relieved of all obligations under the Contract; or Sellers, at their option, may proceed at law or in equity to enforce their legal rights under this Contract. If Sellers fail to perform this Contract, the deposit paid by Buyers shall be returned to Buyers. The prevailing party in any litigation arising out of this Contract shall be entitled to recover reasonable attorneys fees and costs.

13. **Prorations.** Taxes and interest shall be prorated as of the date of closing.

14. **Miscellaneous.** Neither this Contract nor any notice hereof shall be recorded in any public records. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their successors in interest. This agreement is the entire understanding of the parties and no prior agreements or representations shall be binding upon any of the parties hereto unless incorporated in this Contract. No modification or change in this Contract shall be valid or binding upon any of the parties unless in writing and executed by the parties to be bound thereby. Each party represents to the other that there is no broker or real estate agent involved in this transaction.

15. **Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in

Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

In Witness Whereof, etc.

4.6 Real Estate Sale Contract — Seller to Construct Residence Similar to Model Home.

Agreement, made and dated _____, 20____, between _____, a _____ corporation having an office at _____, hereinafter called the Seller, and _____ and _____, husband and wife, residing at _____, hereinafter called the Purchasers.

1. **Sale.** The Seller agrees to sell and convey and the Purchasers agree to purchase, upon the terms and conditions set forth in this contract, the property, hereinafter called the premises, described as follows: [here describe].

Together with all right, title and interest of the Seller, if any, of, in and to the land lying in the bed of the street, road or avenue in front of and adjoining the said premises to the center line thereof, provided such street, road or avenue in front of and adjoining the above described premises is, at the time of closing of title, dedicated to, and under maintenance by the town, city, village or other municipality in which the premises are situate, and if, at the time of closing of title, such street, road or avenue is not dedicated and maintained as aforesaid, then the Seller shall grant to the Purchasers a good and sufficient easement of ingress and egress to and from the nearest public highway.

2. **Seller to Erect Dwelling.** The Seller agrees, at its own cost and expense, to erect and complete, a _____ family dwelling substantially similar to the Model House Type _____ on exhibit by the Seller, which dwelling shall be constructed in accordance with the requirements as to materials and workmanship of the municipality wherein it is or will be located, and with the requirements of the lending institution which shall make the mortgage loan hereinafter set forth. The said dwelling shall be erected in accordance with the approved plans and specifications on file with the _____ or the _____ for that type of house if the mortgage herein provided for is to be insured by either of those agencies. The Seller reserves the right to make such changes or substitutions in the construction as may be required, authorized or approved by the lending institution or by governmental agencies having jurisdiction thereof. The Seller shall determine the exterior color and design to fit into the general pattern of the development.

3. **Items Included in Sale.** Included in this sale are the following: (a) A 4 burner range, or in the event that Purchasers shall furnish a range prior to the title closing, to connect the same and allow Purchasers the sum of \$_____ in the adjustments at title closing. (b) Entire plot to be graded, front of house only to be landscaped. (c) An air conditioning system. (d) Kitchen cabinets. (e) Tile on kitchen floor. (f) Electrical fixtures. (g) Plumbing and heating plants and fixtures. (h) Within 10 days of notification, the Purchasers shall select wallpaper at a place to be

designated by the Seller or Seller's painting contractor at list price of _____ cents per roll to be installed at Seller's expense. If the Purchasers shall select higher priced wallpaper they agree to pay such additional cost and the additional cost or charge of the painting contractor for installing the same. Painting of ceilings to be white casein, woodwork shall be white oil paint. Except as otherwise specifically agreed upon the Purchasers may not select more than one design of wallpaper to be used on all walls in any one room. Title to all articles of personal property included in this sale shall be delivered free and clear of encumbrances save and except the lien of the mortgage herein set forth.

All furniture, furnishings and equipment exhibited in the Model House, excepting those specifically set forth, supra, are for exhibition purposes only and are not included in this sale.

4. Purchase Price. The price is _____ dollars payable as follows: _____ dollars on the signing of this contract, the receipt whereof is hereby acknowledged; and _____ dollars represented by cash, good certified or savings bank check, or the proceeds of the mortgage loan upon the delivery of the deed as hereinafter provided.

5. Mortgage Loan. The Purchasers shall make diligent, truthful and proper application to a lending institution designated by the Seller and without delay furnish such verifications of bank accounts and employment or any other instruments or information as may be required by said lending institution in the processing of the Purchasers' application, for the mortgage loan described below. The said loan is to be secured by a first mortgage against the premises herein described:

(a) **Conventional Mortgage.** A first mortgage in the amount of \$ _____, to run for a period of _____ years, to bear interest at the rate of _____% per annum and to be payable in monthly installments which may include amortization of principal, interest, taxes, water rates if not a private company, fire and other hazard insurance premiums, and such other provisions as may be required by the lending institution.

(b) **Mortgage.** A first mortgage in the amount of \$ _____ to be insured by _____ to run for a period of _____ years from the date of the closing of title, to bear interest at the rate of _____% per annum and to be payable in monthly installments which shall include amortization, interest, taxes, water rates if not a private company, fire and other hazard insurance premiums, and such other provisions as may be required by the lending institution and the _____. Said mortgage to contain provision covering prepayment as provided in the _____.

(c) **Mortgage.** A first mortgage in the amount of \$ _____, to be insured by _____, to run for a period of _____ years from the date of the closing of title, to bear interest at the rate of _____% per annum and to be payable in monthly installments which shall include amortization, interest, taxes, water rates if not a private company, fire and other hazard insurance

premiums, _____ mortgage insurance premium, and such other provisions as may be required by _____ or the lending institution.

If the application for the mortgage loan hereinabove set forth is approved and commitment issue, then the Purchasers do hereby agree to execute, acknowledge and deliver such note, mortgage, assumption, extension and modification agreements, affidavits, statements, or any other instruments which may be necessary or required by the lending institution, the _____ or _____ in order to properly effectuate the placing of the mortgage loan above described and the insurance of said mortgage loan by the _____ or _____ as the case may be.

In the event the lending institution or _____ or _____ shall refuse to approve the application aforesaid for the amount set forth and upon the terms and conditions above described, then this contract shall become null and void and upon refunding the money deposited hereunder, both parties hereto shall be released from any liability hereunder.

6. Appraisal Report. If the mortgage applied for hereunder is an _____ mortgage, then, notwithstanding any other provisions of this contract, the Purchasers shall not be obligated to complete the purchase of the premises and shall not incur any penalty or loss of their deposit money or otherwise unless the Seller has delivered to the Purchasers a written statement issued by the _____ setting forth the appraised value of the property for mortgage insurance purposes of not less than \$_____, which statement the Seller shall deliver to the Purchasers promptly after such appraised value statement is made available to the Seller. The Purchasers shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the appraised valuation made by the _____.

7. Contract Subject to Lien of Mortgage. The Purchasers agree that all terms and provisions of this contract are and shall be subject and subordinate to the lien of any building loan mortgage heretofore or hereafter made and any advances heretofore or hereafter made thereon to the full extent thereof without the execution of any further legal documents by the Purchasers.

8. Payment of Costs and Fees. The Seller shall pay the following costs or fees: title examination and title policy to insure the mortgagee; attorney's fees for drawing the mortgage instruments; mortgage documentary stamps and intangible taxes; recording fees of the mortgage instruments; survey, inspection, and approval fees. The Purchaser shall pay to the Seller at the time of closing title, the sum of \$_____, to cover all of the foregoing expenses, charges and fees advanced by the Seller in connection with the mortgage loan. In the event the Purchasers make application for an insured mortgage loan under provisions affecting _____, the appraisal fees or charges in connection with such application shall be paid directly by the Purchasers to the lending institution.

9. **Apportionments.** The Purchasers shall apportion with the Seller and pay such taxes, water rates and insurance premiums on existing policies as may be determined to be due at the time of the closing of title. The Purchasers shall also make the usual and required adjustments with and prepayments to the lending institution.

10. **Inspection Report If Dwelling Not Fully Completed.** In the event the dwelling or it environs shall not be fully completed at the time set by the Seller for the closing of title, the same shall not constitute an objection to such title closing provided the lending institution, or the _____, or the _____, as the case may be, shall issue an inspection report, and an escrow fund is deposited by the Seller with the lending institution if required under such report.

11. **Building Restrictions, Survey, Encroachments, Easements, Etc.** The Purchasers agree to accept said premises subject to:

(a) Building restrictions and regulations of the municipal authorities and amendments and additions thereto in effect at the date of the closing of title.

(b) Any state of facts that an accurate survey may show, provided title is not rendered unmarketable thereby.

(c) Encroachments of stoops, areaways, steps, trim and cornices, if any.

(d) Sewer, water, gas, electric and telephone easements, if any.

(e) Covenants, agreements and restrictions affecting said premises, provided same do not prohibit the erection and maintenance of the structures referred to herein.

(f) If an attached or semi-detached building is so constructed on the premises as to require a common walk or driveway for access to any part thereof, then this property shall be conveyed together with the right to such walk or driveway and subject to the use by others of the premises.

(g) Protective covenants which may be imposed by the Seller in the deed conveying title to the Purchasers.

12. **Assessments.** If, at the time of the delivery of the deed, the premises or any part thereof shall be or shall have been affected by an assessment or assessments which are or may become payable in annual installments, of which the first installment is then a charge or lien or has been paid, then for the purposes of this contract, all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the Seller upon delivery of the deed.

13. **Unpaid Taxes.** The existence of unpaid taxes of any kind at the time of closing title shall not constitute an objection to title provided the Seller shall deposit a sufficient amount with a title company so that said company shall be willing to insure against collection of such taxes from the premises.

14. **Liability of Seller for Failure to Deliver Title.** If for any reason whatsoever the Seller shall be unable to deliver title to the premises in accordance with the provisions hereof, the Seller's liability shall be limited to the return of the Purchasers' payment hereunder together with the net bulk rate cost of title examination without title insurance as actually charged to Purchasers by the title company engaged in making a search of the premises for the lending institution, and upon the return of said sum, this contract shall be and become null and void.

15. **Force Majeure.** The Seller shall endeavor to complete the construction of the dwelling on the premises before the date set for the closing of title. Nevertheless, the Seller may cancel this contract by forwarding its check in the full amount paid by the Purchasers on the execution of this contract, together with a notice in writing, addressed to the Purchasers at their address hereinabove set forth in the event that: (a) any governmental bureau, department or subdivision thereof shall impose restrictions on the manufacture, sale, distribution, or use of materials necessary in the construction of residential housing; or (b) the Seller is unable to obtain materials from its usual sources due to strikes, lockouts, war, military operations and requirements, or national emergencies; or (c) the installation of public utilities is restricted or curtailed.

16. **Adjournment of Closing.** If final action on the mortgage applications shall not have been taken, final inspection or other necessary instruments or reports issued by the agency insuring the mortgage loan, or if the building shall not be ready for occupancy at the date herein set forth for the closing of title, then the said title closing shall be adjourned to a date to be set by the Seller, which date shall not be beyond one month after said dwelling shall be ready for occupancy and all necessary reports, approvals and instruments shall have issued.

17. **Early Completion of Dwelling.** If the house is completed prior to the closing date specified in this contract, then the Purchasers shall accept title on five days written notice from the Seller's attorneys.

18. **Possession.** The Purchasers shall in no event take possession of the premises prior to the time of delivery of the deed and full compliance with the terms of this contract, and should the Purchasers violate this provision, the Purchasers consent that the Seller shall have the right to dispossess him from the premises as a squatter and intruder by summary proceedings.

19. **Default by Purchasers.** Upon the Purchasers' failure to take title as herein provided, or in the event of an unauthorized possession in violation of the terms hereof, this contract shall be deemed cancelled without further notice on the part of the Seller and the amount paid hereunder shall belong to the Seller as liquidated damages.

20. **Municipal Certificates.** The Seller agrees to deliver to the Purchasers or mortgagee upon the closing of title, if available, such municipal certificates covering occupancy and electrical and gas installation as may be necessary or required by the lending institution.

21. **Risk of Loss by Fire.** The risk of loss or damage to the premises by fire until the delivery of the deed is assumed by the Seller.

22. **Form of Deed.** The deed shall be a statutory warranty deed, shall contain the usual full covenants and warranty, and shall be duly executed and acknowledged by the Seller at the Seller's expense, so as to convey to the Purchasers the fee simple of said premises free of all encumbrances, except as herein stated. The closing deed shall contain such a description of the premises as shall be accepted and approved by the lending institution or the title company insuring the lending institution.

23. **Survival of Contract Terms.** Anything to the contrary herein contained notwithstanding, the delivery to and acceptance of the deed of conveyance by the Purchasers at the time of the closing of title hereunder shall be deemed to constitute full compliance by the Seller with the terms, covenants and conditions of this contract on its part to be performed. None of the terms of this contract shall survive such delivery and acceptance except those terms which this contract expressly states shall survive.

24. **Assignment.** The Seller shall have the right to assign this contract to any building corporation that assumes the construction and completion of the dwelling and compliance with all other terms and conditions of this contract. The Purchasers will in no event assign this contract without the written consent of the Seller.

25. **Restriction on Placing Signs on Property.** The Purchasers, for a period of three years after the date of the closing of title hereunder, will not place any sign or signs, except a house number sign, upon the premises or any part thereof, without the written consent of the Seller. This paragraph shall survive the delivery and acceptance of the deed and may be included therein.

26. **Broker's Commission.** **The parties agree that _____ is the broker, but that the commission to be paid by the Seller as set forth in a separate agreement shall not be deemed to have been earned nor shall the same be due or payable unless and until title closes pursuant to the provisions hereof.**

27. **Date and Place of Closing.** The deed shall be delivered upon the receipt of the payment of the purchase price at the office of _____ or at the office designated by the institution accepting the mortgage, at _____ o'clock, __.M., on _____, 20____.

28. **Entire Contract.** This contract states the entire agreement and the Seller is not and shall not be bound by any stipulations, representations, agreements or promises, oral or otherwise, not printed or inserted in this contract.

29. **Successors Bound.** This agreement is binding upon the heirs, executors, administrators and successors of the respective parties.

30. **Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

In Witness Whereof, etc.

4.7 Agreement for Sale and Purchase of Shopping Center Under Construction.

AGREEMENT made this _____ day of _____, 20____, between _____, a Florida general partnership, whose sole partners are _____, a Florida corporation, _____, a _____ corporation, and _____, having its principal place of business in _____ County, Florida, hereinafter called "Seller", and _____, of _____, Florida, hereinafter called "Purchaser".

IN CONSIDERATION of their mutual promises made herein, the parties hereby agree as follows:

1. **Property.** The Seller now owns the tract of land in _____ County, Florida, which is more particularly described in Exhibit "A" attached hereto and which is hereinafter referred to as the "Premises". The Seller is now constructing on the premises a shopping center. The subject matter of this Contract, which is hereinafter collectively referred to as the "Property", consists of the following:

(a) The Premises;

(b) All buildings and other improvements situated on the Premises and to be erected thereon subsequent to the date of this Contract and prior to closing;

(c) All fixtures, equipment, machinery and other tangible personal property owned by Seller and located on, attached to or used in connection with the Property or with the operation of a shopping center thereon.

(d) Such other rights, interests and properties as are be specified in this Agreement to be sold, transferred, assigned or conveyed by Seller to Purchaser.

2. **Purchase and Sale.** The Purchaser agrees to purchase, and the Seller agrees to sell to Purchaser, the Property on the terms and conditions set forth in this Agreement.

3. **Purchase Price.** The total purchase price for the Property is _____ No/100 U.S. Dollars (\$_____ U.S.). The purchase price shall be paid as follows:

(a) The Purchaser has paid the sum of _____ Dollars (\$_____ U.S.) to _____, a registered Florida real estate broker, hereinafter called "Purchaser's Broker", to be held as an escrow deposit toward the purchase price.

(b) The Purchaser shall pay the additional sum of _____ U.S. Dollars (\$_____ U.S.) to Purchaser's Broker as an addition to the escrow deposit within five (5) days after both Purchaser and Seller have signed this Contract.

(c) The Purchaser shall assume an existing mortgage, hereinafter called the "Mortgage", on the Premises with an approximate principal balance of _____ U.S. Dollars (\$_____ U.S.), which was executed by Seller on _____, 20____, in favor of _____, hereinafter called the "Lender". The interest rate on the Mortgage is now _____ percent (_____%) over the prime rate of _____, New York City, with a minimum rate of _____ percent (_____%) per annum, but the rate increases to _____ percent (_____%) per annum upon completion of construction but not later than _____, 20____, at which time monthly payments of principal and interest of \$_____ each commence. The entire principal and interest of the Mortgage is due no later than _____, 20____. The interest rate on the Mortgage is adjusted every _____ () years to the commercial lending interest rate then posted by the Lender.

(d) The Purchaser shall pay the balance of the purchase price to Seller at closing, subject to adjustments and prorations as set forth in this Contract.

4. **Acceptance of Contract; Effective Date.** If this Contract is not signed by both Seller and Purchaser on or before _____, 20____, this Contract shall be null and void and the escrow deposit shall be returned in full to the Purchaser. The effective date of this Contract, herein referred to as the "date of this Contract" shall be the first date when both the Purchaser and Seller have signed this Contract.

5. **Closing Date.** This transaction shall be closed upon thirty (30) days prior written notice from Seller to Purchaser that all conditions precedent to closing under this Contract have been satisfied, but not before _____, 20____. If Seller has not given such notice to Purchaser by _____, 20____, Purchaser shall have the right (a) to cancel this Contract at any time upon written notice to Seller, in which case the escrow deposit shall be returned to Purchaser in full, or (b) to close on the purchase of the Property as it then exists with equitable adjustment in the purchase price sufficient to cover the Purchaser's anticipated expense of satisfying the conditions precedent to closing.

6. Title Insurance. Within fifteen (15) days after the date of this Contract, Seller shall cause to be issued and delivered to Purchaser, at Seller's expense, a title insurance commitment issued by a title insurance company approved by Purchaser agreeing to issue to Purchaser after closing (at Seller's expense) an owner's policy of title insurance in the amount of the purchase price of the Property insuring marketability of the Purchaser's title to the Property and containing affirmative insurance against construction liens. The commitment shall be accompanied by two copies of all documents referred to in the commitment. The only exceptions allowed on the commitment are the Mortgage and such public utility easements as are necessary for the shopping center and as are approved by the Purchaser. Purchaser shall give Seller notice prior to the closing if the condition of title to the Property is not satisfactory to the Purchaser, in which event the Seller shall diligently undertake, at the Seller's expense, by lawsuit if necessary, to eliminate or modify all such unacceptable matters to the reasonable satisfaction of Purchaser; but if the Seller is unable to do so within ninety (90) days after Purchaser's notice, Purchaser shall have the option of either (a) accepting title as it then is, with an equitable adjustment in the purchase price for the title defects, or (b) cancelling this Contract in which event this Contract shall become null and void and the escrow deposit shall be returned in full to Purchaser.

7. Brokers' Fee. The Seller and the Purchaser agree that the procuring cause of this Contract was the Purchaser's Broker _____, a registered Florida real estate broker. The Seller agrees to pay said broker at closing a total fee equal to _____ percent (___%) of the purchase price. The Seller shall be solely responsible for payment of the broker's fee.

8. Construction of Shopping Center. Seller agrees, at Seller's sole expense, to continue to proceed promptly and diligently to erect upon the Premises a modern shopping center consisting of store buildings containing at least _____ square feet of net rentable space and other related structures with appropriate entrances and driveways and with parking facilities for at least _____ cars, in full compliance with all municipal, county, state, federal, governmental and quasi-governmental requirements. Such construction shall be in accordance with drawings, plans and specifications furnished and paid for by the Seller, which are herein called the "Plans". Within fifteen (15) days after the date of this Contract, the Seller shall furnish to the Purchaser a complete and accurate copy of the Plans and of the Seller's contracts with architects, engineers, general contractors, subcontractors, suppliers and all others relating to the construction. The Seller shall make such modifications to the Plans as the Purchaser reasonably requires. All work and materials shown on the Plans, and any other work and materials necessary to the construction, furnishing, decorating, landscaping, equipping and completion of the entire project as a modern shopping center, shall be performed and completed by the Seller at the Seller's expense and shall become part of the Property to be conveyed to the Purchaser hereunder. The following terms and conditions shall also apply with respect to the construction:

(a) The Seller shall, at its sole expense, procure the approval of the Plans and construction by all governmental authorities having jurisdiction.

(b) The construction shall be in compliance with all applicable provisions of this Agreement, the Plans, all leases, and all applicable laws, ordinances, rules, regulations, orders, directions and requirements of all governmental authorities having jurisdiction.

(c) Prior to the closing, and as a condition precedent to the Purchaser's obligation to close, the Seller shall procure and deliver to the Purchaser each of the following: (i) affidavits of the architect and contractors attesting to the fact that the shopping center has been completed substantially in accordance with the Plans and that the Seller has fully paid them all that is due and that they waive any right to a lien for payment; (ii) an affidavit of the contractors attesting to the payment in full by them of all work, labor, services and material used in the construction; (iii) a certificate of occupancy issued by all of the governmental authorities having jurisdiction; and (iv) such other certificates, permits and approvals as are customarily issued in the locality upon the completion of building construction.

(d) The construction shall be done in a workmanlike manner in accordance with the Plans and all materials used shall be of good quality and free of defects.

(e) The Purchaser shall have no control over the actual construction. The Seller shall have full responsibility for construction and, as between Seller and Purchaser, Seller shall have the entire liability, if any, for all damage or injury of any kind to any persons or property arising from or connected in any way with the Property or construction of the shopping center. The Seller shall indemnify and hold harmless the Purchaser, and the agents and employees of the Purchaser, from any and all liability, loss, claim, demand, expense (including reasonable attorneys fees), or damages arising out of or in connection with the Property or construction of the shopping center. Nothing in this subparagraph shall be deemed to relieve the Seller of any of its obligations under other provisions of this Contract.

(f) At all times during construction of the shopping center and prior to closing, the Seller shall, at its sole expense, maintain and keep in full force and effect general public liability insurance against claims for personal injury, death or property damage occurring in or about the Premises in an amount of not less than \$ _____ for personal injury or death and \$ _____ for property damage, issued by insurance companies approved by Purchaser. Seller shall furnish copies of the policies to Purchaser within fifteen (15) days after the date of this Contract.

(g) During construction of the shopping center, the Purchaser and its representatives may enter and inspect the Property at reasonable times and in a reasonable manner. If the Purchaser notifies the Seller that construction is not proceeding in accordance with the Plans or this Contract, Seller shall take immediate and diligent action to correct such deficiency.

(h) At the closing, the Seller shall assign and deliver to the Purchaser all bonds, warranties and guaranties of contractors and suppliers which the Sellers received in connection with any work or services performed, or equipment or materials installed, on the Premises. In addition to the foregoing, the Seller shall execute and furnish to the Purchaser at closing a warranty of Seller

warranting against defects for a period of one (1) year after the date of closing the Property and all work and materials used in the construction of the shopping center.

9. Leases. Prior to closing, the Seller shall obtain written leases for all (100%) of the rentable space in the shopping center. All leases are subject to the Purchaser's prior approval and shall be in a form approved by the Purchaser. No rental shall be prepaid more than one month in advance. Each lease shall be for a term not less than two years and not exceeding five years, unless Purchaser agrees otherwise. Seller must certify to Purchaser that Seller has investigated each tenant's prior performance and credit, including local bank reference. Prior to closing, the Seller shall pay all expenses relating to the obtaining, negotiating and executing the leases, including without limitation brokers commissions, attorneys fees, and improvements to the Property required by tenants, and shall furnish proof of payment to Purchaser at the closing. If the Seller is unable to obtain written leases for all of the rentable space prior to closing, the Seller shall execute and deliver to the Purchaser at closing a written lease for the space not leased, which space must be of such a configuration that it will be leasable to another tenant within one (1) year, and which lease shall be for a term of one (1) year after the date of closing with rent payable monthly at the annual rate of \$_____ per square foot plus \$__ per square foot for maintenance and which shall be a net-net-net lease.

10. Assumption of Mortgage. Within fifteen (15) days after the date of this Contract, the Seller shall furnish to the Purchaser a statement from the Lender setting forth the present principal balance, method of payment, interest rate and whether the Mortgage is in good standing, and shall furnish the Purchaser, for its approval, a complete and accurate copy of the Mortgage, loan agreement, note, security agreement and all other documents relating to the loan from the Lender to the Seller. The Purchaser shall apply for assumption of the Mortgage, and the Seller shall assist the Purchaser in obtaining the Lender's approval of the assumption. If the Lender fails to approve the assumption without any change in the terms of the Mortgage or other loan documents, the Purchaser shall have the right to either (a) cancel this Contract in which event the escrow deposit shall be returned in full to the Purchaser and this Contract shall become null and void, or (b) find another source of financing the purchase of the Property on terms suitable to the Purchaser in which event the Purchaser shall have an additional thirty (30) days to obtain such financing, or (c) waive this requirement and close this transaction with such changes in the Mortgage or other loan documents as the Lender requires or without assumption of the Mortgage at all.

11. Survey. Prior to closing, the Seller shall furnish to the Purchaser, at the Seller's expense, a current survey certified to the Purchaser showing the improvements to the Property as built, prepared by a registered Florida surveyor in accordance with the minimum requirements of the Florida Society of Professional Land Surveyors and the Florida Land Title Association. The survey must be acceptable to the title insurance company so that it will not include any exception on the title insurance policy for survey matters. The survey must show that there is ingress and egress to the Property sufficient for the shopping center and that there are no existing encroachments, easements or other conditions which would render title unmarketable, unless

previously approved in writing by the Purchaser. Any such encroachments or other conditions shall be treated in the same manner as a title defect under this Contract.

12. **Termite Certificate.** Prior to closing, the Seller shall furnish to the Purchaser, at the Seller's expense, a certificate issued by a certified pest control operator attesting to the fact that the Property was pre-treated for subterranean termites and that an inspection of the Property showed no evidence of current or previous infestation or damage from termites or other wood destroying organisms required to be reported under the Florida Pest Control Act. If any such damage or infestation is found, the Seller shall treat and repair the infestation and damage prior to closing at the Seller's expense.

13. **Warranties and Representations of Seller.** The Seller represents and warrants to the Purchaser as follows, which representations and warranties shall be true at the date of this Contract and at the date of closing and shall survive the closing:

(a) The Seller has good, marketable and insurable title to the Property free and clear of all mortgages, liens, encumbrances, leases, tenancies, security interests, covenants, conditions, restrictions, rights-of-way, easements, judgments and other matters affecting title, except for the Mortgage and the leases required under this Contract.

(b) The Seller has no knowledge of any pending or threatened condemnation or similar proceeding affecting the Property or any portion thereof; nor has Seller knowledge that any such action is presently contemplated.

(c) The Seller has no information or knowledge of any change contemplated in any applicable laws, ordinances or restrictions pertaining to the Property, of any judicial or administrative action relating to the Property, or of any natural or artificial conditions upon the Property, which would prevent, materially limit or materially impede the use of the Property as a shopping center as contemplated by this Agreement.

(d) The Seller has complied with all applicable laws, ordinances, regulations, statutes, rules, orders, directions, permits and restrictions pertaining to the Property.

(e) No zoning, building or similar law, ordinance or regulation will be violated by the construction, maintenance, operation or use of any of the Property.

(f) Performance of this Agreement will not result in breach or default by Seller of any agreement or other obligation of Seller.

(g) There are no legal actions, suits or other legal or administrative proceedings pending against the Property or the Seller, and the Seller is not aware of any that are likely to be commenced.

(h) There are no parties in possession of any portion of the Property except as tenants under the leases required by this Agreement.

(i) None of the leases, rents or other proceeds of the Property have been assigned, pledged or otherwise encumbered by the Seller, except to the Lender as security for the Mortgage.

(j) No tenant or other person, firm or entity has any right or option to acquire the Property or any portion thereof.

(k) All utilities required for the use, occupancy and operation of the Property are available in sufficient quantity and capacity to service the Property.

14. Closing Documents. The Seller shall, at its expense, furnish, execute, acknowledge and deliver the following documents to the Purchaser in addition to any other documents required under this Contract or customarily provided at closings:

(a) Statutory warranty deed conveying the Property to the Purchaser, subject only to such matters as are allowed as exceptions to the title insurance policy under this Contract.

(b) Bill of sale assigning and conveying to the Purchaser title to all personal property covered by this Contract, with the usual warranties and free and clear of all liens and encumbrances.

(c) Evidence of the authority of Seller, its partners and their officers to enter into and consummate this transaction.

(d) Assignments of the landlord's interest in the leases then in effect, to be in a form approved by the Purchaser, together with the original signed leases.

(e) A certificate stating the aggregate of rents then payable per month under all of the leases then in full force and effect and the amount of security deposits and advance rents received by Seller from each tenant, together with written acknowledgments from each tenant that each lease is in full force and effect, that there are no offsets to rent, that there are no claims or defenses to enforcement of the lease, and that the tenant has accepted its premises and is in occupancy and paying rent on a current basis.

(f) Credit to Purchaser all security deposits and advance rents received by Seller.

(g) Deliver to the Purchaser the originals of all certificates of occupancy, licenses, permits, authorizations and approvals which were obtained or required by law, relating to the Property or construction of the shopping center.

15. Prorations. Taxes, rents, utility deposits, and water, sewer and trash service charges shall be prorated to the date of closing. Taxes shall be prorated based on the current year's tax. If the

closing occurs at a date when the current year's tax is not fixed, the tax proration will be estimated based on the prior year's millage and at an equitable assessment to be agreed upon between the parties or to be informally estimated by the County Property Appraiser. Any tax proration based upon an estimate shall, at the request of either party, be subsequently readjusted after closing upon receipt of the final tax bill for the year of closing.

16. Expenses. In addition to any other expenses of Seller under this Contract, the Seller shall pay for all recording, conveyance, transfer, documentary, intangible and other taxes and fees arising out of the closing of this transaction and all expenses relating to the assumption of the Mortgage, including mortgagee title insurance, if required by the Lender. Each party shall pay its own attorneys fees. Seller shall provide and pay for preparation of all closing documents, which shall be in a form acceptable to the Purchaser.

17. Place of Closing. The closing shall be held at the office of the Purchaser's attorney in _____, Florida.

18. Time of Essence. Time is of the essence of this Contract. If any time period provided for herein would end on a Saturday, Sunday or legal holiday, the time period shall automatically be extended to 5:00 P.M. of the next full business day.

19. Assessments. If the Property has been or may be the subject of a lien for assessments, the Seller shall pay the assessments prior to closing whether or not the assessments are final, certified, confirmed or ratified and whether or not the assessments are due or payable before or after closing. If the Property is assessed after the closing for any utilities, sewers, streets, sidewalks or other improvements, the assessments shall be paid by the Seller upon demand by the Purchaser. This provision shall survive the closing.

20. Escrow Deposit. The Purchaser's Broker, acting as escrow agent, is authorized, and agrees by acceptance hereof, to promptly deposit and to hold the escrow deposit in escrow and to disburse it, subject to clearance thereof, in accordance with the terms and conditions of this Contract. In the event of doubt as to its duties or liabilities under this Contract, the Purchaser's Broker may, in its sole discretion, continue to hold the monies which are the subject of this escrow until the parties mutually agree to the disbursement thereof or until a judgment of a court of competent jurisdiction shall determine the rights of the parties thereto, or the Purchaser's Broker may deposit the escrow deposit with the Clerk of the Circuit Court of the county having jurisdiction of the dispute and upon notifying all parties concerned of such action all liability on the part of the Purchaser's Broker as escrow agent shall fully terminate except to the extent of accounting for the escrow deposit prior to the deposit with the Court.

21. Attorneys Fees in Litigation. In connection with any litigation including appellate proceedings arising out of this Contract, the prevailing party shall be entitled to recover reasonable attorneys fees and costs.

22. **Default.** If the Purchaser fails to perform this Contract within the time specified, the escrow deposit shall be retained by the Seller as liquidated damages and in full settlement of any and all claims against the Purchaser. If the Seller fails to perform any provision of this Contract within the time specified, the Purchaser may, at its election, (a) seek specific performance of this Contract, or (b) may receive the return of its escrow deposit without thereby waiving any action for damages against Seller.

23. **Liens.** The Seller shall furnish to the Purchaser at closing an affidavit attesting to the absence of any financing statements, claims of lien or potential lienors known to Seller and further attesting that all construction has been fully paid for. The Seller shall convey the Property free of all construction, mechanics and other liens and charges, all of which shall be paid by Seller prior to closing. If any lien arises or is claimed after the closing for work or materials before the closing, the Seller shall immediately pay such lien or claim upon demand by the Purchaser or its representative. This provision shall survive the closing. There shall be no exception in the title insurance policy for construction, mechanics or other liens, and the policy shall contain affirmative insurance against such liens.

24. **Conditions to Purchaser's Obligations.** In addition to any other conditions set forth in this Contract, the following are conditions precedent to the obligations of the Purchaser:

(a) The representations and warranties of the Seller shall be true as of the date of closing.

(b) The Seller shall have performed, observed and complied with all of the terms, covenants, agreements and conditions of this Contract.

25. **Risk of Loss.** If, prior to closing, any portion of the Property is damaged or destroyed by fire or other casualty or is taken by eminent domain, the Purchaser shall have the option, exercisable by giving written notice to the Seller within thirty (30) days after Purchaser is notified of the same, to either (a) proceed with the closing without a reduction of the purchase price but with all insurance or condemnation proceeds payable to the Purchaser at closing, or (b) cancel this Contract in which event the escrow deposit shall be returned in full to the Purchaser.

26. **Notices.** Any notices to be given under this Contract must be in writing and sent to the following addresses:

Purchaser:

With a copy to:

Seller:

With a copy to:

27. **Miscellaneous.**

(a) **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Florida.

(b) **Counterparts.** This Contract may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) **Headings.** The headings of this Contract are inserted for convenience only and shall not constitute a part hereof.

(d) **Entire Agreement.** This Contract, including the other documents referred to herein which form a part hereof, contains the entire understanding of the parties hereto with respect to the subject matter contained herein. This Contract supersedes any prior agreements and understandings between the parties with respect to such subject matter.

(e) **Benefit; Assignment.** This Contract and all of the provisions hereof shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns; provided however that the Seller may not delegate its duties under this Agreement without the prior written consent of the Purchaser.

(f) **Interpretation.** Whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender and the neuter, and vice versa.

(g) **Survival.** All representation, warranties, covenants and agreements in this Contract shall survive the closing.

28. **Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

In Witness Whereof, etc.

4.8 Contract for Purchase and Sale — Mobile Home Park.

_____, whose address is _____, _____, Florida _____, hereinafter referred to as "Seller," and _____, whose address is _____, _____, Florida _____, hereinafter referred to as "Buyer," hereby agree that the Seller shall sell and the Buyer shall buy the following described property upon the terms and conditions hereinafter set forth:

1. **Legal Description.** The legal description of the real estate which is the subject of part of the Contract is the following described land, and the improvements thereon and the easements and appurtenances relating to it, in _____ County, Florida:

2. **Street Address.** The street address of the subject property is _____, _____, Florida _____.

3. **Personal Property and Inventory.** The personal property listed on Exhibits "A-1", "A-2" and "A-3" are, and the inventory listed on Exhibit "B" might be, included in this sale.

4. **Purchase Price.**

A. The purchase price for the above-described real and personal property is _____ Dollars (\$_____), excluding inventory, payable as follows:

\$_____ Deposit, paid to _____ upon execution of the contract by Buyer, or cash or a bank check drawn on a local bank. This deposit shall be placed into a separate interest-bearing, FDIC-insured attorneys' trust account in a commercial bank. All interest earned on the deposit shall be added to the deposit and shall be applied toward the purchase price at closing, or otherwise applied in the same manner as the deposit itself.

\$_____ Purchase money mortgage, with interest at the rate of _____ percent (___%) per annum, payable in monthly installments of interest only, with one balloon payment of principal in _____ (___) years after closing. Mortgage will contain a "due on sale" provision with principal acceleration and provision for receivership and assignment of rent, except that it shall allow conveyance to _____ or jointly to he and his wife, without triggering the due on sale provisions. Note will provide fifteen day grace period. Note and Mortgage to be executed by Buyer. Buyer intends to convey this property after closing to _____ who along with his wife _____ shall personally assume the note and mortgage. No secondary or additional mortgage financing will be permitted against the property except where proceeds are invested in the property. There shall be no penalty for prepayment.

\$_____ Cash or cashier's check drawn on a local bank on closing and delivery of deed (or such greater or lesser amount as may be necessary to complete payment of the purchase price after credits, adjustments or prorations).

\$_____ TOTAL PURCHASE PRICE

B. At closing Buyer shall purchase for cash Seller's inventory (not custom orders) of up to _____ (___) mobile homes at Seller's cost from manufacturer plus the costs and expenses of set up, per Exhibit "B" attached hereto, which estimates shall not vary by more than \$_____ per unit.

Seller presently owns ___ () mobile homes, which are listed on Exhibit "B". Seller agrees not to purchase any inventory between now and closing. Buyer shall not be required to purchase for cash Seller's inventory in excess of ___ () units. In the event Seller's inventory at closing is greater than ___ units, all units over ___ will be purchased and paid for by a separate promissory note and security agreement payable to Seller, with said promissory note being guaranteed by Buyer. Buyer intends to convey the inventory to _____ after closing, at which time _____ and his wife _____ shall personally assume the note and security agreement. Said note shall be for a period of ___ months and bear interest at the same rate being charged to Buyer on his financing of the ___ units paid for with cash. In the event that the Buyer shall sell any of the units purchased with cash (other than to _____ or jointly to he and his wife), a Seller financed unit shall be paid for in full within ten (10) days after the aforementioned sale. During the period of time that Seller is holding any financing on inventory, Buyer shall purchase no additional inventory. In addition, during such period of time, Seller or its representative will be allowed to sell any unit it is financing on behalf of Buyer and may sell the same for any price not below Buyer's cost plus costs and expenses of set up, but no commission shall be owed by Buyer for such sale. Seller may retain manufacturer's statement of origin on each unit financed by Seller until that unit is paid off.

5. Allocation of Purchase Price. The purchase price for the assets shall be allocated as follows:

Land \$ _____

Buildings \$ _____

Inventory in Exhibit "B" \$ _____

Personalty on Exhibit "A-1" \$ _____

Personalty on Exhibit "A-2" \$ _____

Personalty on Exhibit "A-3" \$ _____

6. Title Insurance Commitment. Seller shall, at its expense, deliver to Buyer within twenty days after the Effective Date a title insurance commitment issued by a qualified title insurer agreeing to issue to Buyer upon recording of the deed to Buyer a policy of title insurance in the amount of the purchase price, subject to the following exceptions:

A. Taxes for the year of closing:

B. Printed exceptions customarily contained in a title commitment, unless the title company agrees to remove and in fact removes such printed exceptions and the restrictions of record.

C. Existing easements and restrictions of record which do not affect its use as a mobile home park.

Seller warrants that there are no leases of the property and that all tenants are on month-to-month oral tenancies.

At or prior to closing Seller shall pay off and satisfy any and all mortgages, liens and encumbrances existing against the property.

Upon receipt of title insurance commitment, the Buyer shall have ten (10) days within which to examine the same and, if it finds the Seller's title contains defects or encumbrances not provided for herein, the Buyer may, within said ten (10) day period, notify the Seller of Buyer's objections. The Seller shall have thirty (30) days within which to cure said defects at Seller's expense. In the event that Seller is unable to cure said defects, Seller shall notify Buyer in writing within said 30-day period and Buyer shall have the right to attempt to cure them within thirty (30) days thereafter. If Buyer is unable to cure them within said period, or elects not to attempt to do so, then Buyer shall have the option, within ten (10) days thereafter, of accepting the then condition of Seller's title, or of cancelling this Contract in which case the deposit(s) shall be returned to _____, (being the person who paid the deposit for Buyer) and all obligations hereunder shall cease and terminate.

7. **Closing Date.** This contract shall be closed and the deed shall be delivered on or before _____, 20____. The closing date may be extended by written agreement by both the Buyer and Seller, but in no event shall closing be held later than _____ 20____. Both parties acknowledge that this property is to be conveyed to _____ by Buyer as part of an exchange agreement and that said conveyance must take place before _____, 20____, or _____ will incur substantial damages by way of loss of the tax-free exchange.

8. **Place of Closing.** This sale shall be closed in the office of _____ in _____, _____, or at such other place as is mutually acceptable to the parties.

9. **Expenses.** Documentary stamps which are required to be affixed to the instruments of conveyance and owner's title insurance premium shall be paid by Seller. All other costs and expenses shall be paid by Buyer, except as otherwise provided in this Contract.

10. **Conveyance.** The Seller shall convey the subject property to the Buyer by warranty deed. Buyer shall take title subject to zoning and/or restrictions and prohibitions imposed by governmental authority: taxes for the year of closing; and title matters shown on the title insurance commitment or the survey and which are allowed under this Contract.

11. **Survey.** If the Buyer desires a survey, Buyer shall have the property surveyed by a registered professional surveyor for the purpose of obtaining an accurate metes and bounds description of

the property to be inserted in the warranty deed to be executed at closing. The expense of any survey shall be borne and paid by the Buyer. The survey shall be done in accordance with ALTA standards. In the event said survey shows any encroachments or other defects, the same shall be treated as title defects. In the event said survey is not obtained and delivered to Seller on or before ten (10) days prior to closing, then the Buyer shall be deemed to have waived any encroachments, and title shall be conveyed to Buyer subject to such encroachments.

12. Infestation Provisions. The Buyer, within thirty (30) days prior to closing, may have the improvements inspected at Buyer's expense by a Certified Pest Control Operator to determine whether there is any visible active termite infestation or visible existing damage from termite infestation in the improvements. If Buyer is informed of either or both of the foregoing, Buyer will have four (4) days from date of written notice thereof or two (2) days after selection of a contractor, whichever occurs first, within which to have all damages, whether visible or not, inspected and estimated by a licensed building or general contractor. Seller makes no warranties as to any infestations and will not pay any costs of treatment nor repair of any damage.

However, Buyer shall have the option of cancelling this Contract within five (5) days after receipt of Contractor's repair and treatment estimate by giving written notice to Seller, or Buyer may elect to proceed with the transaction. "Termites" shall be deemed to include all wood destroying organisms required to be reported under the Florida Pest Control Act.

13. Time of the Essence. Time is of the essence of this Contract for Purchase and Sale. Any time period provided for herein which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next full business day.

14. Prorations. Personal and real property taxes, rent payments and insurance premiums (if any) shall be prorated as of the date of delivery of deed unless otherwise specified. Buyer shall pay all State of Florida sales taxes payable as a result of the transfer of the taxable assets hereunder.

If the amount of taxes for the current year cannot be ascertained, rate millage and assessed valuations for the previous year, with known changes, shall be used, due allowance being made for homestead or other exemptions if allowed. Tax proration based on an estimate shall be readjusted subsequently and this provision shall be reflected in the closing statement.

15. Default by Buyer. If the Buyer fails to perform any of the provisions of this Contract within the time specified, in addition to Seller's other remedies Seller may proceed at law or in equity to enforce its legal and equitable rights under this Contract, including, but not limited to, the right to bring a suit for specific performance.

16. Default by Seller. If the Seller fails to perform any of the provisions of this Contract, in addition to Buyer's other remedies, Buyer and _____ as third party beneficiary through Buyer may proceed at law or in equity to enforce Buyer's legal and equitable rights under this Contract, including, but not limited to, the right to bring a suit for specific performance.

17. **Attorneys Fees.** In the event of litigation relating to the breach, terms or enforcement of this Contract, the prevailing party shall be entitled to recover reasonable attorneys fees and costs.

18. **Affidavit of No Liens.** Seller shall, at closing, furnish the Buyer with an affidavit attesting to the absence of any liens, encumbrances, financing statements, claims of lien or potential lienors known to the Seller, and further attesting that there have been no improvements on the property for ninety (90) days immediately preceding the date of closing. If the property has been improved within said time, the Seller shall deliver releases or waivers of all construction liens executed by all general contractors, subcontractors, suppliers and materialmen, in addition to Seller's lien affidavit, setting forth the names of all such general contractors, subcontractors, suppliers and materialmen, and further reciting that in fact all bills for work at the subject property which could serve as a basis for construction liens have been paid or will be paid at closing. Such forms shall meet the requirements of the title insurer to remove the mechanics lien exception.

19. **Special Assessment Liens.** Certified, confirmed and ratified special assessment liens as of date of closing (and not as of Effective Date) are to be paid by Seller. Special assessment liens which are not certified, confirmed and ratified as of the date of closing and special assessment items which become liens after the date of closing shall be assumed and paid by Buyer.

20. **Risk of Loss.** If the property is damaged by fire or other casualty prior to closing, and cost of restoring same does not exceed three percent (3%) of the assessed valuation of the property so damaged, costs of restoration shall be an obligation of Seller and closing shall proceed pursuant to the terms of this Contract with cost therefor escrowed at closing. In the event the cost of repair or restoration exceeds three percent (3%) of the assessed valuation of the property so damaged, Buyer shall have the option of either taking the property as is, together with the greater of either (a) the said three percent (3%), or, (b) any insurance proceeds payable by virtue of such loss or damage, or of cancelling this Contract and receiving return of deposit(s) made hereunder which deposit shall be paid to _____ (being the person who paid the deposit for Buyer).

21. **Maintenance.** Between the Effective Date and closing date, the personal property referred to in this Contract and the real property shall be maintained by Seller in the condition they existed as of the Effective Date of this Contract, ordinary wear and tear excepted, and Buyer or Buyer's designee will be permitted access for inspection of the realty and personal property prior to closing in order to confirm compliance with this paragraph.

22. **Closing Procedure.** The deed shall be recorded upon clearance of funds, and the cash proceeds of sale shall be held in escrow by Seller's attorney in FDIC fully-insured bank accounts or by such other escrow agent as may be mutually agreed upon for a period of not longer than five (5) days from and after closing date, but in no event past _____, 20____. If Seller's title has become unmarketable, Seller shall inform Buyer and Seller shall have until _____, 20____, to cure said defect. In the event Seller fails to timely cure said defect, Buyer shall have

the option, in addition to any other remedies, of accepting the title as it then exists or of cancelling the Contract in which case all moneys paid hereunder shall, upon written demand therefor and within five (5) days thereafter, be returned to Buyer and, simultaneously with such repayment, Buyer shall vacate the property and reconvey same to the Seller by special warranty deed. In the event Buyer fails to make timely demand for refund, it shall take title as is, waiving all rights against Seller as to such intervening defect except as may be available to Buyer by virtue of warranties, if any, contained in the deed.

23. Escrow. Any escrow agent receiving funds is authorized and agrees by acceptance thereof to promptly deposit and to hold same in escrow and to disburse same subject to clearance thereof in accordance with the terms and conditions of this Contract. Failure of clearance of funds shall not excuse performance by the Buyer. In the event of doubt as to its duties or liabilities under the provisions of this Contract, the escrow agent may in its sole discretion continue to hold the moneys which are the subject of this escrow until the parties mutually agree to the disbursement thereof, or until a judgment of a court of competent jurisdiction shall determine the rights of the parties thereto, or it may deposit all the moneys then held pursuant to the Contract with the Clerk of the Circuit Court of _____ County, Florida, which the parties agree is proper venue for any action under this Contract, and upon notifying all parties concerned of such action, all liability on the part of the escrow agent shall fully terminate, except to the extent of accounting for the deposit moneys received in escrow and the interest thereon. In the event of any suit between Buyer and Seller wherein the escrow agent hereunder is an innocent party, or in the event of any suit wherein the escrow agent interpleads the subject matter of this escrow, the escrow agent shall be entitled to recover a reasonable attorney's fee and costs incurred, said fees and costs to be charged and assessed as court costs in favor of the prevailing party. All parties agree that the escrow agent shall not be liable to any party or person whomsoever for misdelivery to Buyer or Seller of moneys subject to this escrow, unless such misdelivery shall be due to willful breach of this Contract or negligence on the part of the escrow agent.

24. FIRPTA. In accordance with the Foreign Investment in Real Property Tax Act of 1980 and the Tax Reform Act of 1984, the closing agent shall withhold 10% of the purchase price and shall forward such sum to the Internal Revenue Service UNLESS the Seller, at closing, furnishes the Buyer and the closing agent with a certificate in the form and substance required by Proposed Regulations Section 1.1445-4T, clearly showing that Seller is not subject to such withholding requirements. Such certificate shall be notarized and in recordable form.

25. Miscellaneous.

A. The provisions herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto.

B. Whenever used the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

C. This Contract shall not be assigned by either Seller or Buyer without the written consent of the other, except Buyer may assign this Contract to _____.

D. The Effective Date is the date this Contract is executed by the last of the Seller and Buyer.

E. Any time period provided for herein which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next full business day.

26. **Other Agreements.** No prior or present agreements shall be binding upon any of the parties hereto unless incorporated in this Contract. No modification or change in this Contract shall be valid or binding upon the parties unless in writing, executed by the parties to be bound thereby.

27. **Survival of Covenants, Warranties and Agreements.** All covenants, warranties and agreements herein contained shall survive the closing and remain in full force and effect.

28. **Captions.** The captions contained in this contract are solely for the convenience of the parties and are not intended to limit, enlarge, or otherwise modify or define the contents of the provisions of this Contract.

29. **Time for Acceptance.** If this Contract is not executed and delivered by both Seller and Buyer on or before _____, 20____, the aforesaid deposit shall be returned to _____ (being the person who paid the deposit for Buyer) and this agreement shall be null and void.

30. **Notices.** Any notice to be given or served on either party hereto in connection with this Contract must be in writing and delivered in person to the other party or shall be given by certified mail, return receipt requested, and shall be deemed to have been given and received three (3) days after a certified letter containing such notice, properly addressed with postage prepaid, is deposited in the United States Mail, and if given otherwise then by certified mail, will be deemed to have been given when delivered to and received by the parties at the following addresses:

If to Seller: _____

With Copy to: _____

If to Buyer: _____

With Copy to: _____

Either party hereto may, by giving five (5) days written notice to the other party hereto, designate a different address where such notice shall be given.

31. **Nondivisible Contract.** The Buyer must buy, and the Seller must sell, all of the property covered by this agreement.

32. **Disposition of Assets.** Prior to the closing date, Seller shall not, except as otherwise provided in this Contract or otherwise consented to or approved in writing by Buyer, sell, encumber, remove, lease or otherwise dispose of or enter into any agreement or arrangement providing for the sale, encumbrance, removal, lease or other disposition of any of the real property or personal property subject hereto, except for the mobile home inventory and the ten lots to be rented out on month-to-month oral tenancies as said inventory is sold.

33. **Bill of Sale and Other Documents.** Seller shall deliver at closing, bills of sale and certificates of title to the motor vehicles and mobile homes which are to be purchased by Buyer hereunder. The bills of sale shall warrant Seller's right, title and interest in and to the assets conveyed thereunder to be free and clear of all liens and encumbrances, except for the tangible personal property taxes attributable to the assets for the calendar year 20____ not yet due and payable.

34. **Broker.** The parties represent and warrant to each other that there is no broker in this sale and that no broker procured the sale.

35. **Seller's Warranty.** Seller warrants and represents to Buyer and _____ that the property conveyed is in good working order and to the best of Sellers' knowledge complies with all applicable zoning, building, environmental, sewer, water, land and mobile home use laws, statutes, rules, regulations, ordinances, and orders. Seller further warrants that the property will comply with all of such laws, statutes, rules, regulations, ordinances and orders on the day of closing. Seller agrees to correct any deficiencies of same that occur before closing.

Seller further warrants that all permits, approvals and licenses required for operating Phases __ and __ of the property as a mobile home park and dealership have been obtained and are in good standing and will be in good standing on the day of closing, and that the _____ has also approved Phase __. Seller agrees to correct any violations of same that occur before closing.

36. **Zoning.** Seller will furnish a letter from _____ County that Phases __ and __ of the mobile home park on the property are zoned for mobile home park use on the day of closing.

37. **Covenant Not to Compete.** Seller shall cause to be executed and delivered to Buyer at closing a noncompete agreement assignable to _____ by which _____ jointly and severally covenant and agree as follows:

A. Not to carry on or engage in the mobile home park, mobile home dealer or similar business, nor be owner of, partner in, shareholder of, employee, consultant or agent of, or officer or director of, any corporation, trust, or partnership carrying on or engaged in the mobile home

park, mobile home dealer or similar business within the following geographical area for a period of _____ () years so long as Buyer or _____ carries on a like business therein:

The area of Florida generally bounded on the south by _____, on the west by _____, on the north by _____ and on the east by _____. The area is shaded on the map attached hereto as Exhibit "C".

B. In addition, Seller covenants and agrees not to develop a mobile home park within _____ County, Florida. The area is shaded on the map attached hereto as Exhibit "C".

Specifically excluded from this covenant not to compete will be the operation of a travel trailer park. The parties agree that this sale includes the business and goodwill of the mobile home park and dealership and that this covenant is valid and enforceable under Section 542.33, Florida Statutes, by injunction, among other remedies.

38. Florida Mobile Home Act. Seller has and will comply with Florida Statutes Chapter 723 Florida Mobile Home Act with respect to this Contract.

39. Additional Buyer Warranty. Buyer warrants and represents that it is not relying on the report prepared by _____.

40. Operation of Business. Seller warrants that the mobile home park will be operated in the ordinary course of business until the day of closing (at which time it shall be transferred to Buyer as a going concern) and that there will not be any change in rents.

41. Status of Mobile Home Park. Seller warrants and represents that there are _____ lots in Phases __ and __, of which _____ lots are occupied by oral month-to-month tenants paying rent, _____ are occupied with mobile homes in inventory (models), and _____ are unoccupied and have been completed with water, electric and sewer hook-ups and are ready for placement of a mobile home. Every lot with an electrical pedestal has had the electrical impact fee paid.

42. Financial Inspection. Seller shall allow Buyer and its representatives to inspect and copy all of Seller's financial and sales books and records for twenty (20) days after the Effective Date of this Contract. This includes the last three years' profit and loss information on individual mobile home sales, invoices, etc., in order to verify profit margins and sales numbers. Buyer has the right to cancel this Contract within ten (10) days after the inspection period ends if Buyer finds a material fact disclosed by the inspection to be unacceptable, in which case the aforesaid deposit shall be returned to _____ (being the person who paid the deposit for Buyer) and this Contract shall be null and void.

43. For Use in Exchange. _____ shall have no personal liability on this Contract or on the notes, mortgage and security agreement to be given to Seller. At the closing, Buyer shall convey

the Property and the mobile home inventory to _____, pursuant to the Contract for Exchange of Real Estate dated _____, 20____, between Buyer and _____ immediately upon receiving Seller's deed. At that time, _____ shall automatically take title to all of the rights and warranties given to Buyer hereunder and _____ shall retain no right, title or interest therein.

44. **Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

Date: _____, 20____

In Witness Whereof, etc.

CHAPTER 5. ADDENDUM FORMS

5.1 Addendum — Basic Form.

Seller:

Buyer:

Property:

Contract Date:

The following Addendum is hereby made a part of and is specifically incorporated into the above-described contract and is being signed simultaneously therewith:

1. Seller shall provide and pay for a current survey of the Property.
2. Buyers shall give Seller a purchase money note and mortgage on the Property in the principal amount of \$ _____ bearing interest at the rate of _____% per annum, being payable in equal monthly payments (including principal and interest) of \$ _____ each beginning thirty days after closing and continuing until the note is paid in full.
3. The parties represent and warrant to each other that no broker is involved in this transaction and that no brokerage fee or commission is due or payable to anyone.
4. The title insurance to be provided to Buyers by Seller shall insure marketability of title.
5. Buyer may have the house inspected by licensed building contractors _____.
6. In all other respects, the Contract remains the same. In case of conflict between any of the provisions of this Addendum and of the Contract For Sale and Purchase, the provisions of this Addendum shall control.

In witness whereof, etc.

5.2 Addendum — Commercial Property.

Seller:

Buyers:

Property: Lot _____, Block _____, _____ REPLAT, per plat in Plat Book _____, Page _____, Public Records of _____ County, Florida.

Contract Date:

The following Addendum is hereby made a part of and specifically incorporated into the above-described contract and is being signed simultaneously therewith:

1. Seller shall provide and pay for a current survey of the Property.
2. Buyers shall give Seller a purchase money note and mortgage on the Property in the principal amount of \$_____ bearing interest at the rate of _____% per annum, being payable in equal monthly payments (including principal and interest) of \$_____ each beginning thirty days after closing and continuing until the note is paid in full. The mortgage shall only be upon the lot zoned _____ and not upon the lots _____ zoned. The mortgage shall provide for subordination to the construction mortgage and shall allow for submission of the Property to office condominium form of ownership, without additional fees or expenses.
3. The parties represent and warrant to each other that no broker is involved in this transaction and that no brokerage fee or commission is due or payable to anyone.
4. Buyers intend to build on part of the Property which is now zoned _____ three professional office buildings of at least _____ square feet each, with parking spaces and other related amenities. The performance of this contract by Buyers is subject to and conditioned upon the approval by the City of _____ and other governmental authorities of the site plan and drawings (to be prepared at the direction and expense of the Buyers) for the buildings, upon the issuance of building permits by such authorities, and upon the zoning ordinance allowing such construction. If such approvals are not obtained within ninety (90) days after the date of this Contract or waived by Buyers in writing, either party may cancel this contract upon written notice to the other party, in which case the escrow deposit shall be immediately returned to the Buyers and this contract shall become null and void.
5. This sale does not include the existing building, facilities and pavement located on the Property, which shall remain the personal property of Seller and shall be completely removed by Seller at Seller's expense prior to closing.
6. The title insurance to be provided to Buyers by Seller shall insure marketability of title.
7. In all other respects, the Contract remains the same. In case of conflict between any of the provisions of this Addendum and of the Contract For Sale and Purchase, the provisions of this Addendum shall control.

In witness whereof, etc.

5.3 Addendum — Inspection Procedure.

Seller:

Buyer:

Date of Contract:

The following Addendum is hereby made a part of and is specifically incorporated into the above-described contract and is being signed simultaneously therewith:

1. The Property being sold by Seller to Buyers is as follows:
2. Buyers shall execute and deliver to Seller at closing the Mortgage Note attached hereto as Exhibit "A". Buyers shall execute and deliver to Seller at closing the Mortgage attached hereto as Exhibit "B". The legal description in the Mortgage shall be the same as the legal description in the deeds from Seller to Buyers. The names of the Mortgagors in the Mortgage and Mortgage Note shall be the same as the grantees in the deeds.
3. Buyers shall order a commitment for a policy of marketability title insurance on the Property, which Buyers shall pay for. The provisions of paragraph _____ of the Contract shall apply to this Contract. Without limiting the generality of the foregoing, if the title insurance commitment shows that there is a cloud upon Seller's title to either parcel A or parcel B, or if there is any encroachment of any kind with respect to any parcel, then the title shall be deemed defective. Seller shall pay all fees and expenses that may be incurred in curing any defect in the title or matters of survey. If the building encroaches upon any right of way, easement or adjacent land, Seller shall pay all fees and expenses incurred in obtaining approval of the encroachment from the proper parties within a reasonable time before closing.
4. Notwithstanding the provisions of paragraph _____ of the Contract, Buyers shall pay for documentary stamps on the deed, documentary stamps on the mortgage, intangible tax on the mortgage, recording the deed, recording the mortgage, survey, and the premium for the owners policy of title insurance. Each party shall be responsible for its own attorneys fees and for any other costs or fees which the party incurs, unless otherwise provided herein.
5. Buyers may have the Property inspected by licensed building contractors, engineers and other professionals. Seller shall, prior to closing, repair any problems, inconsistencies, defects, or other conditions which are not correct in the Property and notice of which are provided to Seller by Buyers or by Buyers' inspectors in one or more written "punch lists". Buyers may cancel this Contract and receive back their entire deposit by giving written notice to Seller before closing if any such inspection shows that there is any problem, inconsistency, defect or other incorrect condition in the Property, which is not corrected by Seller.
6. Seller represents and warrants that the Property is in good and sound condition and complies with all applicable zoning and building codes and all other ordinances, laws and regulations.
7. Each party represents to the other party that there is no broker in this transaction and that no one is entitled to a sales commission of any kind due to this transaction.

8. In all other respects, the Contract remains the same. In case of conflict between any of the provisions of this Addendum and of the Contract For Sale and Purchase, the provisions of this Addendum shall control.

In witness whereof, etc.

5.4 Addendum — To FR/Bar For Seller.

Sellers:

Buyers:

Property: Lot _____, Block _____, according to plat thereof recorded in Plat Book _____, Page _____, Public Records of _____ County, Florida.

Contract Date:

The following Addendum is hereby made a part of and is specifically incorporated into the above-described contract and is being signed simultaneously therewith:

1. **No Broker.** The parties represent and warrant to each other that no broker is involved in this transaction and that no brokerage fee or commission is due or payable to anyone.
2. **Cash Sale; No Financing.** This is a cash sale and is not contingent upon Buyers obtaining financing. Paragraph _____ of the Contract is hereby deleted.
3. **Expenses.** Sellers shall pay for owners title insurance and documentary stamps on the deed. Buyers shall pay for recording the deed and Buyers' attorneys fees. Paragraph _____ of the Contract is hereby deleted.
4. **Closing Procedure.** The closing shall be held in accordance with the customary practices in _____ County, Florida. Paragraph _____ of the Contract is hereby deleted.
5. **Title Insurance Commitment.** Paragraph _____ of the Contract is revised so that Buyers shall not have 5 days to examine the title insurance commitment if Buyers have already closed; that is, Buyers must examine the commitment and make any objections before closing. Sellers have furnished Buyers a copy of the _____ Title Insurance Corporation Policy of Title Insurance no. _____ issued to Sellers as of _____, 20___. Buyers agree that the title insurance commitment to be given to Buyers at closing may have the same exceptions as shown on said policy. Buyers further agree that the deed shall contain the same exceptions as the title insurance commitment.

6. **Satisfy Mortgages.** Sellers shall pay off both mortgages on the Property at the closing. The mortgages shall not be assumed by Buyers.

7. **Survey.** Paragraph _____ of the Contract is deleted. Sellers have furnished Buyers a copy of the survey of the Property prepared by _____ as Job No. _____ and dated _____, which shows that _____ encroaches on the Property. Sellers are not obligated to have the _____ moved off the Property, nor are they obligated to update the survey. Sellers do not warrant the survey in any way. Buyers acknowledge that this encroachment and any other matters of survey may be an exception on the title insurance commitment.

8. **Termite Inspection.** Paragraph _____ of the Contract is deleted. Sellers had _____ inspect the Property for wood destroying organisms in _____, 20____, before Sellers purchased the Property and again recently. Sellers have furnished Buyers with a copy of both the report dated _____ and the report dated _____. Sellers do not warrant either of those reports; nor do Sellers warrant the condition of the Property with respect to wood destroying organisms. Except for _____, Sellers are not personally aware of the existence of any wood destroying organisms on the Property; Sellers' only knowledge of same comes from the two inspection reports. In consideration of the indication on those reports of the possible present existence of wood destroying organisms on the Property, Sellers hereby agree that Buyers shall be credited at closing with the sum of _____ and No/100 Dollars (\$_____) to be applied against the purchase price. Buyers may use said sum to apply towards termite treatment and repair, but Buyers are not obligated to do so; they may use it for whatever they desire. Sellers shall not be liable for any cost of treatment or repair of any wood destroying organism infestation or damage.

9. **Buyers' Inspection; Property Sold "As Is".** Prior to entering into this Contract, Buyers have inspected the Property thoroughly and have had the opportunity to have the house inspected by such professionals as they desired. Sellers do not intend to conduct their own inspection of the Property, and Buyers agree that Sellers are under no duty to discover any defects in the Property prior to the closing. The Property is being sold "as is", with no express or implied representations or warranties by Sellers as to physical conditions, quality of construction, workmanship, or fitness in general or for any particular purpose. Buyers hereby acknowledge and agree that the Property is being sold with certain known defects, including, but not limited to the following: _____. The parties agree that this list is not intended to be exhaustive and that the Property may contain other defects which might be discovered through inspection. It is understood by the parties that Sellers are selling the Property at the purchase price stated herein, which is much less than Sellers' original offering price, only because the condition of the Property is inferior and needs a substantial amount of work to be done by and at the expense of Buyers. The Property is not suitable for human habitation at the present time, and Sellers will not make it so suitable before or after the closing. Paragraph _____ of the Contract is deleted.

10. **Utilities.** Buyers shall be responsible for reactivating city water, trash and sewer service.

11. **Contents.** Buyers shall be responsible for having removed from the Property after closing such of the present contents of the house and garage as Buyers do not want to keep.

12. **Initials.** The changes in the Contract made in handwriting and the pages of this Addendum may be initialed by either Buyer and shall bind both Buyers, and may be initialed by either Seller and shall bind both Sellers.

13. In all other respects, the Contract remains the same. In case of conflict between any of the provisions of this Addendum and of the Contract For Sale and Purchase, the provisions of this Addendum shall control.

In witness whereof, etc.

5.5 Addendum — Buyer's Form for Vacant Land to Be Improved.

Seller:

Buyers:

Property:

The following Addendum is hereby made a part of and specifically incorporated into the above-described contract and is being signed simultaneously therewith:

1. **Survey.** Seller shall provide and pay for a current survey of the Property, certified to Buyers and _____ Title Company, sufficient to remove any survey exception in the title insurance policy, showing the easement areas described above and where such easement connects to or with a publicly dedicated right-of-way and describing the centerline of _____ Creek by metes and bounds. Said survey shall be provided to Buyers at least twenty (20) days prior to the closing of the purchase and sale of the Property.

2. **Mortgage.** Buyers shall give Seller a balloon purchase money note and mortgage on the Property in the principal amount of \$_____ bearing interest at the rate of ___% per annum, being payable in equal monthly payments (including principal and interest) of \$_____ each beginning thirty days after closing and continuing for five years after execution of the note and mortgage. The mortgage shall provide for subordination to the construction mortgage, if one is obtained for construction of a single family dwelling, without additional fees or expenses.

3. **Brokers.** The parties represent and warrant to each other that no broker is involved in this transaction and that no brokerage fee or commission is due or payable to anyone.

4. **Representations and Warranties of Seller.** Seller hereby represents and warrants:

- (a) The Property is properly zoned for single family purposes and the construction and occupation of a single family dwelling;
- (b) There is adequate, good and marketable ingress to and egress from the Property;
- (c) The Property has ready and available access to potable water supplies (at least by well, which well water shall be suitable for use as potable water), electrical power, telephone service and trash collection;
- (d) The Property is properly zoned and suitable for the installation and operation of a septic tank;
- (e) There are no violations and the sale of the Property will not create or cause any violation of any statute, law, regulation or ordinance of any governmental entity relating to environmental protection, land use, water, zoning or subdivision of land. Further, there is no statute, law, regulation or ordinance which would prohibit or limit Buyers' installation of a well on the Property for residential purposes and use of the water obtained therefrom for potable purposes.

5. Inspection Period. Buyers intend to build on part of the Property a single family dwelling and other related amenities. Buyers shall have the right to inspect the Property and do any and all investigation to ascertain the suitability of the Property for this purpose. In the event the Buyers determine, in their sole discretion, that the Property is not suitable for the purpose of constructing and occupying a single family dwelling, Buyers may cancel this contract upon written notice to Seller on or before _____, 20__, and this contract shall become null and void.

6. Title Insurance. The title insurance to be provided to Buyers by Seller shall insure marketability of title, and shall insure adequate ingress and egress to the property.

7. Conflict. In all other respects, the Contract remains the same. In case of conflict between any of the provisions of this Addendum and of the Contract For Sale and Purchase, the provisions of this Addendum shall control.

8. Survival of Representations. The representations contained in this Contract and Addendum shall survive the closing of the purchase of the Property.

In witness whereof, etc.

5.6 Addendum — Buyer's Form With Warranties of Building's Condition.

Seller:

Buyer:

Property:

The following Addendum is hereby made a part of and is specifically incorporated into the above-described contract and is being signed simultaneously therewith:

1. Seller shall provide and pay for a current survey of the Property, certified to Buyers and the title company.
2. The title insurance to be provided to Buyers by Seller shall insure marketability of title.
3. Buyers may have the Property inspected by licensed building contractors. Seller shall, prior to closing, repair any problems, inconsistencies, defects, or other conditions which are not correct in the Property and notice of which are provided to Seller by Buyers or by Buyers' inspectors in one or more written "punch lists". Buyers may cancel this Contract and receive back their entire deposit by giving written notice to Seller before closing if any such inspection shows that there is any problem, inconsistency, defect or other incorrect condition in the Property, which is not corrected by Seller.
4. The Property is a new house constructed by Seller, which has been occupied only once before for a short period of time. Seller represents and warrants that the Property is in good and new condition and complies with all applicable zoning and building codes and all other ordinances, laws and regulations. Seller shall further execute and deliver to Buyer at closing a written warranty in form satisfactory to Buyers' attorney, with a guarantee of performance by a surety, that there are no defects in workmanship, design or materials of the Property, that no defects will exist for a period of one year after date of closing, and that the Property complies with all applicable zoning and building codes and all other ordinances, laws and regulations.
5. Occupancy of the Property will be given to Buyers by Seller on _____, 20___. Buyers lease the Property from Seller from _____, 20___, to the date of closing. Buyers shall pay Seller rent of \$_____ a month, which shall be prorated on a daily basis to the date of closing and shall be paid at closing. Seller shall continue to be responsible for taxes and risk of loss of the Property after possession and prior to closing. Seller shall be responsible for repairs and maintenance of the Property prior to closing.
6. Notwithstanding the first sentence of paragraph _____ of the Contract (which first sentence is hereby deleted), if Buyers fail to perform this Contract, the entire \$_____ escrow deposit shall be paid to Seller as liquidated damages and rent and in full payment of all amounts due Seller from Buyers hereunder. Because of such payment, Seller may not have specific performance.
7. Seller shall provide Buyers with a copy of Seller's existing flood insurance policy, if any. Buyers shall inquire into the cost of obtaining their own flood insurance. If the annual premium for flood insurance on the Property will exceed \$_____ then Buyers may cancel this Contract by giving written notice to Sellers within fifteen days after the date of this Contract.

8. In all other respects, the Contract remains the same. In case of conflict between any of the provisions of this Addendum and of the Contract For Sale and Purchase, the provisions of this Addendum shall control.

In witness whereof, etc.

5.7 Addendum — Seller to Occupy After Closing.

Sellers:

Buyers:

Property: Lot _____, Block _____, as recorded in Plat Book _____, Page _____, Public Records of _____ County, Florida.

The following Addendum is hereby made a part of and is specifically incorporated into the above-described contract and is being signed simultaneously therewith:

1. Prior to signing this Contract, Buyers paid directly to Sellers the sum of \$ _____ as an escrow deposit toward this purchase. Sellers shall pay said sum to the Escrow Agent to hold in accordance with this Contract as part of the escrow deposit. Buyers are paying the additional sum of \$ _____ to the Escrow Agent to bring the deposit to \$ _____.
2. The parties represent and warrant to each other that no broker is involved in this transaction and that no brokerage fee or commission is due or payable to anyone.
3. Sellers shall provide Buyers with a current survey of the Property and shall pay for same.
4. The title insurance to be provided to Buyers by Sellers shall insure marketability of title.
5. Sellers shall have the right to occupy the Property until _____, 20___. As long as Sellers occupy the Property, Sellers shall: (a) maintain insurance coverage as approved by Buyers; (b) pay all utilities to the Property; and (c) maintain and repair the Property so that it is in good condition and repair at all times. A written occupancy agreement shall be signed at closing, but shall not be recorded.
6. Buyers may have the Property inspected by licensed building contractors, including but not limited to roofing and other contractors. Buyers may cancel this Contract and receive back their entire deposit by giving written notice to Sellers within 20 days after the date of this Contract if any such inspection shows that there is any material defect in the Property.
7. In all other respects, the Contract remains the same. In case of conflict between any of the provisions of this Addendum and of the Contract For Sale and Purchase, the provisions of this Addendum shall control.

In witness whereof, etc.

5.8 Addendum — Radon Disclosure.

Sellers:

Buyers:

Property: Lot _____, Block _____, as recorded in Plat Book _____, Page _____, Public Records of _____ County, Florida.

The following Addendum is hereby made a part of and is specifically incorporated into the above-described contract and is being signed simultaneously therewith:

1. The following is hereby added as paragraph _____ to the Contract:

Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

2. In all other respects, the Contract remains the same. In case of conflict between any of the provisions of this Addendum and of the Contract For Sale and Purchase, the provisions of this Addendum shall control.

In witness whereof, etc.

CHAPTER 6. OPTIONS TO PURCHASE

6.1 Option to Purchase — Basic Form.

1. **Grant of Option.** I, _____ of _____ (hereinafter called the "Vendor"), for and in consideration of the sum of _____ dollars (\$_____) and other valuable considerations to me in hand paid by _____ (hereinafter called the "Vendee") do hereby give and grant to the Vendee the exclusive right and option to elect to purchase at any time within thirty (30) days from the date hereof at and for the price of _____ dollars (\$_____), payable in cash at the time and in the manner hereinafter provided, all of that certain tract or parcel of land, together with all buildings and improvements thereon and everything appurtenant thereto, situated in the County of _____, State of Florida, which is particularly described as follows:

_____.

2. **Notice of Exercise.** Written notice of the election of the Vendee to purchase under the terms of this option may be given to the Vendor by mailing the same in a prepaid sealed envelope addressed to the Vendor at _____; and in case said notice is given by such mailing, the time of the deposit of the same in such prepaid sealed envelope in a depository for the receipt of the United States Mail shall not only constitute sufficient notice to the Vendor of such action, but the time of such notice of acceptance shall be in such case the time of the delivery of the same in a United States Post Office as aforesaid.

3. **Conveyance.** Upon the giving of such notice of election to purchase, the Vendor shall promptly execute, acknowledge and deliver to the Vendee a good and sufficient warranty deed conveying a fee simple title to said land and all buildings and improvements thereon and everything appurtenant thereto, free and clear of all liens, encumbrances and other defects in title. The title to the land shall be exclusively subject to approval by the Vendee, and all the costs and expenses of curing any defect or defects in the title shall be borne by the Vendor; and such costs and expenses, together with all moneys required for the satisfaction of taxes, liens or encumbrances may be reserved from the purchase price and applied directly to the curing of such defects, if any, and to the satisfaction and release of such taxes, liens and encumbrances. All taxes for the year 20__ shall be paid by the Vendor up to the date title is vested in the Vendee.

4. **Right to Inspect.** The Vendor gives to the Vendee, and its duly authorized agents and employees, the right during the option period and at any and all times after exercise of the election to purchase herein provided for, to enter in and upon the land covered by this option, to inspect the same and to make such surveys and measurements thereof as shall be deemed necessary.

5. **Possession.** Thirty (30) days after giving the notice mentioned in paragraph 2 above, the Vendee shall have the right to the immediate and exclusive possession of the optioned land and premises; and the Vendor shall remove from the optioned land on or before the expiration of such thirty-day period all crops, live stock and other movable personal property, provided, however, that if the Vendee shall elect to grant to the Vendor or his duly authorized agents the right to harvest at maturity presently growing crops and to remove such crops from the premises not later than _____, 20__, then in such event, the price hereinbefore agreed to be paid for the optioned property shall be reduced by the sum of _____ dollars (\$_____).

6. **Broker's Commission.** Upon the exercise of this option by the Vendee, the Vendor agrees to pay to _____ of _____, a commission of _____ percent (_____%) of the gross sales price as full payment for the services of said _____ in procuring such sale.

7. **Failure to Exercise Option.** If the Vendee shall fail to exercise this option within the period provided therefor, or if after the exercise of this option, the Vendee shall reject the title to said land as defective, then this agreement shall be void and of no further force or effect, but the Vendor shall keep the consideration paid for this option.

8. **Escrow.** At the option of the Vendee, the deed or deeds of conveyance, and the purchase price, shall be deposited in escrow with any title insurance agent designated by the Vendee, and said escrowee shall have the power to pay out of the purchase price all moneys required for the satisfaction of all taxes, liens, claims, interests and encumbrances, liquidated or otherwise, against said land.

9. **Successors Bound.** This agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective heirs, executors, administrators, assigns and successors.

Date:

In Witness Whereof, etc.

6.2 Option to Purchase — Another Basic Form With Contract Attached.

OPTION given this _____ day of _____, 20__, by _____, of _____, Florida (hereinafter called "Optionor"), to _____ or assigns, of _____, Florida, (hereinafter called "Optionee").

1. **Grant of Option.** Optionor, in consideration of the sum of _____ Dollars (\$_____) paid by Optionee to Optionor, receipt of which is acknowledged by Optionor, grants to Optionee the exclusive right and option to purchase, on the following terms and conditions, that real property in _____ County, State of Florida, described as follows, together with any improvements thereon:

2. **Option Period.** The term of this option shall be _____ () months, commencing on the _____ day of _____, 20____, and continuing until __.M. on the _____ day of _____, 20_____.

3. **Purchase Price of Property.** The full purchase price of the property shall be _____ Dollars (\$_____), which amount shall be payable as hereinafter provided if Optionee elects to exercise this option.

4. **Application of Consideration to Purchase Price.** If Optionee purchases the property described in this option, then the consideration paid for this option shall be applied to the purchase price.

5. **Exercise of Option.** Optionee may exercise this option by giving Optionor written notice thereof, signed by Optionee, before the time herein set for expiration. If this option is exercised, Optionor as Seller and Optionee as Buyer shall perform the Contract For Sale and Purchase attached hereto and made a part hereof as fully as if said Contract had been signed by each party and witnessed. The date of the exercise of the option shall be considered the date of the contract.

6. **Failure to Exercise Option.** If Optionee does not exercise this option, then this option shall automatically terminate upon expiration of the option period and Optionor shall retain the sum paid as consideration for this option.

7. **Notices.** All notices provided for herein shall be deemed to have been duly given if and when deposited in the United States mail, properly stamped and addressed to the party for whom intended, or when delivered personally to such party.

8. **Assignment.** Optionee may assign this option.

9. **Time of Essence.** Time is of the essence of this option.

10. **Binding Effect.** This option shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, successors, or assigns.

11. **Broker.** _____, registered real estate broker, is the procuring cause of this option. Optionor agrees to pay _____ compensation in accordance with the attached Contract For Sale and Purchase if this option is exercised.

In witness whereof, etc.

6.3 Option to Purchase — Another Basic Form With Contract Attached; Vacant Land To Be Improved.

This Option is hereby granted this _____ day of _____, 20___, by _____, a single man, of _____, _____, Florida, _____, hereinafter Seller, to _____ and _____, his wife, of _____, _____, Florida, _____, hereinafter Buyers.

1. **Grant of Option.** Seller, in consideration of the sum of _____ Dollars (\$_____) paid by Buyers to Seller, receipt and sufficiency of which is acknowledged by Seller, grants to Buyers the exclusive right and option to purchase, on the following terms and conditions, that real property in _____ County, State of Florida, described as follows, together with any improvements thereon: [See Attached Exhibit A]

2. **Option Period.** The term of this option shall be _____ () months, commencing on this date and continuing until midnight on _____, 20___.

3. **Purchase Price of Property.** The full purchase price of the property shall be _____ Dollars (\$_____), which amount shall be payable as hereinafter provided if Buyers elect to exercise this option.

4. **Application of Consideration to Purchase Price.** If Buyers purchase the property described in this option, then the consideration paid for this option shall be applied to the purchase price.

5. **Exercise of Option.** Buyers may exercise this option by giving Seller written notice thereof, signed by Buyers, before the time herein set for expiration. If this option is exercised, Seller and Buyers shall perform the Contract For Sale and Purchase attached hereto and made a part hereof as fully as if said Contract had been signed by each party and witnessed. The date of the exercise of the option shall be considered the date of the contract.

6. **Failure to Exercise Option.**

(a) If Buyers do not exercise this option, then this option shall automatically terminate upon expiration of the option period and Seller shall retain the entire _____ Dollars (\$_____) paid as consideration for this option.

(b) Notwithstanding the foregoing or anything else contained in this Option Contract, in the event that the title insurance policy provided by Seller pursuant to this Option Contract or the previous contract for the sale by Seller to Buyer of the real property described in Exhibit B attached hereto is not satisfactory to Buyer, or in the event the purchase by and sale to Buyer of the real property described in Exhibit B attached hereto is not closed, all of the _____ Dollars (\$_____) consideration paid by Buyers to Seller shall be returned by Seller to Buyer upon Buyers' demand.

7. **Notices.** All notices provided for herein shall be deemed to have been duly given if and when deposited in the United States mail, properly stamped and addressed to the party for whom intended, or when delivered personally to such party.

8. **Assignment.** Buyers may assign this option.

9. **Binding Effect.** This option shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, successors, or assigns.

10. **Representations and Warranties of Seller.** Seller hereby represents and warrants:

- (a) The Property is properly zoned for single family purposes and the construction and occupation of a single family dwelling;
- (b) There is adequate, good and marketable ingress to and egress from the Property;
- (c) The Property has ready and available access to potable water supplies, electrical power, telephone service and trash collection;
- (d) The Property is properly zoned and suitable for the installation and operation of a septic tank;
- (e) There are no violations and the sale of the Property will not create or cause any violation of any statute, law, regulation or ordinance of any governmental entity relating to environmental protection, land use, zoning or subdivision of land.
- (f) The Property is adjacent to and contiguous with that real property described on Exhibit B, attached hereto.

11. **Broker.** The parties hereby represent and warrant to each other that there is no broker involved in the granting of this option or in the purchase and sale of the Property in the event that this option is exercised.

12. **Survival of Representations.** The representations and warranties contained in this Option Contract shall survive the closing of the purchase of the Property.

IN WITNESS WHEREOF, etc.

6.4 Option to Purchase — Commercial Property — Environmental Concerns .

OPTION given this _____ day of _____, 20____, by _____, of _____, Florida, (hereinafter called "Optionor"), to _____, a Florida corporation, of _____, Florida, (hereinafter called "Optionee").

WHEREAS, Optionor and Optionee have been negotiating the possible purchase by Optionee of certain real property in _____ County, Florida, owned by Optionor; and

WHEREAS, Optionor desires to give Optionee a certain amount of time for Optionee to investigate the condition of the property, including but not limited to its soil, groundwater, tanks, and all other characteristics, so that Optionee will be fully knowledgeable with respect to the property before being obligated to purchase it; and

WHEREAS, during that time Optionee desires to have the exclusive option to purchase the property, without the obligation to purchase it;

NOW THEREFORE, the parties hereby agree as follows:

1. **Grant of Option.** In consideration of the sum of _____ and No/100 Dollars (\$_____) paid by Optionee to Optionor, receipt of which is hereby acknowledged by Optionor, Optionor hereby grants to Optionee the exclusive option to purchase, on the following terms and conditions, that certain real property in _____ County, Florida, legally described as follows, together with all improvements, rights and appurtenances on or pertaining thereto, and including Optionor's right, title and interest (if any) in adjacent streets, alleys or rights-of-way, all of which is hereinafter called the "Property": _____.

2. **Option Period.** The term of this option shall commence on the date first above stated and shall expire at midnight on _____, 20____.

3. **Purchase Price of Property.** The full purchase price of the property shall be _____ and No/100 Dollars (\$_____), which amount shall be payable in cash at closing if Optionee elects to exercise this option.

4. **No Application of Consideration to Purchase Price.** The _____ option fee paid by Optionee for this option shall not be applied to the purchase price.

5. **Option Fee Not Refundable.** The \$_____ option fee shall not be refundable, except as provided in Paragraph 8 (Title Insurance and Survey) below.

6. **Exercise of Option.** Optionee may exercise this option only by giving Optionor written notice thereof, signed by Optionee, on or before the _____, 20____, expiration date. If this option is properly exercised, this option shall become a contract for sale and purchase which shall be legally binding upon both Optionor as seller and Optionee as buyer, and they shall perform the additional Closing Provisions set forth below. The Closing Provisions shall not be valid and binding unless and until this option is exercised by Optionee.

7. **Failure to Exercise Option.** If Optionee does not exercise this option, then this option shall automatically terminate upon expiration of the option period and Optionor shall retain the \$_____ paid as consideration for this option.

8. Title Insurance and Survey. Optionee shall obtain a title insurance commitment at this time from such title insurance company as is acceptable to Optionee and Optionor. Optionor has already given Optionee a current topographical survey of the Property. Optionee shall have until _____, 20____, to examine the title insurance commitment and survey to determine whether there are any title or survey matters which are not acceptable to Optionee and to give Optionor written notice of such matters. If Optionee gives such notice to Optionor, then Optionor shall refund the \$_____ option fee to Optionee and this option shall then be automatically terminated, null and void. If Optionee does not give such notice to Optionor by _____, 20____, then the \$_____ option fee shall be absolutely nonrefundable and Optionee shall be conclusively deemed to have accepted the title and survey matters of the Property in the condition shown on the title insurance commitment and survey as of the dates of those two documents.

9. Right to Erect Sign. Until this option expires or otherwise terminates, Optionee shall have the right to erect a sign on the Property, which sign must be for the purpose of leasing the Property after purchase. The erecting and maintenance of the sign must comply with all City of _____ ordinances and all other laws and governmental regulations. If Optionee does not exercise this option, then Optionee shall remove said sign within seven (7) days after expiration or other termination of this option, and Optionee shall immediately, at Optionee's sole expense, repair any damage to the Property caused by said sign. Optionee acknowledges and consents that Optionor has no fire, liability or other insurance on the Property, and agrees that Optionee shall have the sole risk of loss with respect to all occurrences as to Optionee's sign.

10. DEP Process During Option Period. Prior to exercising the option, Optionee shall assure itself that the Property is in such condition both above and below the ground that Optionee is satisfied therewith. The parties acknowledge that the Property was used as a gas filling station for many years; that Optionor has never operated a filling station on the Property itself; and that there may be some leakage from underground petroleum tanks that were installed on the Property. The parties hereby agree to cooperate with each other in pursuing such approvals from the Florida Department of Environmental Protection (DEP) as will enable the Property to comply with such laws and regulations as are applicable to the Property. In such regard, Optionor does not admit any responsibility or liability with respect to the present condition of the Property. If Optionee exercises the option, then Optionee will take the Property at closing in its condition at that time. Prior to exercising the option, Optionee will, without charge, lead Optionor through the administrative processing necessary to obtain DEP approvals. Optionor shall reimburse Optionee such reasonable expenses as are incurred by Optionee in doing this and as are approved by Optionor. If such approvals are not obtained from DEP by the expiration date of this option, then this option shall, nevertheless, expire.

11. Removal of Underground Tanks. Prior to exercising the option, Optionee shall cause the underground tanks on the Property to be removed. Optionor shall pay the first _____ and No/ 100 Dollars (\$_____) of the expense of removal, and Optionor and Optionee shall equally pay any expense over that amount. Optionee shall not be entitled to any refund of such payment if

Optionee does not exercise the option. Optionee shall provide to Optionor written proof of the cost of removal.

12. Access for Testing. Until this option expires or otherwise terminates, Optionee may cause to be conducted test borings, percolation and other soil tests, and any other tests and reports of the Property, all at the expense of Optionee. Optionee and its agents shall have the right during the term of this option to enter upon the Property for the purpose of conducting such tests. Optionee shall immediately restore any damage to the Property caused by such tests or otherwise by reason of such entry at Optionee's sole expense.

13. City Permits. Optionor hereby authorizes Optionee to obtain, at Optionee's sole expense, all necessary permits from the City, including vacation of alley, lot splits, zoning changes or other matters which are necessary to enable Optionee to use the Property for the purposes desired by Optionee (which are not yet known), and Optionor agrees to cooperate with Optionee in doing so, but Optionor is not obligated to incur any expense in doing so.

14. Condemnation. If the Property becomes the subject of a condemnation or eminent domain action, either party shall have the option to terminate this option by giving the other party written notice within thirty (30) days after the initiation of such condemnation or eminent domain action. If neither party chooses to terminate, then:

A. If the sale or taking by condemnation or eminent domain is completed before closing, then the portion of Property affected by said condemnation or eminent domain action is hereby excluded from the Property and the amount of proceeds received by Optionor from said condemnation or eminent domain action shall be deducted from the Purchase Price for the Property and all such proceeds shall belong exclusively to Optionor. Wherever used in this subparagraph, "completed" means that the condemnation or eminent domain sale has closed and the proceeds of such sale have been paid to Optionor or that the condemnation or eminent domain action has been finally adjudicated and the proceeds have been paid to Optionor.

B. If the sale or taking by condemnation or eminent domain action is not completed before closing, then the portion of Property affected by such condemnation or eminent domain action is hereby included in the Property and all proceeds of such sale or taking shall belong exclusively to Optionee if Optionee exercises the option and closes on the purchase.

15. No Broker's Commission. The parties acknowledge that there is no broker in this transaction and that no one is entitled to any sales commission whatsoever with respect to this option or the possible sale.

16. Assignment. This option may be assigned by Optionee only to an entity of which _____ is an active participant and only after written notice to Optionor.

17. **Benefit.** The provisions of this option shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, legal representatives, successors, and assigns.

18. **Notices.** All notices under this option, and under the Purchase Contract if the option is exercised, shall be in writing and shall be deemed to have been properly given when either hand delivered or sent by United States Certified Mail, Return Receipt Requested, postage fully prepaid, to the addresses which follow:

Optionor: _____

Optionee: _____

19. **Entire Agreement.** This option merges all prior negotiations and understandings between the parties and constitutes their entire agreement on the date of this option.

20. **Time of Essence.** Time is of the essence of this option.

21. **No Recording.** Neither this option nor any notice thereof shall be recorded in the public records.

22. **Paragraph Headings.** The paragraph headings herein are for convenience only and are not a substantive part of this option.

23. **Closing Provisions.** The following provisions shall apply if, and only if, Optionee properly exercises this option; Optionor is herein called "Seller" and Optionee is herein called "Buyer":

A. Closing of the sale shall take place at the office of Seller's attorney in _____, Florida, within thirty (30) days after the date of exercise of the option. If the thirtieth day is a Saturday, Sunday or legal holiday, then the last date for closing shall be the first business day thereafter.

B. Buyer shall have the title insurance commitment and survey updated to the day prior to the date of closing. If there are any additional matters on the commitment which arose after the issuance date on the commitment, and if those matters are not acceptable to Buyer, then Seller shall have 120 days in which to attempt to remove said matters. But if Seller is unable to remove them within said time, and if Buyer is not willing to waive them, then either party may cancel the contract, in which case neither party shall be obligated to close.

C. Seller shall pay the following expenses at closing: documentary stamps on the deed; reasonable premium for owner's policy of title insurance. Each party shall pay its own attorneys fees and costs and any other expenses incurred by that party.

D. Seller shall convey to Buyer at closing fee simple title to the Property by statutory warranty deed, which shall contain only such encumbrances and exceptions as are shown on the title insurance commitment or are otherwise acceptable to Buyer.

E. Ad valorem real and personal property taxes shall be prorated as of the closing date. If the taxes for the year of closing cannot be ascertained, then taxes for the previous year shall be used at closing for prorating taxes.

F. Possession of the Property shall be delivered to Buyer upon closing.

G. If Buyer exercises the option but fails to close on this purchase within the time set forth above, then Buyer shall pay Seller the additional sum of _____ No/100 Dollars (\$_____) as liquidated damages for its breach of contract, and each party shall thereupon be released of all liability under this instrument.

IN WITNESS WHEREOF, etc.

CHAPTER 7. MISCELLANEOUS CLAUSES

7.1 Date.

This agreement, made the _____ day of _____, 20____.

7.2 Parties and Residence.

Between John Doe, unmarried, residing at _____, hereinafter called the Seller, and Richard Roe and Mary Roe, his wife, residing at _____, hereinafter called the Purchaser.

7.3 Description of the Property.

The Seller agrees to sell and convey and the Purchaser agrees to purchase all that tract or parcel of land and premises situate, lying and being in the City of _____, County of _____ and State of Florida, and being more particularly described as follows: [here describe] being the same premises conveyed to the Seller by deed dated _____, and recorded in the Official Records of _____ County, Florida, in Book _____ at page _____, together with all the right, title and interest of the Seller in and to all the land and premises included within all adjoining streets and roads.

7.4 Reservations and Exceptions.

Reserving and excepting to the Seller, his heirs and assigns [here describe the subject of the reservation, for example, right of way, growing crops, minerals, etc.].

7.5 Included in Sale.

Included in the sale as a part of said premises are the buildings, structures, and improvements now thereon, and the fixtures belonging to the seller and used in connection therewith including, if any, all venetian blinds, window shades, screens, screen doors, storm windows and doors, awnings, shutters, furnaces, heaters, heating equipment, stoves, ranges, oil and gas burners and fixtures appurtenant thereto, hot water heaters, plumbing and bathroom fixtures, electric and other lighting fixtures, mantels, outside television antennas, fences, gates, trees, shrubs, plants, and, if built in, air conditioning equipment, ventilators, garbage disposers, dishwashers, washing machines and dryers; and _____ but excluding _____.

7.6 Subject to Mortgage.

The premises are sold and are to be conveyed subject to a mortgage now a lien of record, a copy of which is annexed hereto and made part of this contract, upon which there is unpaid the principal sum of \$ _____ with interest at the rate of _____% from _____, 20 ____.

7.7 Mortgage Assumption.

The Buyer agrees to assume and agrees to pay the Seller's existing loan on the property, the principal balance of which is approximately (exact amount to be adjusted at closing) \$ _____. The Buyer agrees to pay all costs in connection with the assumption. Any escrow deposit held by the holder of the Seller's loan is to be assigned to the Buyer at the closing and the Seller is to be reimbursed by the Buyer for the same. The interest on the Seller's loan is to be prorated as of the date of the closing. This contract is contingent upon the acceptance of the Buyer by the holder of the Seller's loan and on the approval of the Buyer's credit by the Seller. The Buyer shall furnish the Seller forthwith with any credit information requested and will be reimbursed by the Seller for any expense incurred by him in obtaining said information. The Seller shall, within ten (10) days after receipt of the credit information, notify the Buyer in writing that said credit is approved or disapproved. If disapproved, this contract shall be null and void and the earnest deposit returned to the Buyer.

7.8 Restrictions.

The premises are sold and are to be conveyed subject to restrictions and covenants, if any, contained in prior instruments of record.

7.9 Leases.

The premises are sold and are to be conveyed subject to leases and tenancies as set forth in Schedule A annexed hereto and made part hereof. The Purchaser acknowledges that he has examined each of the leases referred to in said schedule and has initialed the same for identification.

7.10 Survey Exceptions.

The premises are sold and are to be conveyed subject to such state of facts as an accurate survey may disclose, provided the same does not render the title unmarketable [or does not render the title uninsurable by _____, at their regular rates].

7.11 Zoning Ordinances.

The premises are sold and are to be conveyed subject to any and all zoning ordinances and regulations affecting it, if any.

7.12 Street Encroachments.

The premises are sold and are to be conveyed subject to encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway.

7.13 Construction Liens.

If improvements or additions have been completed within six months prior to sale closing date, Seller shall furnish reasonable security against construction liens or satisfactory evidence of payment of bills.

7.14 Purchase Price.

The Purchaser agrees to purchase the premises, and to pay therefor the sum of \$_____ in the following manner: _____.

7.15 Terms of Payment — Down Payment.

\$_____ upon the execution and delivery of this agreement, receipt whereof by check, subject to collection, is hereby acknowledged.

7.16 Terms of Payment — Balance of Cash Payment.

\$_____ in cash or by valid cashier's check payable to the order of the Seller upon a bank or trust company which is _____, on the delivery of the deed as hereinafter provided.

7.17 Terms of Payment — Assumption of Existing Mortgage.

\$_____ by assuming the payment of the first mortgage above described at present a lien on the premises.

7.18 Terms of Payment — Purchase Money Mortgage.

\$_____ by the Purchaser executing, acknowledging and delivering his note in said sum, to be secured by a purchase money mortgage on the premises above described, in the same amount.

Said bond and mortgage shall bear interest at the rate of _____% per annum, to be computed from the date herein fixed for the closing of title, payable on a date _____ months after said date, and quarter-annually thereafter. The principal thereof shall be payable as follows:

\$_____ on a date _____ months after the date fixed for the closing of title, and a like sum of \$_____ quarter-annually thereafter until a date _____ years after the date herein fixed for the closing of title when the balance of principal then remaining unpaid shall become due and payable. Said note and purchase money mortgage shall be drawn by the attorney for the Seller at

the expense of the Purchaser who also agrees to pay for the documentary stamps, if any, required to be affixed to the note, the intangible tax required to be paid upon the mortgage, and the fees for recording said mortgage, and the same shall contain such provisions as the attorney for the Seller may deem advisable.

7.19 Mortgage Contingency Clause.

This Agreement is contingent on the Buyer's ability to obtain a _____ mortgage loan commitment of \$ _____. The Buyer/s agree to apply for said mortgage loan forthwith and to make every effort to obtain said mortgage loan commitment on or before a date hereinafter set forth. In the event the Buyer/s are unable to obtain a commitment for said mortgage loan on or before the date hereinafter set forth, the Buyer/s shall so advise the Seller/s Broker and this contract shall become null and void, and all payments made hereunder shall be refunded, and all obligations to each other shall cease. If such notice is not received on or before the expiration date hereinafter specified, the Buyer/s shall be bound to perform their obligations under this contract. It is agreed that the time granted for mortgage loan financing commitment shall expire on _____, 20____.

7.20 Delivery of Deed.

The deed shall be delivered upon the receipt of said payments at the office of _____ at _____ o'clock, __.M., on _____, 20____.

7.21 Type of Deed.

The deed shall be a [statutory warranty deed] [special warranty deed] [general warranty deed] [fee simple deed] [quit claim deed] [trustee's deed] [personal representative's deed], and shall be duly executed, acknowledged, and have documentary stamps in the proper amount affixed thereto by the Seller, at the Seller's expense, so as to convey to the Purchaser the fee simple of the premises, free from all liens and encumbrances, except as herein stated.

7.22 Title.

The Seller shall give and the Purchaser shall accept such title as a title insurance company permitted to do business in the State of Florida will approve and insure in the amount of \$ _____, subject to the exceptions herein set forth, at its regular premium; and if the title prove not so insurable by one of the aforesaid companies at its regular premium, then the deposit of \$ _____ paid hereunder is to be returned to the Purchaser without any claim for damages to either party.

7.23 Another Title Clause.

Title is to be free of liens, encumbrances, easements, restrictions, rights and conditions of record or known to Seller, other than the following: (1) Current property taxes, (2) covenants, conditions, restrictions, and public utility easements of record, if any, provided the same do not adversely affect the continued use of the property for the purposes for which it is presently being used, unless reasonably disapproved by Buyer in writing within _____ days of receipt of a current preliminary title report furnished at _____ expense, and (3) _____. Seller shall furnish Buyer at _____ expense a standard American Land Title Association policy issued by _____ Company, showing title vested in Buyer subject only to the above. If Seller (1) is unwilling or unable to eliminate any title matter disapproved by Buyer as above, Seller may terminate this agreement, or (2) fails to deliver title as above, Buyer may terminate this agreement; in either case, the deposit shall be returned to Buyer.

7.24 Fixtures.

All fixtures and articles of personal property attached or appurtenant to or used in connection with the premises are represented to be owned by the Seller, free from all liens and encumbrances except as herein stated, and are included in this sale; without limiting the generality of the foregoing, such fixtures and articles of personal property include plumbing, heating, lighting and cooking fixtures, air conditioning fixtures and units, ranges, refrigerators, radio and television aerials, bathroom and kitchen cabinets, mantels, door mirrors, venetian blinds, shades, screens, awnings, storm windows, window boxes, storm doors, mail boxes, weather vanes, flagpoles, pumps, shrubbery and outdoor statuary.

7.25 Possession.

The parties agree that the Purchaser may enter into and take possession of the premises on the _____ day of _____, 20____, and from that date on shall take and be entitled to all rents, issues and profits thereof to his own use and benefit.

7.26 Apportionments.

The following items are to be apportioned as of the date of the delivery of the deed hereunder: rents as and when collected, interest on mortgages, insurance premiums, taxes, water charges, sewer rents, heating fuel and service, garbage removal or incinerator service, janitor service [include other types of service or supplies].

7.27 Risk of Loss.

The Seller assumes all risks and liability for loss, damage or injury by fire, windstorm, accident or other cause to the premises until the delivery of the deed, and further agrees that should the premises suffer any damage beyond ordinary wear and tear, he will repair the damage before the date for delivery of the deed herein designated, or that the Purchaser shall be allowed to deduct from the purchase price an adequate amount to effect such repairs.

7.28 Assessments.

If at any time before the delivery of the deed, the premises or any part thereof shall be or shall have been affected by any assessment or assessments which are or may become payable in annual installments, of which the first installment is then a charge or lien, or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the Seller, upon the delivery of the deed.

7.29 Condition – Seller's Warranty.

Seller covenants that buildings, if any, are entirely within the boundary lines of the property.

7.30 Condition — As Is.

Purchaser has inspected the buildings on the premises and the personal property included in this sale and is thoroughly acquainted with their condition. Purchaser agrees to purchase them "as is" and in their present condition subject to reasonable use, wear, tear, and natural deterioration between now and closing. Purchaser shall have the right, after reasonable notice to seller, to inspect them before closing.

7.31 Condition — Inspection Right.

Buyers shall have the right to have inspections performed of the Property at their own expense within 10 days after the date of this Contract. Buyers shall arrange convenient times with Sellers. Buyers hereby acknowledge that Sellers do not intend to conduct their own inspection of the Property and that Sellers are under no duty to discover any defects prior to the closing. The Property is being sold "as is", with no express or implied representation or warranties by Sellers as to physical conditions, quality of construction, workmanship, or fitness in general or for any particular purpose. Buyers hereby acknowledge and agree that the Property is being sold with certain known defects, including, but not limited to those listed in Exhibit "A" attached hereto. The parties agree that the attached list is not intended to be exhaustive and that the Property may contain other defects which might be discovered through the exercise of Buyers' right to inspect provided for above.

7.32 Condition — Confirming Inspection and Defects.

Buyer acknowledges that Buyer has had the right to have inspections performed with respect to the Property at Buyer's own expense prior to signing this Contract. Buyer hereby acknowledges that Seller does not intend to conduct its own inspection of the Property and that Seller is under no duty to discover any defects prior to the closing. The Property is being sold "as is", with no

express or implied representation or warranties by Seller as to physical conditions, quality of construction, workmanship, or fitness in general or for any particular purpose. Buyer hereby acknowledges and agrees that the Property is being sold with certain known defects, including, but not limited to the following: _____. The parties agree that the above-mentioned list of known defects is not intended to be exhaustive and that the Property may contain other defects which might be discovered through the exercise of Buyer's right to inspect the Property before signing this Contract.

7.33 Condition — Reliance.

The buyer acknowledges that the buyer has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either the seller or the broker(s): (fill in; if none, state "none"; if any listed, indicate by whom each warranty or representation was made).

7.34 Broker's Commissions.

The parties agree that _____ is the licensed and authorized real estate agent who brought about this sale, and the Seller agrees to pay the brokerage commission of _____% on the purchase price aforesaid, amounting to \$_____.

7.35 Oral Modifications.

This agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

7.36 Signatures.

In Witness Whereof, the parties hereto have duly executed this agreement.

Seller: _____

Buyer: _____

7.37 Warning.

THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT LEGAL ADVICE.

7.38 Deposit Receipt.

The undersigned agent hereby acknowledges having received from _____ the sum of \$_____, in the form of _____, to be held by _____ broker, in broker's escrow or trustee account, as earnest money and part payment for the following described real estate in _____ County of _____, Florida, to wit: _____ together with all improvements thereon and all fixtures of a permanent nature currently on the premises except as hereinafter provided, in their present condition, ordinary wear and tear excepted, known as No. (Street Address, City, Zip) , and hereinafter called the Property.

7.39 Delivery of Abstract of Title or Title Insurance.

The Vendor agrees to deliver to the Purchaser, as soon as the same can be obtained with reasonable diligence, an abstract of title to the premises, or a written commitment issued by a recognized title insurance company doing business in the State of Florida binding that company to insure the title in the Purchaser upon the consummation of this agreement. If an abstract is furnished, such abstract shall bring the title down to the date of this contract, or later, and shall show a good record, unencumbered fee simple title in the Vendor except as herein otherwise provided. The Purchaser shall have fifteen days after the delivery of said abstract for the examination thereof, and within said period shall notify the Vendor in writing of any objections to said title. If this notification is not given within the time stated, then said title shall be conclusively deemed to be acceptable to the Purchaser. In the event that the title of the Vendor is not good and marketable, the Vendor shall have a reasonable time thereafter to perfect the title; and if the defects are not cured within a reasonable time, then the Purchaser may demand a return of all earnest moneys paid by him and cancel this contract, or waive the defects and accept the property without deduction on account of said defects.

7.40 Policy of Title Insurance.

The Seller agrees to deliver, without charge to the Buyer, a policy of title insurance in favor of the Buyer, issued by such company as the Buyer shall approve, in the amount of the purchase price of said property, and to comply with all the requirements of such company. The Seller further agrees to deliver an abstract of title, when required, which shall become the property of the Buyer, continuing down to and including the date when the deed to the Buyer and the mortgage to the Mortgagee have been recorded. The Seller further agrees that, except as herein provided, all taxes, liens, encumbrances, or other interests in third persons will be satisfied, discharged, or paid by him, including stamp taxes and other expenses incident to the preparation and execution of the deed and other evidences of title required herein. Upon failure of the Seller to furnish such policy of insurance within a reasonable time, the Buyer may procure such insurance, in which event the cost thereof shall be deducted from the purchase price herein provided.

7.41 Marketable Title Subject to Restrictions of Record.

The title to be delivered shall be a marketable title and insurable by _____ Title Company and shall be free and clear of all encumbrances including municipal liens and assessments and liability for assessments for improvements now constructed (except as herein stated), this clause to be operative as of the date of this agreement, and the title is to be subject to all existing restrictions of record. The Seller, however, guarantees that there are no restrictions in any conveyance or plans of record affecting the premises, which will prohibit the use or occupancy thereof as dwelling and poultry and egg farm.

7.42 Price to Be Fixed by Valuation.

The price to be paid for the purchase of the premises shall be determined by _____, as the valuer acting for both parties [or by _____, appointed by the Vendor, and _____, appointed by the Purchaser, or, in the event of their disagreement, by an umpire to be nominated by them before entering upon the valuation.] Such valuation shall be made within _____ days from the date hereof; and otherwise, unless the parties extend the time, the authority of the valuer[s and umpire] shall determine, and this agreement shall become null and void. In making such valuation the valuer[s or umpire] shall value separately the land and building and the fixtures and machinery in the said building [add other items of valuation].

7.43 Purchase Money Mortgage.

Upon the delivery of the deed the Purchaser shall concurrently therewith deliver to the Vendor a mortgage of the premises securing the payment to the Vendor of the balance of the purchase money, being the sum of \$_____, which shall be payable _____ years from the date of the completion of the purchase, with interest thereon at the rate of _____ per cent per annum, payable semiannually, and computed from the last-mentioned date, together with the Purchaser's promissory note to the order of the Vendor for the said principal sum and interest payable as aforesaid. Such mortgage shall provide that the Purchaser shall pay all taxes and assessments which shall be assessed against the premises, and shall at his own expense keep the same insured against fire, in companies satisfactory to and with loss if any payable to the mortgagee as his interest may appear, in at least the sum of \$_____, and that the policies and premium receipts thereof be deposited with the mortgagee, and shall contain such other provisions as the Vendor may reasonably require. In case of disagreement as to the form or contents of the mortgage, the same shall be settled by the Vendor's counsel, whose approval shall be accepted by and be binding upon the parties.

7.44 Purchase Money Mortgage — Another Clause.

If a new loan is to be obtained by Purchaser from a third party, Purchaser agrees to promptly and diligently (a) apply for such loan, (b) execute all documents and furnish all information and documents required by the lender, and (c) pay the customary costs of obtaining such loan. Then if such loan is not approved on or before _____, 20____, or if so approved but is not available

at time of closing, this contract shall be null and void and all payments and things of value received hereunder shall be returned to Purchaser.

7.45 Assumption of Mortgage.

The premises are to be conveyed by the Seller to the Buyer on or before the _____ day of _____, 20____, by a good and sufficient [warranty] deed conveying a good and clear title to the same in fee simple, free from all incumbrances, except a certain mortgage made by the Seller to _____, dated the _____ day of _____, 20____, and recorded on the _____ day of _____, 20____, in the Public Records of _____ County, Florida, in book _____, at page _____, and securing the sum of \$_____, with interest thereon at the rate of _____ per cent per annum, which mortgage the Buyer is to assume and agree to pay as part of the purchase price for such conveyance; and for such deed and conveyance the Buyer is to pay the sum of \$_____, of which the sum of \$_____ has been paid at the date hereof, and \$_____ is to be paid upon the delivery of such deed, and the remainder is to be paid by the assumption and payment of said mortgage as hereinbefore provided, it being understood that a clause whereby the Buyer shall assume and agree to pay said mortgage shall be contained in such deed.

7.46 Assumption of Mortgage — Another Clause.

If a note and mortgage is to be assumed, Purchaser agrees to apply for a loan assumption if required and agrees to pay (1) a loan transfer fee not to exceed \$_____ and (2) an interest rate not to exceed _____% per annum. If the loan to be assumed has provisions for a shared equity or variable interest rates or variable payments, this contract is conditioned upon Purchaser reviewing and consenting to such provisions. If the lender's consent to a loan assumption is required, this contract is conditioned upon obtaining such consent without change in the terms and conditions of such loan except as herein provided.

7.47 Building Violations.

All notices of violation of law or municipal ordinances, orders or requirements noted in or issued by the housing, fire, building, labor, health, or other state or municipal department having jurisdiction, against or affecting the premises at the date hereof, shall be complied with by the Seller and the premises shall be conveyed free of the same, and this provision of this contract shall survive delivery of the deed hereunder. The Seller shall furnish the Purchaser with an authorization to make the necessary searches therefor.

7.48 Rights in Street.

This sale covers all right, title and interest of the Seller of, in and to any land lying in the bed of any street, road or avenue opened or proposed, in front of or adjoining the premises, to the center line thereof, and all right, title, and interest of Seller in and to any award made or to be made in lieu thereof, and in any unpaid award for damage to the premises by reason of change of grade of

any street; and the Seller will execute and deliver to the Purchaser, on closing of title, or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of any such award.

7.49 Water Meter Readings.

If there be a water meter on the premises, the Seller shall furnish a reading to a date not more than thirty days prior to the time herein set for closing title and the unfixed meter charge for the intervening time shall be apportioned on the basis of such last reading.

7.50 Covenant by Vendor to Pay Taxes.

The Vendor shall pay before delinquency all real estate taxes that may have been levied for the year 20____ but payable in _____ and that may be levied subsequent to this date upon the property in _____ County, which it is accepting as a part of the purchase price herein mentioned.

7.51 Termite and Other Wood–Destroying Insects Inspection.

This agreement is contingent on a termite and other wood destroying insect inspection and report being made by a recognized exterminator at the Buyer’s expense on or before a date hereinafter set forth. If the inspection shows that there is no evidence of termite or other wood destroying infestations in the existing construction and if infestations had existed, it has been corrected, this contract shall be in full force. If the inspection shows there is evidence of termites or other wood destroying infestations, and or structural damage as a result of such infestations, the extermination and or repair may be done at the Seller/s expense or this contract shall become null and void, and all payments made hereunder shall be refunded, and all obligations to each other shall cease. The Buyer/s shall furnish the Seller/s Broker with a copy of the written report stating the results of the inspection. If such written report is not received on or before the expiration date hereinafter specified, the Buyer/s shall be bound to perform their obligations under this contract. It is agreed that the time granted for the termite inspection shall expire on _____ 20____.

7.52 Right to Inspect.

This agreement is subject to the right of the Buyer to obtain at his own expense, inspection(s) of the premises by consultant(s) of his own choosing, granting to the Buyer such right of inspection(s) on or before a date hereinafter set forth. The Buyer and his consultant(s) shall have the right of access to the premises at reasonable times and in the presence of the Seller/s or his authorized representative upon twenty-four (24) hours advance notice, for the purpose of inspecting the condition of said premises. If the Buyer/s is not satisfied with the results of such inspection(s), this agreement may be terminated without legal or equitable recourse to either party by the Buyer at his election, the parties thereby releasing each other from all liability under

this Agreement, and the deposit shall be returned to the Buyer/s provided however, that the Buyer shall have notified the Seller's Broker in writing together with a copy of the written report(s) stating the results of the inspection(s), on or before the expiration date hereinafter specified of his intentions to so terminate. If such written notice and report(s) are not received on or before the expiration date hereinafter specified, the Buyer shall be bound to perform their obligations under this contract. IN CONSIDERATION OF THE BUYER'S RIGHT TO TERMINATE WITHIN THE PERIOD SPECIFIED, THE SELLER AND BROKERS ARE HEREBY RELEASED FROM LIABILITY RELATING TO DEFECTS IN THE PREMISES OF WHICH THE SELLER AND BROKER HAD NO ACTUAL KNOWLEDGE PRIOR TO THE EXECUTION OF THIS AGREEMENT. It is agreed that the period granted to the Buyer for inspection(s) shall expire on _____ 20 ____.

7.53 Disclosure Concerning Lead Paint.

Buyer acknowledges that Seller has informed him that the premises described in this contract may be contaminated with dangerous levels of lead, and that if a child or children under 6 years of age is to become a resident, Buyer agrees that he shall hold Seller and broker harmless of any injury or damage to said child or children as a result of lead paint poisoning and for the removal or cover of any paint, plaster, or other material containing such dangerous levels of lead, and said Buyer shall, at his own expense remove or cover said paint, plaster or other materials, so as to make said dangerous levels of lead inaccessible to such child or children, including such requirements as law may, from time to time require.

7.54 No Representations by Broker.

Information was supplied by the Sellers and has not been checked for accuracy by the broker. Public information was subject to verification. Each item was subject of direct inquiry by Buyers, and the Buyers have been so advised. The Broker makes no representations regarding the condition of the structure or its mechanical components.

7.55 Casualty Damage.

In case of any damage to the premises by fire or other casualty, and unless the property shall previously have been restored to its former condition by the Seller, the Buyer may at his option, either cancel this agreement, and recover all sums paid hereunder or require as part of this agreement that the Seller pay over or assign on delivery of the Deed, all sums recovered or recoverable on any and all insurance covering such damage.

7.56 Occupancy by Seller.

It is understood and agreed that the Seller may occupy the premises herein described until _____. Seller agrees to pay a per diem charge for occupancy to the Buyer of \$_____ a day. Failure to vacate on the date designated will entitle the Buyer to collect a penalty of \$_____ a

day in addition to the per diem rate for each day of occupancy after the date agreed upon as his liquidated damages. Also, the Seller agrees to leave the premises in the same condition in which they now are, reasonable use and wear of the buildings thereon excepted. The Seller agrees to be responsible for any damages to the dwelling or property caused by him and to hold the Buyer harmless from any and all liability which might result from his occupancy. The provisions of this article are to survive the delivery of the deed.

7.57 Occupancy by Buyer.

The Buyer shall be permitted to take possession of said property on _____, and shall pay rent for the same at the rate of \$_____ per diem from the date of possession to the date of the closing of sale, said rent to be payable at the closing. If the sale is not completed under the terms of this contract or on terms acceptable to both the Buyer and the Seller, the Buyer agrees to vacate said property within 5 days after receipt of written notice from the Seller and agrees to continue to pay said rent until possession is given. The Buyer also agrees to leave said dwelling in the same condition that it was in prior to his taking occupancy. The Buyer agrees to be responsible for any damages to the dwelling or property caused by him and to hold the Seller harmless from any and all liability which might result from his occupancy.

7.58 Buyer Storing Property on Seller's Premises.

The Seller hereby agrees that the Buyer may use and occupy certain designated parts of the premises for storage. It is agreed and understood that any use and occupation shall be for storage purposes only and that any loss or damage resulting therefrom to the Seller will be paid for by the Buyer. Storage is at the risk of the Buyer of any damage or injury to the stored property.

7.59 Surrender of Possession on Purchaser's Default.

Should default be made in the payment of said several sums of money or any or either of them or any part thereof, or in the payment of said interest, taxes, or assessments or any part thereof, or in any of the covenants herein to be by the Purchaser kept or performed, then the Seller shall at his election be discharged from all further obligation hereunder, time being of the essence of this agreement; and in case of any such default, the Purchaser hereby agrees, upon demand of the Seller, quietly and peaceably to surrender to the Seller the possession of the premises and every part thereof, it being understood that until such default the Purchaser is to have possession of the premises.

7.60 Remedies for Default.

Time is of the essence hereof. If any note or check received as earnest money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed as herein provided, there shall be the following remedies:

(a) IF SELLER IS IN DEFAULT, (1) Purchaser may elect to treat this contract as terminated, in which case all payments and things of value received hereunder shall be returned to Purchaser and Purchaser may recover such damages as may be proper, or (2) Purchaser may elect to treat this contract as being in full force and effect and Purchaser shall have the right to an action for specific performance or damages, or both.

(b) IF PURCHASER IS IN DEFAULT, (1) Seller may elect to treat this contract as terminated, in which case all payments and things of value received hereunder shall be forfeited and retained on behalf of Seller and Seller may recover such damages as may be proper, or (2) Seller may elect to treat this contract as being in full force and effect and Seller shall have the right to an action for specific performance or damages, or both.

(c) Anything to the contrary herein notwithstanding, in the event of any litigation arising out of this contract, the court may award to the prevailing party all reasonable costs and expense, including attorneys' fees.

7.61 Disposition of Deposit on Default.

If the Seller shall fail to cause the title to be registered and to tender a deed to the Buyer in the manner and within the time herein provided, time being of the essence of this agreement, the said deposit shall be refunded to the Buyer; but if the Buyer shall fail or refuse to perform this agreement on his part, and the Seller shall be ready and willing to perform, the Seller shall be entitled to retain the said deposit as liquidated damages therefor.

7.62 Dispute Over Deposit.

Purchaser and Seller agree that, in the event of any controversy regarding the earnest money held by broker, unless mutual written instruction is received by broker, broker shall not be required to take any action but may await any proceeding, or at broker's option and discretion, may interplead any moneys or things of value into court and may recover court costs and reasonable attorneys' fees.

7.63 Arbitration.

If the only controversy or claim between the parties arises out of or relates to the disposition of the Buyer's deposit, such controversy or claim shall at the election of the parties be decided by arbitration. Such arbitration shall be determined in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

7.64 Time of Essence of Contract.

Time is hereby made of the essence of this agreement and each and every provision thereof, and if default shall be made in the payments or the interest or if any taxes levied or assessed after _____, 20____, become delinquent or if the Buyer shall fail to keep and perform the agreements in any other respect, the Seller shall have the right to declare the entire balance of the purchase price immediately due and payable, although by the terms of the agreement the payments may not then be due, and may then institute proceedings for the immediate collection of the entire balance of the purchase price, in which event all the rights, remedies and privileges granted by the laws of the State of Florida may be exercised by the Seller, including the right to collect reasonable attorneys' fees and the cost of continuation of an abstract of title.

7.65 Payment of Costs and Fees.

The Buyer and Seller each agree, should they default in any of the covenants and agreements contained herein, to pay all costs and expenses that may arise from enforcing this agreement, either by suit or otherwise, including a reasonable attorney's fee.

7.66 Multiple Listing Service.

If broker is a participant of a Board multiple listing service ("MLS"), the Broker is authorized to report the sale, its price, terms, and financing for the information, publication, dissemination, and use of the authorized Board members.

7.67 Protection From Other Brokers.

The Buyer represents and warrants that no broker, other than _____, Realtors, procured the Buyer as purchaser, nor was in any way instrumental in effecting this sale. The Buyer further agrees to hold the Seller, its successors and assigns, harmless from the claims of any other real estate broker in connection with this agreement of sale or sale of said premises to the Buyer herein. The provisions of this article shall survive the delivery of the deed.

7.68 Sale Dependent on Purchaser Obtaining Transfer of Seller's Liquor License.

It is an express condition of this agreement that consummation of this deal shall be and is dependent upon the Purchaser applying for and obtaining a transfer of the said alcoholic beverage license now in the name of the Seller herein to the Purchaser. In the event the State does not approve of said transfer within sixty (60) days from the date hereof or within any additional period mutually agreed upon between these parties, the said deposit of _____ dollars (\$_____) shall be returned to the Purchaser and this contract shall stand extinguished, canceled and be void. In the event the State does approve the transfer of said license, then and in that event this deal shall be consummated and closed within ten (10) days from the date of said approval. Provided, however, that the parties hereto shall jointly and severally do no act or cause or permit any act to be done by them or by others which will impair, impede or be detrimental to the successful transfer of said license, and provided further that the said parties have jointly and

severally done no act of a nature or character that would impair the successful transfer of said license.

7.69 Covenant Against Recording.

The parties hereto covenant each with the other that this agreement shall not be recorded in any office of public record and all such offices of public record are hereby ordered and directed to refuse for recording this agreement if so presented.

7.70 Rents Under Outstanding Lease Reserved to Vendor.

It is mutually understood that the premises are now under written lease, the primary term of which expires the _____ day of _____, 20____, and which lease carries an option in favor of the lessee for an additional _____ year term. As further consideration for the sale of said property, the Purchaser agrees that the Vendor shall be entitled to retain the possession thereof and to receive all rents and income accrued and to accrue under the lease above mentioned for the period ending _____, 20____. In event the lessee exercises the option of renewal and extends the primary term of such lease for the additional term of _____ year, the rents reserved and to be paid during such extended period shall be paid to and received by the Purchaser. The Vendor agrees that during the period expiring _____, 20____, he will pay all taxes levied upon the premises to and including the taxes for the year 20____ and shall, in addition, pay all premiums of insurance which shall mature and become payable under policies of insurance now in force and covering improvements upon the premises and will pay all normal maintenance items and expenses for and during said period of time and will deliver possession of the premises to the Purchaser, subject only to the lease and option herein referred to, on the _____ day of _____, 20____, in as good condition as the premises are now, the ordinary wear and tear alone excepted.

7.71 Miscellaneous.

This agreement is made in the State of Florida and shall be governed by Florida law. This is the entire agreement between the parties and may not be modified or amended except by a written document signed by the party against whom enforcement is sought. This agreement may be signed in more than one counterpart, in which case each counterpart shall constitute an original of this agreement. Paragraph headings are for convenience only and are not intended to expand or restrict the scope or substance of the provisions of this agreement. Wherever used herein, the singular shall include the plural, the plural shall include the singular, and pronouns shall be read as masculine, feminine or neuter as the context requires. The prevailing party in any litigation relating to this agreement shall be entitled to recover its reasonable attorneys fees from the other party. _____ County, Florida, shall be proper venue for any litigation involving this Contract.

7.72 Foreign Investment in Real Property Tax Act (FIRPTA).

The parties acknowledge that the provisions of the Tax Reform Act of 1984 impose certain withholding requirements upon the Buyer of real property in instances where the Seller is a foreign individual as defined in the Internal Revenue Code. The parties agree to comply with the provisions of the Tax Reform Act of 1984 and to provide appropriate documentation, either at or prior to closing, in order to demonstrate that the sale is exempt from the withholding provisions of the Act. In compliance with the Act, the Seller hereby represents and warrants for the benefit of the Buyer that the Seller is not a foreign individual subject to the withholding provisions of the Act. Furthermore, the Seller's Tax Identification Number (Social Security Number) is:

_____.

7.73 Radon Disclosure.

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

7.74 Appraisal.

This contract is subject to the property being appraised by Buyer's financial institution at no less than \$_____.

7.75 Broker.

It is agreed that through the sole efforts of _____ Realty _____ the Buyer became interested in said property but that Buyer's decision to buy was based on his inspection and investigation of the property and not on any statement or representation of _____ Realty. The Broker and its Associates shall not be liable or responsible for failure or default of their principal in carrying out the terms and conditions of this Agreement. Brokers' commission on this sale shall be _____% divided equally between listing broker and selling broker.

7.76 Mold.

Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.

7.77 Energy Brochure.

Buyer acknowledges receipt of the information required by Florida Statutes Section 553.996.

7.78 Property Tax Disclosure.

Per Florida Statutes Section 689.261:

PROPERTY TAX

DISCLOSURE SUMMARY

BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

7.79 Condominium Disclosure.

Per Florida Statutes Section 718.503: THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT.

7.80 Condominium Disclosure — Alternate Form.

Per Florida Statutes Section 718.503: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

7.81 Condominium Disclosure — Another Form.

Per Florida Statutes Section 718.503:

ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR HER BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING. FIGURES CONTAINED IN ANY BUDGET DELIVERED TO THE BUYER PREPARED IN ACCORDANCE WITH THE CONDOMINIUM ACT ARE ESTIMATES ONLY AND REPRESENT AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF THE PREPARATION OF THE BUDGET BY THE DEVELOPER. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

7.82 Homeowner Association Disclosure.

Per Florida Statutes Section 720.401: IF THE DISCLOSURE SUMMARY REQUIRED BY SECTION 720.401, FLORIDA STATUTES, HAS NOT BEEN PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE EXECUTING THIS CONTRACT FOR SALE, THIS CONTRACT IS VOIDABLE BY BUYER BY DELIVERING TO SELLER OR SELLER'S AGENT OR REPRESENTATIVE WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS AFTER RECEIPT OF THE DISCLOSURE SUMMARY OR PRIOR TO CLOSING, WHICHEVER OCCURS FIRST. ANY PURPORTED WAIVER OF THIS VOIDABILITY RIGHT HAS NO EFFECT. BUYER'S RIGHT TO VOID THIS CONTRACT SHALL TERMINATE AT CLOSING.

7.83 Miscellaneous — Another Form.

Neither this Contract nor any notice hereof shall be recorded in any public records. This Contract is the entire understanding of the parties and no prior agreements, understandings, or representations shall be binding upon any of the parties hereto unless stated in this Contract. No modification or change in this Contract shall be valid or binding upon any of the parties unless in writing and signed by the parties to be bound thereby. This Contract is made in the State of Florida and shall be governed by Florida law. This Contract may be signed in more than one counterpart, in which case each counterpart shall constitute an original of this Contract. Paragraph headings are for convenience only and are not intended to expand or restrict the scope or substance of the provisions of this Contract. Wherever used herein, the singular shall include the plural, the plural shall include the singular, and pronouns shall be read as masculine, feminine or neuter as the context requires. The prevailing party in any litigation arising out of this Contract shall be entitled to recover reasonable attorneys fees and costs for all matters including any appeals, mediations and arbitrations. The county where the Property is located shall be the only proper venue for any litigation involving this Contract. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their successors in interest. This Contract may not be assigned or delegated by either party without the prior written consent of the other party. This Contract may be electronically signed using DocuSign or any other lawful method of signing.

7.84 Default — Liquidated Damages.

If either party breaches this Contract, then the only remedy of the other party is that the other party shall be entitled to liquidated damages in the amount of _____ Dollars (\$_____) from the breaching party, and upon payment of that amount this Contract shall be deemed cancelled.

7.85 Force Majeure Clause.

_____ shall not be liable for nonperformance or delay in performance that is caused, prevented, hindered or impeded by any matter, cause, event, or thing reasonably beyond the control of _____, including but not limited to any or all of the following: war, hostility, revolution, riot, civil commotion, terrorism, or national emergency; strike, lockout, or boycott; unavailability or shortage of material, equipment, supplies or labor; blackout, brownout or other disruption of power or communications; epidemic, pandemic, fire, hurricane, tropical storm, named storm, tornado, flood, earthquake, natural disaster, force of nature, explosion, embargo, or Act of God; or any executive order, law, statute, directive, guideline, proclamation, regulation, ordinance, order, or other act of any court, official, government or government agency. If _____ desires to invoke these force majeure provisions, then it shall notify _____ in writing of the circumstances constituting the force majeure and of the obligations the performance of which is thereby delayed, caused, prevented, hindered or impeded, and _____ shall thereupon be excused from the performance or timely

performance of such obligations for as long as the force majeure circumstances continue and for a period of thirty days thereafter. Until _____ resumes performance, _____ may suspend its own performance of non-monetary duties under this agreement. Force majeure also relieves _____ from damages, penalties and other contractual remedies due to the nonperformance or delay resulting from force majeure.

7.86 Force Majeure Clause — Another Form.

Except as otherwise provided in this contract, a party shall not be liable for nonperformance or delay in performance (other than of obligations regarding payment of money or confidentiality) caused by any event reasonably beyond the control of such party, including but not limited to the following: war, hostility, revolution, riot, civil commotion, or national emergency; strike, lockout, or boycott; unavailability or shortage of material, supplies or labor; blackout, brownout or other disruption of power or communications; epidemic, fire, hurricane, tropical storm, named storm, tornado, flood, earthquake, natural disaster, force of nature, explosion, embargo, or Act of God; or any law, proclamation, regulation, ordinance, or other act or order of any court, government or governmental agency. If either party desires to invoke these force majeure provisions, then it shall notify the other party in writing of the circumstances constituting the force majeure and of the obligations the performance of which is thereby delayed or prevented, and the party giving the notice shall thereupon be excused from the performance or timely performance of such obligations for as long as the force majeure circumstances continue. Until the party seeking relief resumes performance, the other party may suspend its own performance of this agreement. Force majeure also relieves the party seeking relief from damages, penalties and other contractual sanctions due to the nonperformance or delay resulting from force majeure. Optional: [Force majeure also extends the time for performance of the party invoking it by an amount of time equal to the amount of time that the force majeure circumstances continue. Notwithstanding the foregoing, if either party is excused the performance of any obligation for a continuous period of one hundred twenty (120) days under this paragraph, then either party may at any time thereafter, and provided that such performance or punctual performance is still excused, by written notice to the other terminate this agreement. If the agreement is so terminated, _____ shall immediately pay to _____ the entire remaining balance due on all invoices for _____.]

7.87 Force Majeure Clause — Another Form.

A party shall not be liable for nonperformance or delay in performance (other than of obligations regarding payment of money or confidentiality) caused by any event reasonably beyond the control of such party including, but not limited to wars, hostilities, revolutions, riots, civil commotion, national emergency, strikes, lockouts, unavailability of supplies, epidemics, fire, flood, earthquake, force of nature, explosion, embargo, or any other Act of God, or any law, proclamation, regulation, ordinance, or other act or order of any court, government or governmental agency.

7.88 Force Majeure Clause — Another Form.

Buyer and Seller shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Contract when prevented from so doing by a cause or causes beyond Buyer's or Seller's control, which shall include, but shall not be limited to, all labor disputes, governmental regulations or controls, fire, storm, inclement weather or other casualty, inability to obtain any material or services, acts of God, or any other cause beyond the reasonable control of the party to be excused.

7.89 Force Majeure Clause — Another Form.

A party is not liable for a failure to perform any of his obligations in so far as he proves:

- (a) that the failure was due to an impediment beyond his control, and
- (b) that he could not reasonably be expected to have taken into account the impediment and its effects upon his ability to perform at the time of the conclusion of the Contract, and
- (c) that he could not reasonably have avoided or overcome it or its effects.

A party seeking relief shall, as soon as practicable after the impediment and its effects upon his ability to perform become known to him, give notice to the other party of such impediment and its effects on his ability to perform. Notice shall also be given when the ground of relief ceases.

Failure to give either notice makes the party thus failing liable in damages for loss which otherwise could have been avoided.

A ground of relief under this clause relieves the party failing to perform from liability in damages, from penalties and other contractual sanctions, except from the duty to pay interest on money owing as long as and to the extent that the ground subsists.

If the grounds of relief continue for more than six months, either party shall be entitled to terminate the Contract with notice.

CHAPTER 8. RELATED FORMS

8.1 Amendment to Contract — Basic Form.

Sellers:

Buyers:

Property:

Date of Contract:

In consideration of their mutual promises, the parties hereby agree that the above-described contract is amended as follows:

1. Paragraph _____ of the Contract is amended to read as follows: _____

2. In all other respects, the Contract remains the same. In case of conflict between any of the provisions of this Amendment and of the Contract For Sale and Purchase, the provisions of this Amendment shall control.

IN WITNESS WHEREOF, the parties have signed this Amendment as of the _____ day of _____, 20____.

BUYERS: _____

SELLERS: _____

8.2 Amendment to Contract — To Be Signed at Closing.

Sellers:

Buyers:

Property:

Date on Contract: _____, 20____

Closing Date: _____, 20____

In consideration of their mutual promises, the parties hereby agree that the above-described contract is hereby amended and modified as follows:

1. The \$ _____ mortgage from Buyers to Sellers shall be a wraparound mortgage.
2. Buyers shall be credited at the closing the flat sum of \$ _____ for prepaid rents, deposits, and _____.
3. Buyer shall be responsible for transferring or obtaining all necessary licenses after closing. Buyer may assume such of the existing licenses as are assumable; but Sellers' names shall be removed from all licenses. Buyer is buying the real property and certain personal property. Buyer is not buying the corporation _____ which now operates the property under a lease. Said lease shall be terminated at the closing by the Sellers and said corporation. This provision shall survive the closing.
4. Buyer may assume the existing hazard insurance on _____ without prorating the prepaid insurance premium.
5. Buyers hereby acknowledge and agree that all contingencies for closing and all conditions under the contract have either been satisfied or are hereby waived by Buyers. Buyers have reviewed and investigated the property and its operations and are satisfied with them. Buyers are satisfied with the inventory of personal property. There are no representations or warranties of Sellers which shall survive the closing, except for the warranties set forth in the warranty deed. This provision shall survive the closing.
6. The earnest money deposit paid by Buyers and held by _____ is the sum of \$ _____, which shall be paid to Sellers at closing towards the purchase price.
7. Buyers shall be credited at the closing with the flat sum of \$ _____ (which shall be a reduction against the purchase price) for termite treatment and damage of the property. It shall be the Buyer's responsibility to treat the property for termites, and Buyers shall do so in accordance with the termite report of _____ Termite Control, Inc. dated _____, 20 _____. Buyers hereby fully release and discharge Sellers from any responsibility for treatment for or damage by termites or other wood-destroying organisms or conditions. This provision shall survive the closing.
8. In all other respects, the Contract remains the same. In case of conflict between any of the provisions of this Addendum and of the Contract For Sale and Purchase, the provisions of this Addendum shall control.

IN WITNESS WHEREOF, the parties have signed this Amendment on the _____ day of _____, 20____, before the closing.

Buyers: _____

Sellers: _____

8.3 Amendment to Contract — To Correct Legal Description at Closing.

Seller:

Buyer:

Property:

Contract Date:

Amendment signed at closing.

In consideration of their mutual promises made herein, the Seller and Buyer hereby agree that the above-described Contract is amended by changing the legal description of the Property being purchased as set forth on Exhibit "A" of the Contract to be the legal description set forth on the Warranty Deed signed by Seller at this closing.

SELLER: _____

BUYER: _____

8.4 Amendment to Contract — To Extend Closing Date.

Seller:

Buyers:

Property:

Date of Contract:

In consideration of their mutual promises made herein, the parties hereby agree that the above-described contract is amended to change the closing date from _____, 20____, to _____, 20____. Possession of the property shall be delivered to Buyers no later than midnight _____, 20____. Time is of the essence of this contract.

DATED this _____ day of _____, 20____.

Seller: _____

Buyers: _____

8.5 Assignment of Contract, With Assumption and Release.

For value received, I hereby sell, assign, transfer and set over to _____ all of my right, title and interest in and to that certain real estate contract dated _____, 20____, between _____ and _____, for the sale of _____ in _____ County, State of Florida, in which I am the [seller] [buyer], a copy of which contract is attached hereto, and I hereby delegate all of my duties and obligations under the contract to _____.

Date: _____, 20____.

Assignor: _____

The undersigned hereby accepts the foregoing assignment and assumes the duties and obligations of _____ under the contract.

Date: _____, 20____.

Assignee: _____

The undersigned hereby approves the foregoing assignment and assumption of contract and hereby releases _____ from all duties and obligations under the contract.

Date: _____, 20____.

Non-Assigning Party to Contract: _____

8.6 Assignment of Contract, With Assumption and Release — Another Form.

FOR VALUE RECEIVED, the undersigned Assignor hereby assigns, transfers and delivers to the undersigned Assignee all of the Assignor's right, title and interest in and to the following described contract:

Title:

Parties:

Date:

Property:

The Assignee hereby accepts this assignment and assumes the rights and responsibilities of Assignor under the contract.

This Assignment is not effective unless and until the Consent below is signed by _____.

Date: _____, 20____.

Assignor: _____

The undersigned hereby accepts the foregoing assignment and assumes the duties and obligations of _____ under the contract.

Date: _____, 20____.

Assignee: _____

The undersigned hereby approves the foregoing assignment and assumption of contract and hereby releases _____ from all duties and obligations under the contract.

Date: _____, 20____.

Non-Assigning Party to Contract: _____

8.7 Notice to Buyer Cancelling Sales Contract for Breach.

To _____:

You are hereby notified that, pursuant to the terms of that certain contract dated _____, 20__, between the undersigned, as seller, and you, as buyer, for the sale of property in the County of _____, State of Florida, described as follows: _____, the undersigned elects to cancel and terminate the same because of your nonperformance of the terms thereof.

Dated _____, 20__.

8.8 Notice to Seller to Complete Contract.

To _____:

You are hereby notified that the title to the premises known as _____, which you sold to me under contract dated _____, 19__, is satisfactory to me, and I hereby tender you the sum of _____ dollars for a deed, properly executed by you, conveying to me said premises pursuant to the terms of the contract, and, if you fail to deliver such deed within _____ days of the date hereof, I shall seek the relief I am entitled to at law or equity.

Dated _____, 20__.

8.9 Notice to Purchaser to Complete Contract.

To _____:

You are notified that more than _____ days (the time allowed you to examine the title) have elapsed since you signed the contract purchasing from the undersigned the property known as

_____ ; that the undersigned has prepared and executed a deed conveying said property to you, and is ready to deliver, and hereby tender, the same to you on payment of the sum of _____ dollars due under said contract. You are further notified that, if you fail to make such payment within _____ days of the date hereof, the undersigned will seek relief in the courts.

Dated _____, 20__.

8.10 Termination of Contract.

FOR VALUE RECEIVED, the undersigned hereby mutually agree that the Contract to buy and sell Lot _____, Block _____, _____ Subdivision, _____, _____ County, Florida, dated _____, 20__, between the undersigned Buyer and Seller is hereby immediately terminated, void and of no further force or effect, and that the deposit of \$_____ paid by _____ shall be returned to _____, the receipt of which is hereby acknowledged by _____.

Date: _____
Buyer: _____
Seller: _____
Broker: _____

8.11 Termination of Contract — Another Form.

Sellers:

Purchasers:

Property:

The undersigned hereby agree that the Contract For Sale of Real Estate dated _____, 20__, between the Sellers and Purchasers for the property described above is hereby cancelled ab initio, and the real estate brokers shall return Purchasers' deposits to Purchasers immediately without deduction, and all of the undersigned agree that no real estate commission is due arising out of the contract and neither Sellers nor Purchasers shall be liable for any such commission, and the parties hereby agree that each party shall be responsible for its own attorney fees and expenses arising out of this matter.

Date: _____
Buyer: _____
Seller: _____
Broker: _____

8.12 Termination of Contract — Another Form.

Seller:

Buyer:

Date of Contract:

Property:

In consideration of their mutual promises made herein, the parties hereby agree that the above-described Contract is hereby terminated, each party is hereby relieved of all obligations under the Contract, Seller is entitled to keep the deposit on the Contract as liquidated damages, Seller has no obligation of any kind to Buyer, and Buyer has no right to anything from Seller.

In witness whereof, the parties have signed this Termination.

Date: _____

Buyer: _____

Seller: _____

Broker: _____

END OF EBOOK