

PUBLIC ADMINISTRATOR OF QUEENS COUNTY

COOPERATIVE UNIT CONTRACT OF SALE

This **CONTRACT** is made as of **2016**, between LOIS M. ROSENBLATT, Public Administrator of Queens County, as Administrator of the **ESTATE OF** , "Seller" and , the "**Purchasers**" identified below.

I. Certain Definitions and Information

1a The "Parties" are:

Seller: LOIS M. ROSENBLATT, Public Administrator of Queens County, as Administrator of the **ESTATE**

Address: 88-11 Sutphin Boulevard, Courtroom 61, Jamaica, New York 11435.

**Federal
Id No.:**

**Purchaser:
Address:**

**Social
Sec. No.:**

1b The Attorney for the Seller is Gerard J. Sweeney, 1981 Marcus Avenue, Suite 200, Lake Success, N.Y. 11042

1c There is no Escrow agent, and any and all funds deposited shall be retained by the Public Administrator of Queens County, in accordance with the terms of this contract, in an interest bearing account, in the name of the Estate. Under no circumstances shall the Purchaser be credited with interest.

1d The "Managing Agent" is:

1e The name of the cooperative housing Corporation ("Corporation") is:

1f The "Unit" number is:

1g The Unit is located in "Premises" known as

1h The "Shares" are the 447 shares of the Corporation allocated to the Unit.

1i The "Lease" is the proprietary lease for the Unit given by the

1j The "Broker" is:

1k The "Closing" is the transfer of ownership of the Shares and Lease, which is scheduled to occur on **2016**, at the law office of Gerard J. Sweeney, Esq., 1981 Marcus Avenue, Suite 200, Lake Success, New York 11042 at
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1l i. The "Purchase Price" is: \$
ii. The "Binder Deposit" is: \$ 0.00
iii. The "Contract Deposit" is: \$
iv. The "Balance" of the
Purchase Price due at Closing is: \$

1m The party responsible for the payment of any "Flip Tax" or similar transfer fee, if any, is the Seller.

1n The Contract Deposit, together with any and all previous deposits tendered shall be held in the "Estate" account, and the "Purchaser" shall not be credited with any interest thereon.

2. Agreement to Sell and Purchase: Purchase Price

2a Seller agrees to sell and assign to Purchaser, and Purchaser agrees to purchase and assume from Seller, the Sellers Shares and Lease for the Purchase Price and upon the other terms and conditions stated in this Contract.

- 2b The Purchase Price is payable to Seller by Purchaser as provided in paragraph 1L, above and only by cashier's, official bank or certified check of Purchaser made payable to the direct order of the ESTATE OF. These checks shall be drawn on and payable by a branch of a commercial or savings bank, savings and loan association or trust company located in the same City or County as the Unit. Seller may direct on not less than 1 business day Notice prior to closing, that all or a portion of the Balance shall be made payable to persons other than Seller.

3. Personal Property

- 3a Subject to any rights of the Corporation or any holder of a mortgage to which the Lease is subordinate, the sale includes all of Seller's ownership, if any, of the following "Property" to the extent existing in the Unit on the date hereof, and owned by the Estate: the refrigerator, freezer, range, oven, microwave oven, dishwasher, cabinets and counters, lighting fixtures, chandeliers, wall-to-wall carpeting, plumbing fixtures, central air-conditioning and/or window or sleeve units washing machine, dryer, screens and storm windows, window treatments, switch plates, door hardware, built-ins not excluded herein, "AS IS".
- 3b Specifically excluded from this sale is all personalty not owned by the estate.
- 3c The personalty, if any, shall not be purchased if closing does not occur.
- 3d No consideration is being paid for the personal Property. Seller makes no representation as to the condition of said Property. Purchaser shall take the Property "AS IS". Seller makes no representations regarding the condition or working order of any appliances or property, and shall not be liable for the condition, repair of, or operating status of said appliances or property.

4. Representations and Covenants

- 4a Subject to any matter affecting title to the Premises (as to which Seller makes no representations or covenants), Seller represents and covenants that:
- i. Seller is and shall at Closing be the sole owner of the Shares and Lease with the full right and power to sell and assign them;
 - ii. the Shares and Lease will, at Closing be free and clear of monetary liens (other than the Corporation's general lien on the Shares, for which no monies shall be owed, or liens of any creditor(s) or mortgagee(s) of the co-op corporation) or Seller will deliver to Purchaser at Closing all requisite terminations, releases and / or satisfactions executed in form suitable for filing and / or recording, so as to remove of record, at Seller's expense any such monetary Liens;
 - iii. the Shares were duly issued, fully paid for and are non-assessable;
 - iv. the lease is, and will at Closing be, in full force and effect and no notice of default under the Lease will be in effect at Closing;
 - v. All sums currently due to the Corporation for maintenance will be fully paid by Seller at the closing. All unpaid assessments, shall be the financial responsibility of the Purchaser.
 - vi. Seller has not entered and will not enter into any agreement (other than the lease) affecting the use and/or occupancy of the Unit which would be binding on or adversely affect Purchaser.
- 4b. Purchaser represents and covenants that Purchaser is acquiring the Shares and Lease solely for residential occupancy of the Unit by the Proposed Occupants and their family only and will so represent to the Corporation in connection with Purchaser's application to the Corporation for approval of this transaction by the Corporation. The names of the proposed occupants are: _____,

5. Corporate Documents

Purchaser has examined and is satisfied with or has waived the examination of the Lease, and the Corporation's certificate of incorporation, bylaws, house rules, prospectus and amendments to same, if any, most recent audited financial statement and most recent statement of tax deductions available to the Corporation's shareholder under Internal Revenue Code ("IRC") § 216 (or any successor statute).

6. Required Approval and References

- 6a ***THIS SALE IS SUBJECT TO THE APPROVAL OF THE CORPORATION.***
- 6b Purchaser shall in good faith:
- i. submit to the Corporation or its Managing Agents, within ten (10) business days (time being of the essence) after the receipt of a fully executed counterpart of this Contract, an application for approval of this sale on the form required by the Corporation containing such data and together with such documents as the Corporation reasonably requires, if applicable;
 - ii. attend on one or more personal interviews, as requested by the Corporation; and
 - iii. promptly submit to the Corporation such further references, data and documents requested by the Corporation.
- 6c Either party, after learning of the approval or denial by the Corporation of the application, shall promptly send Notice to the other Party of the Corporation's decision. If approval or denial has not been issued on or before the date set for Closing, the Closing shall be adjourned for 30 days for the purpose of obtaining such approval unless otherwise agreed to by the Parties. If the approval of this sale

is not obtained by said adjourned date, Seller may cancel this Contract on Notice to the Purchaser provided that the Corporation's approval is not issued before Notice of cancellation is given. In the event of a denial other than for Purchaser's bad faith conduct, this contract shall be deemed canceled. In the event of cancellation pursuant to this Par. 6, all monies paid on account of this contract by the Purchaser to the Seller shall be refunded to Purchaser. In case of a denial or lack of approval due to Purchaser's bad faith conduct or non compliance with this contract, Purchaser shall be in default and Par. 13a shall govern.

7. Condition of Unit and Possession

7a Seller makes no representation as to the condition of the Unit. Purchaser has inspected the Unit (or waives inspection of the unit) and shall take the same "as is", on the date of this Contract, reasonable wear and tear excepted.

8. Risk of Loss

8a While Seller has legal title and is in possession of the Unit, Seller assumes all risk of loss or damage ("Loss") to the Unit and Property from Fire or other cause not due to the fault of Purchaser or Purchaser's contractors, agents or servants. In the event of a Loss, Seller shall have the option (but not the Obligation) to restore the Unit and Property to as near as reasonably possible to the condition immediately prior to the Loss.

8b Within a reasonable time after the Loss occurs, Seller shall give Notice to Purchaser of the Loss and whether or not Seller elects to restore ("Election Notice").

8c If Seller elects to restore, Seller must do so within 60 calendar days after sending the Election Notice or by the Closing, whichever is later ("Restoration Period").

8d If the Closing is before such 60 calendar day period expires, then the closing shall be adjourned to a date and time fixed by Seller on not less than 10 calendar days' prior Notice to Purchaser, but in no event shall the Closing be adjourned for more than 120 calendar days after the original scheduled closing date.

8e If Seller elects not to restore or fails, in a timely manner, to send the Election Notice or, having sent the Notice, Seller fails to complete the restoration within the Restoration Period, then Purchaser's sole remedy is either to:

i. cancel this Contract in accordance with Par. 16 and recover all sums theretofore paid on account of the Purchase Price; or

ii. complete the purchase in accordance with this contract, without reduction in the Purchase Price or claim against Seller, but with the right to receive any "Net Insurance Proceeds" as defined in Par 8f together with an assignment to Purchaser, without recourse to Seller, of any uncollected proceeds, which assignment shall be delivered by Seller at Closing.

8f "Net Insurance Proceeds" are proceeds of Seller's insurance covering the Loss which is attributable to the Unit and Property after deducting legal and other collection expenses incurred by Seller and any sums paid or incurred by Seller for restoration.

8g If Purchaser fails to exercise one of Purchaser's options by Notice to Seller within 7 days after Seller gives the Election Notice or within 7 days after the Restoration Period expires (in the event Seller fails to complete the restoration within the Restoration Period), then Purchaser will be deemed to have conclusively elected the option to complete the Purchase pursuant to Par. 8e(ii).

8h If Purchaser is given possession of the Unit Prior to Closing:

i. Purchaser assumes all risk of Loss to the Unit and Property prior to the Closing from fire or other cause not the fault of the Seller or Seller's contractors, agents, employees or servants; and

ii. Purchaser shall be obligated to complete the purchase in accordance with this Contract, without reduction in the Purchase Price or claim against Seller and without delay.

8i Notwithstanding anything to the contrary in Par. 8a, Purchaser shall have the right to cancel this Contract in accordance with Par. 16 if, prior to Closing and while Seller is in possession, through no fault of Purchaser or Purchaser's contractors, agents, employees and servants, either:

i. a Loss occurs to the Unit which would cost more than 50% of the Purchase Price to restore; or

ii. more than 50% of the units in the Premises are damaged and rendered uninhabitable by fire or other cause, regardless of whether the Unit is damaged.

8j Purchaser shall be deemed to have waived Purchaser's right to cancel under Par. 8i if Purchaser fails to elect to cancel by Notice to Seller given within 7 days after Seller gives Notice to Purchaser of the event which gives rise to Purchaser's right to cancel. In the event Purchaser waives or is deemed to have waived this right to cancel, the provisions of Par 8e(ii) shall apply.

9. Closing Location

The closing shall be held at the office of GERARD J. SWEENEY, ESQ., 1981 Marcus Avenue, Lake Success, New York 11042 the Seller's Attorney. IN THE EVENT SELLER'S ATTORNEY MUST CLOSE IN A LOCATION OTHER THAN THE LOCATION STATED HEREIN, THERE SHALL BE DUE AND PAYABLE BY THE PURCHASER TO GERARD J. SWEENEY, ESQ. AT THE CLOSING BY GOOD CERTIFIED CHECK THE SUM OF \$450.00, SO LONG AS SAID ALTERNATE LOCATION IS WITHIN THE COUNTY OF QUEENS. IN THE EVENT THE ALTERNATE LOCATION IS OUTSIDE THE COUNTY OF QUEENS, THE SUM DUE AND PAYABLE SHALL BE \$550.00.

9a. Time of Closing

The closing shall take place on or about _____, at _____.
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10. Closing

- 10a At Closing, Seller shall deliver:
- i. Seller's certificate for the Shares duly endorsed for transfer to Purchaser or accompanied by a separate duly executed stock power to Purchaser, and in either case, with any guarantee of Seller's signature required by the Corporation (or affidavit explaining the unavailability of same);
 - ii. Seller's counterpart original of the Lease and a duly executed assignment thereof to Purchaser in the form required by the Corporation (or affidavit therefore);
 - iii. a written statement by an officer of the Corporation or its authorized agent consenting to the transfer of the shares and Lease to Purchaser and setting forth the amounts and payment status of the Maintenance and any Assessments;
 - iv. executed FIRPTA document(s) (defined in Par. 25);
 - v. keys to the Unit, if available to the Public Administrator, building entrances, garage, mailbox and any locks in the Unit;
 - vi. if requested, an assignment to Purchaser of Seller's interest in the Property;
 - vii. Net Insurance Proceeds and/or assignment of any uncollected Net Insurance Proceeds, if applicable; and
 - viii. instruments or other documents required under Par. 4a(ii), if any.
- 10b At Closing, Purchaser shall:
- i. pay the Balance in accordance with Par 2(b)
 - ii. execute and deliver to Seller and the Corporation an agreement assuming the Lease, in the form required by the Corporation; and
 - iii. if requested by the Corporation, execute and deliver counterparts of a new lease substantially the same as the Lease, for the balance of the Lease term, in which case the Lease shall be canceled and surrendered to the Corporation together with Seller's assignment thereof to Purchaser.
- 10c At Closing, the Parties shall provide the information necessary for Internal Revenue Service ("IRS") Form 1099-S or other similar form required.
- 10d At Closing, Seller shall provide, and the Parties shall execute, all documents necessary to comply with any applicable transfer and/or gains tax filings.

11. Closing Fees, Taxes and Apportionments

- 11a At Closing, Purchaser shall pay, if applicable:
- i. the processing fee(s) of the Corporation, its attorneys, and/or agents.
 - ii. the cost of stock transfer stamps; and
 - iii. the sales taxes, if any, on this sale.
 - iv. any fee to the Corporation or its agents and attorneys to attend the closing;
 - v. any fee to any party related to Purchaser financing.
- 11b At Closing, the Flip Tax, if any, shall be paid by the Party specified in Par. 1m.
- 11c At Closing, the Parties shall apportion as of 11:59 P.M. of the day proceeding the Closing, the Maintenance and any other periodic charges due the Corporation (other than Assessments).
- 11d Assessments, whether payable in a lump sum or installments, shall be paid by the Purchaser.
- 11e At closing, New York State and New York City Real Property Transfer Taxes shall be paid by the Seller.
- 11f Each party covenants to the other that it will timely pay any taxes for which it is primarily liable pursuant to law and/ or this contract. This Par. shall survive Closing.

12. BROKER

- 12a Each Party represents to the other that such Party has not dealt with any other persons acting as a broker, whether licensed or unlicensed, in connection with this transaction other than the Broker named in Par. 1j.
- 12b Seller shall pay the Broker's commission pursuant to a separate agreement. The Broker shall not be deemed to be a third-party beneficiary of this provision.
- 12c This Par. 12 shall survive the Closing.

13. Defaults, Remedies and Indemnities

- 13a In the event of a default or misrepresentation by Purchaser, Seller's remedy shall be to either: terminate this Contract and retain the Contract Deposit as liquidated damages, except there shall be no limitation on Seller's remedies for a breach of Par. 12a; or maintain an action against the Purchaser for specific performances.
- 13b In the event of a default or misrepresentation by Seller, Purchaser shall be entitled and shall receive back any sums paid to the seller on account of this contract.
- 13c Purchaser indemnifies and holds harmless the Seller against and from any claim, judgment, loss, liability, cost or expense resulting from the indemnitor's breach of any of the representations or covenants stated to survive Closing. This indemnity includes, without limitation, reasonable attorneys' fees and disbursements, court cost and litigation expenses. This Par. 13c shall survive the Closing.
- 13d Purchaser indemnifies and holds harmless Seller against and from any claim, judgment, loss, cost or expense resulting from the Lease obligations assumed by Purchaser. This indemnity includes, without limitation, reasonable attorney's fees and disbursements, court costs and litigation expenses. This indemnity does not include or excuse a breach of any representation or covenant by Seller in Par. 4a. This Par. 13d shall survive the Closing.
- 13e In the event any instrument for the payment of the Contract Deposit fails of collection, Seller shall have the right to sue on the uncollected instrument. In addition, such failure of collection shall be a default under this Contract, provided Seller gives Purchaser Notice of such failure of collection and, within 3 business days after Notice is given, Seller does not receive from Purchaser an unendorsed certified check, bank check or immediately available funds in the amount of the uncollected funds. Failure to cure such default shall entitle Seller to the remedy in Par. 13a and to retain all sums as may be collected and / or recovered.

14. Remedying Defects:

Seller shall be entitled from time to time, to adjourn the date for Closing hereunder for a period or periods not exceeding 90 days in the aggregate, and the date for Closing shall be adjourned to a date specified by Seller not beyond such period. If for any reason whatsoever, Seller shall not have succeeded in removing, remedying or complying with such Defects at the expiration of such adjournment(s), and if Purchaser shall still be unwilling to waive the same and to close title without abatement of the purchase price, then either party may cancel this Contract by Notice to the other given within ten days after such adjourned date. If this Contract is cancelled pursuant to its terms, other than as a result of Purchaser's default, this Contract shall terminate and come to an end, and neither party shall have any further rights, obligations or liabilities against or to the other hereunder or otherwise except that Seller shall promptly refund the down payment to Purchaser unless cancelled as a result of Purchaser's default.

15. Entire Agreement; Modification

- 15a All prior oral or written representations, understandings and agreements had between the Parties with respect to the subject matter of this Contract, are merged in this Contract, which alone fully and completely expresses their agreement.
- 15b A provision of this Contract may be changed or waived only in writing signed by the Party (or their attorney.)
- 15c The Attorneys may extend in writing any of the time limitations stated in this Contract.

16. No Assignment by Purchaser

- 16a Purchaser may not assign this Contract or any of Purchaser's right hereunder and any purported assignment shall be null and void.
- 16b This Contract shall bind and inure to the benefit of the Parties hereto and their respective heirs, personal and legal representatives and successors in interest.

17. Seller's Default

If Seller shall be unable to transfer the Lease and the Shares in accordance with this Contract for any reason then the sole obligation of Seller shall be to refund to Purchaser the Contract Deposit and reimburse Purchaser for the actual costs incurred for Purchaser's title or abstract search, except such reimbursement shall not be required if a cancellation is pursuant to Par. 6. Upon making such refund, this Contract shall be canceled and neither Party shall have any further claim against the other hereunder.

18. Notices

- 18a Any notice or demand shall be in writing and either delivered by hand or overnight delivery or sent by certified or registered mail to the Party and simultaneously, in like manner, to such Party's Attorney, if any, or to such other address as shall hereafter be designated by Notice given pursuant to this Par. 18.
- 18b Each Notice shall be deemed given on the same day if delivered by hand or on the following business day if sent by overnight delivery, or the second business day following the date of mailing.

18c The Attorneys are authorized to give any Notice specified in this Contract on behalf of their respective clients.

18d Failure to accept a Notice does not invalidate the Notice.

19. Margin Headings

The margin headings do not constitute part of the text of this Contract.

20. Singular/Plural and Joint/Several

The use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires. If more than one entity is selling or purchasing the Unit, their obligations shall be joint and several.

21. No Survival

No representation and / or covenant contained herein shall survive Closing except as expressly provided. Computational errors shall survive and be corrected after closing.

22. Inspections

Within two (2) business days prior to closing, Purchaser shall have the right to inspect the Unit at reasonable times upon reasonable request to Seller. In no event shall Purchaser be permitted to inspect the Unit on the day of Closing.

23. Governing Law

This contract shall be governed by the laws of the State of New York. Any action or proceeding (including but not limited to any motions or orders to show cause) arising out of this Contract shall be brought in the country where the Unit is located and the Parties hereby consent to said venue.

24. Removal of Liens

24a Purchaser shall deliver or cause to be delivered to Seller or Seller's Attorney, not less than 10 Calendar days prior to Closing, a list of Liens, if any, which may violate Par. 4a.

24b Seller shall have a reasonable period of time to remove any such lien.

25. Cooperation of Parties

25a The Parties shall each cooperate with the other, the Corporation and title company, if any, and obtain, execute and deliver such documents as are reasonably necessary to close.

25b The Parties shall timely file or pre-file all required documents in connection with all governmental filings, that are required by law. Each Party represents to the other that its statements in such filings will be true and complete. This Paragraph shall survive the Closing.

26. FIRPTA and Gains Tax

26a The Parties shall comply with IRC §§ 897, 1445 and related provisions, as amended, and any substitute provisions of any successor statute and the regulations thereunder ("FIRPTA"). The Seller shall furnish to the Purchaser at or prior to Closing a Certification of Non-foreign Status in accordance with FIRPTA. If the Seller fails to deliver such certification by Closing, the Purchaser shall deduct and withhold from the Purchase Price such sum required by law and remit such amount to the IRS. In the event of such withholding by Purchaser, Seller's obligations hereunder, including (but not limited to) the transfer of ownership of the Shares and Lease, shall not be excused or otherwise effected. In the event of any claimed over-withholding, Sellers shall be limited solely to an action against the IRS for a refund. Seller hereby waives any right of action against Purchaser on account of such withholding. This paragraph shall survive the Closing.

26b If a Real Property Transfer Gains Tax pre-filing is required by law, Purchaser shall simultaneously herewith deliver to Seller a completed and executed Transferee Questionnaire or the equivalent thereof.

27. Additional Conditions

27a Purchaser shall not be obligated to close unless at the time of the Closing:

- i. the Corporation is duly incorporated and in good standing; and
- ii. the Corporation has fee or leasehold title to the Premises, whether or not marketable or insurable.

27b Purchaser shall give Seller Notice of any failure of any of the conditions in Par. 27a. If any condition in Par. 27a is not true and is not cured within a reasonable period of time after giving said Notice, then either Seller or Purchaser shall have the option to cancel this Contract pursuant to Par. 16.

28. Binding Effect

This Contract shall not be binding unless a fully executed counterpart thereof has been delivered to each of the Parties.

29. Changes to Contract

Notwithstanding anything to the contrary, no changes to the Contract are permitted less than two (2) weeks prior to the closing.

In Witness Whereof, the parties hereto have duly executed this Contract as of the date first above written.

Witness

**LOIS M. ROSENBLATT, Public Administrator of Queens County, as
Administrator of the ESTATE OF _____, Seller**

Witness

, Purchaser

Witness

, Purchaser