

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**Hearing Date: September 2, 2016  
Hearing Time: 10:00 am**

-----X  
In re:

Case No. 16-22810 RDD  
Chapter 11

DENNIS DARCY,

Debtor.  
-----X

**NOTICE OF MOTION TO APPROVE PRIVATE SALE OF REAL PROPERTY  
PURSUANT TO 11 U.S.C. §§ 363(B), (F), AND (M) AND RULES 2002 AND 6004 OF THE  
FEDERAL RULES OF BANKRUPTCY PROCEDURE**

PLEASE TAKE NOTICE that, upon the application (the "Application") of Dennis Darcy (the "Debtor"), by its attorneys, Spence Law Office, P.C., the Debtor shall move before the Honorable Robert D. Drain, United States Bankruptcy Judge, at the United States Bankruptcy Court, Southern District of New York, 300 Quarropas Street, White Plains, New York 10601, on **September 2, 2016 at 10:00 a.m.**, or as soon thereafter as counsel may be heard, for an order, pursuant to pursuant to 11 U.S.C. §§ 363(B), (F), And (M) and Rules 2002 and 6004 of the Federal Rules Of Bankruptcy Procedure, for an Order approving the private sale of 4 Mohawk Trail, Sandy Hook, Connecticut for \$150,000.00, and related relief and for such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that responding papers shall be filed and served upon Debtors' counsel Spence Law Office, P.C., Attention: Robert J. Spence, Esq., 55 Lumber Road, Suite 5, Roslyn, New York, 11576, with a copy to the Chambers of the Honorable Robert D. Drain, United States Bankruptcy Judge, at the United States Bankruptcy Court, Southern District of New York, 300 Quarropas Street, White Plains, New York 10601, so as to be received by all foregoing parties not later than **4:00 p.m. Eastern Standard Time on August 30, 2016.**

Dated: Roslyn, New York  
August 8, 2016

SPENCE LAW OFFICE, P.C.  
Proposed attorneys for the Debtor

By: s/ Robert J. Spence

Robert J. Spence, Esq.  
55 Lumber Road, Suite 5  
Roslyn, New York 11576  
(516) 336-2060

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**MOTION TO APPROVE PRIVATE SALE OF PROPERTY**

Dennis Darcy, the Debtor herein, by his attorneys, Spence Law Office, P.C., respectfully alleges as follows:

**PRELIMINARY STATEMENT**

This is a motion under 11 U.S.C. §§ 363(b) to approve a sale of property (the “Sale Motion”) pursuant to a contract of sale dated August 5, 2016 (the “Contract of Sale”) entered into by the Debtor and his wife, Meredith Darcy (collectively, the “Sellers”) and John Doyle and Robert Wilson (collectively, the “Purchasers”) for a property located at 4 Mohawk Trail, Town of Sandy Hook, County of Fairfield, State of Connecticut (the “Property”). A copy of the Contract of Sale is annexed hereto as **Exhibit A**. The Sellers use the Property as a rental income Property. They do not reside at the Property. The Property is not necessary for an effective reorganization, produces nominal if any net income, and has been on the market for almost one year. The Debtor believes that is in the best interests of the estate to sell the Property to the Purchasers.

**JURISDICTION, VENUE, AND STATUTORY PREDICATES**

1. This Court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(M) and (N).

2. Venue of this case is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief sought herein are sections 363(b), (f), and (m) of Title 11 of the United States Code (the “Bankruptcy Code”) and rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **BACKGROUND**

4. On June 15, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

5. The Debtor remains in possession of his assets and continues to manage his business as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

6. On the Petition Date, the Debtor filed his original bankruptcy schedules and statement of financial affairs [Docket No 1]. The Debtor’s bankruptcy schedules are referred to herein as the “Schedules.”

7. In or about 2006, the Debtor and his wife acquired fee simple title to the Property for \$150,000. The Property was paid for by the Debtor and his wife with cash and a purchase money mortgage from Nationstar Mortgage (“Nationstar”). Nationstar enjoys a first priority mortgage against the Property securing the Sellers’ obligations. The current balance on the Nationstar mortgage is approximately \$119,800.00.

8. The Property has estimated equity of approximately \$30,000 which means only \$15,000 for the estate before closing costs are deducted.

9. The Debtor currently rents the property to a third party for \$1,400 per month. After deducting the expenses of insurance and the mortgage, the Debtor is left with little if any net income. The Tenant is currently residing at the Property on a month-to-month basis and the Debtor runs the risk that the Tenant will vacate and the Debtor could lose money each month by having to maintain the mortgage, insurance, maintenance and other expenses associated with ownership. Currently, the monthly income and expenses for the Property (excluding maintenance and upkeep) are as follows:

<u>Rental Income:</u>	\$1400
<u>Expenses -</u>	
Mortgage -	\$688
Electricity -	\$45 (avg)
Gas -	\$125 (avg)
Homeowners Ins -	\$130.75
<u>Total Expense:</u>	<u>\$988.75</u>
<b>Net Monthly Income =</b>	<b>\$411.25</b>
<b>Debtor 1/2 Interest =</b>	<b>\$205.62</b>

#### **THE PROPERTY AND PROPOSED SALE**

10. As disclosed in the Debtor's schedules, the Property is jointly owned by the Debtor and his wife. A copy of the deed is annexed hereto as **Exhibit B**.

11. The Property is a small 774 square foot, 1 bedroom, 1.5 baths home on a 3,920 square foot lot size overlooking a lake. The structure was built in the 1930s. The Property is generally considered a vacation home and has been on the market for almost 300 days over the past two years.

12. The Affidavit of designated broker, Brenda Garzi, is annexed hereto and is submitted in support of this application. Ms. Garzi provides the background on the marketing of the Property

and the Sellers' attempts to sell this property within the last 2 years. According to Ms. Garzi, the Property was listed for sale in 2015 by William Raveis Real Estate Incorporated ("Raveis RE") at the original listing price of \$199,000.00. The Property was on the market for 214 days in 2015 and Raveis RE received interest at \$150,000 but no firm offer to purchase the Property. The Property was again listed in the Spring of 2016 for over 80 days. Although it is not in the Garzi affidavit, the renewed listing agreement for Spring 2016, sets the listing price to a reduced \$165,000. (See annexed **Exhibit C**). The Spring 2016 marketing resulted in one offer of \$150,000.00, all cash.

13. In Ms. Garzi's opinion, the \$150,000 sale price is the most the Sellers can expect for this Property. Her opinion is supported by, among other things, the amount of time the Property has been on the market and the interest shown during that time.

14. The Purchasers are third parties, not related to the Debtor or his spouse.

15. It is respectfully submitted that based upon Ms. Garzi's affidavit that the sale price of \$150,000 is likely the highest and best offer that will be realized by the Sellers.

16. After taking into consideration, the costs of sale which are approximately \$10,000 (broker commission, Debtor's real estate attorney, title and transfer fees), the Debtor expects to net approximately \$10,000 as his share of the sale.

17. It is respectfully submitted that there is very little to be gained by an auction sale at this point. Even if the auction resulted in a purchase price of \$165,000, the estate would only stand to gain another \$5,000 at most after the auction sale premium/commission was paid.

**RELIEF REQUESTED AND BASIS FOR RELIEF REQUESTED**

18. By this Sale Motion, the Debtor requests authority, pursuant to section 363 of the Bankruptcy Code, to sell the estate's interest in the Property, free and clear of all Liens, pursuant to the Contract of Sale.

**A. The Private Sale of the Property Should be Approved**

19. Section 363(b) of the Bankruptcy Code provides that “[t]he trustee [or Debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Although section 363 does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor's assets, the United States Court of Appeals for the Second Circuit, in applying this section, has required that it be based upon sound business judgment. See Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC), 478 F.3d 452, 466 (2d Cir. 2007) (quoting Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983)); Official Comm. of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 145 (2d Cir. 1993); Parker v. Motors Liquidation Co. (In re Motors Liquidation Co.), 430 B.R. 65, 83 (S.D.N.Y. 2010) (“The overriding consideration for approval of a Section 363 sale is whether a ‘good business reason’ has been articulated.” (citations omitted)).

20. In addition to requiring sound business reasons to approve a sale pursuant to section 363(b) of the Bankruptcy Code, many courts have required a showing that the price to be obtained for assets be fair and reasonable; that the sale to the proposed purchaser was negotiated in good faith; and that it does not unfairly benefit insiders, the purchaser, or a certain creditor or class of creditors. See, e.g., In re Channel One Communications, 117 B.R. at 494-97; In re Indus. Valley Refrig. & Air Cond. Supplies, Inc., 77 B.R. 15 (Bankr. E.D. Pa. 1987). Here, the asking price is \$165,000 and the

Debtor is receiving \$150,000 in an all cash offer. The Property has been on the market for the better part of the last 18 months and this is the best offer the Debtor has received. The sale is to a non-insider third party and the Contract of Sale was negotiated by and between parties who were represented by their own counsel. No one is unfairly benefitted by the contemplated transaction.

21. Under Bankruptcy Rule 6004(f)(1), “[a]ll sales not in the ordinary course of business may be by private sale or by public auction.” FED. R. BANKR. P. 6004(f)(1). Here, the Debtor is exercising sound business judgment by selling the Property at the proposed private sale because he believes that he has received the highest and best offer already.

22. For these reasons the Debtor respectfully requests that he be authorized to proceed with the private sale.

**B. The Property Should be Sold Free and Clear of Liens**

23. The Debtor seeks approval of the sale of the Property free and clear of all liens and for authority to satisfy certain liens at the closing.

24. Property may be sold outside the ordinary course of business under section 363(b) of the Bankruptcy Code, free and clear of all liens, claims and encumbrances under Bankruptcy Code section 363(f), only if:

1. applicable nonbankruptcy law permits sale of such property free and clear of such interest;
2. such entity consents;
3. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
4. such interest is in bona fide dispute; or
5. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

25. Accordingly, a Debtor may sell property of a bankruptcy estate outside the ordinary court of business if one of the five conditions under Bankruptcy Code § 363(f) is satisfied. See In re Grubb & Ellis Co., Case No. 12-10685 (MG), 2012 Bankr. LEXIS 1279, at \*31 (Bankr. S.D.N.Y. Mar. 27, 2012) (discussing Bankruptcy Code § 363(f)); In re Borders Group, Inc., 453 B.R. 477, 483–84 (Bankr. S.D.N.Y. 2011) (discussing Bankruptcy Code § 363(f)).

26. Here, the Debtor believes that the sale price of the Property exceeds any liens against the Property and the Debtor intends to satisfy the mortgage and any outstanding real estate taxes, utilities, and similar charges from the sale proceeds at closing. To the extent there are any other liens, the Debtor seeks to sell the Property free and clear of such liens. The Debtor will provide all potential holders of liens with notice of this Sale Motion and they will have an opportunity to object to the relief requested in this Sale Motion. Any entity that does not object to the Sale Motion shall be deemed to have consented. See, e.g., Futuresource LLC v. Reuters, Ltd., 312 F.3d 281, 285-86 (7th Cir. 2002) (standing for the proposition that the lack of an objection to a proposed sale of assets counts as consent); Hargrave v. Township of Pemberton (In re Tabone, Inc.), 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); In re Elliot, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (citing In re Gabel, 61 B.R. 661 (Bankr. W.D. La. 1985)); see also In re Enron Corp., 2003 WL 21755006 at \*2 (AJG) (Bankr. S.D.N.Y. 2003) (order deeming all parties who did not object to proposed sale to have consented under section 363(f)(2)). Therefore, if a party holding a Lien on the Property who received notice fails to object to the sale, the Debtor's sale of the Property free and clear of all liens satisfies section 363(f)(2) of the Bankruptcy Code.



**C. The Purchasers Shall Be Entitled To 363(m) Protection**

27. Section 363(m) of the Bankruptcy Code protects good faith purchasers at sales conducted under section 363(b) by providing that:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

28. Although the Bankruptcy Code does not define good faith, the United States Court of Appeals for the Second Circuit has provided the following definition of good faith in the context of sales under section 363 of the Bankruptcy Code:

Good faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings; where there is a lack of such integrity, a good faith finding may not be made. A purchaser's good faith is lost by fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders. . . . As just defined, the good-faith analysis is focused on the purchaser's conduct in the course of the bankruptcy proceedings.

Licensing by Paolo v. Sinatra (In re Gucci), 126 F.3d 380, 390 (2d Cir. 1997) (quotations and citations omitted); see In re Motors Liquidation, 430 B.R. at 78 (relying on Gucci definition of good faith in this context).

29. The Debtor submits that the sale to the Purchasers is an arm's length transaction and that the Purchasers are good faith purchasers of the Property.

30. Accordingly, the Debtor respectfully requests that the successful bidder be afforded the protections under section 363(m) of the Bankruptcy Code.

#### **D. Waiver of Stay**

31. Under Bankruptcy Rule 6004(h), orders authorizing the sale of a debtor's assets under section 363(b) of the Bankruptcy Code are "stayed until the expiration of 14 days after entry of the order" authorizing such sale. FED. R. BANKR. P. 6004(h). Bankruptcy Rule 6006(d) similarly provides that orders authorizing the assignment of an unexpired lease under section 365(f) of the Bankruptcy Code are stayed for 14 days, unless the court orders otherwise. FED. R. BANKR. P. 6006(d).

32. A waiver of the stay requirement under Bankruptcy Rule 6004(h) will relieve the Debtor's estate of any financial burdens associated with the Property and reduce the expenditure of additional funds to maintain the Property. Additionally, such a stay could further delay the date that a new owner can take possession and control of the Property and thus could chill the sale. Conversely, the waiver of the stay will allow for a smoother transition for the new owner and unburden the Debtor and the estate from any obligations arising from the Property.

33. For these reasons, the Debtor respectfully requests that the Court waive the requirement under Bankruptcy Rule 6004(h).

#### **E. Notice**

34. Bankruptcy Rule 2002(a) requires that notice of motions under Bankruptcy Code section 363(b) be given to "the debtor, the trustee, all creditors and indenture trustees . . ." FED. R. BANKR. P. 2002(a). Accordingly, this Sale Motion shall be served on the following parties: (a) all known holders of liens against the Property; (b) all known holders of judgments against the Debtor; (c) the Purchasers' attorney (d) the Debtor's creditors; (g) all government agencies and taxing authorities required to receive notice of proceedings under the Bankruptcy Rules; (h) all parties that have filed a notice of appearance in the Debtor's case.

35. It is respectfully requested that the Court enter an Order substantially similar to the Order annexed hereto as **Exhibit D**.

36. No prior application for the within relief has been made to this or any other Court.

WHEREFORE, the debtor respectfully requests an order pursuant to 11 U.S.C. §363(b) allowing the Debtor to sell the Property to the Purchasers and to pay all costs of closing and his wife her 50% of the net proceeds, and for such other and further relief as this Court deems just and proper.

Dated: Roslyn, New York  
August 8, 2016

SPENCE LAW OFFICE, P.C.  
Proposed attorneys for the Debtor

By: s/ Robert J. Spence

Robert J. Spence, Esq.  
55 Lumber Road, Suite 5  
Roslyn, New York 11576  
(516) 336-2060

EXHIBIT A

**THE GREATER BRIDGEPORT BAR ASSOCIATION, INC.  
STANDARD FORM RESIDENTIAL REAL ESTATE SALES AGREEMENT  
APPROVED AS OF NOVEMBER 10, 2009**

AGREEMENT made as of the 5<sup>th</sup> day of August, 2016

BETWEEN DENNIS E. DARCY AND MEREDITH F. DARCY both of 19 Haslings Landing, Hastings On Hudson, NY 10706 (hereinafter referred to as the SELLER, whether one or more), AND JOHN DOYLE AND ROBERT WILSON both of 18 Wendover Road, Newtown, CT 06470 (hereinafter referred to as the BUYER, whether one or more),

**WITNESSETH:**

1. **PROPERTY.** The SELLER, in consideration of the purchase price hereinafter specified, hereby agrees to sell and convey, and the BUYER hereby agrees to purchase the real property commonly known as 4 MOHAWK TRAIL, NEWTOWN, CONNECTICUT 06482 and specifically described in Schedule A attached hereto (the "Premises") subject to the encumbrances and exceptions to title set forth or referred to in paragraph 6(e) and Schedule A (legal description and exceptions, if any) attached hereto.

2. **CONSIDERATION.** The purchase price is ONE HUNDRED FIFTY THOUSAND & 00/100 DOLLARS (\$150,000.00), which the BUYER agrees to pay as follows:

- a. As a part of the deposit heretofore paid, receipt of which is hereby acknowledged, subject to collection; \$ 1,500.00
- b. As the balance of the deposit before or upon the signing of this Agreement, receipt of which is hereby acknowledged, subject to collection; \$ 13,500.00
- c. Upon the delivery of the deed, by certified check or official bank check drawn on a bank which is a member of the New York Clearing House, or wire transfer the proceeds of which are immediately available to SELLER (this amount may vary depending on adjustments pursuant to this Agreement); \$ 135,000.00

TOTAL: \$ 150,000.00

Any deposit made hereunder shall be paid to the SELLER's attorney who shall hold the same in escrow subject to the terms and conditions hereof and release same to SELLER at the time of closing or to the party entitled thereto upon sooner termination of this Agreement. Any other deposits held by other parties shall immediately be forwarded to SELLER's attorney to be held under the same conditions. Prior to any release of the funds to either party for any reason other than a closing, SELLER's attorney shall provide not less than seven (7) days notice to both parties. If there is a dispute as to the deposit the SELLER's attorney may pay the deposit into court by interpleader or other appropriate action whereupon the SELLER's attorney shall be relieved of all further obligation.

Mortgage company checks or similar holding company checks, unless certified, DO NOT represent immediate funds and will not be accepted at the time of closing. Trustee checks are NOT satisfactory funds for any payment required by this Agreement at the time of closing. In the event SELLER or his attorney accepts BUYER's attorney's trustee check in lieu of other funds, BUYER agrees that no stop payment order or direction will be issued with respect to such check(s). This provision shall survive the closing.

BUYER's attorney shall tender to SELLER separate cashier's check(s), bank treasurer certified check(s) or wire transfer(s), at SELLER's discretion, for payoff of SELLER's mortgage obligation(s), if any, in accordance with the GBBA Real Estate Closing Customs; the balance of funds due to be paid at closing in accordance with Paragraph 2d of the Agreement.

3. **DEED.** The SELLER, on receiving the total purchase price, shall, at the SELLER's cost and expense, execute, acknowledge, and deliver to the BUYER, or BUYER's permitted assigns, the usual Connecticut full covenant Warranty Deed (or appropriate Fiduciary's Deed) in proper form, to convey to the BUYER, or BUYER's permitted assigns, the fee simple of the Premises, free of all encumbrances except as aforesaid. The SELLER shall thereupon pay all real estate conveyance taxes and shall complete and deliver to the BUYER the conveyance tax forms.

4. **CLOSING.** The deed shall be delivered at the offices of the SELLER's attorney, provided said office is in Fairfield County Connecticut, or at such place in Fairfield County, Connecticut, as may be designated by the BUYER's lending institution on the 15th day of August, 2016 at \_\_\_\_\_ or sooner by mutual agreement of the parties hereto.

5. **FIXTURES.**

- a. Included in this sale, for the aforesaid purchase price, are the following items, all of which items the SELLER represents are owned by SELLER, not leased, and free from security interests, liens, and other encumbrances, insofar as any of them are now located on the Premises, in their present "AS IS" condition, normal wear and tear excepted: heating, cooling, electrical and plumbing systems and fixtures, electric light fixtures, stove, storm windows and doors, screens and screen doors, window shades, venetian blinds, curtain rods, awnings, exterior television antennae, weathervanes, mail box(es), all pool equipment, garage door openers with remotes, and existing plants and shrubbery, together with: **As Per MLS# 99146057.**
- b. Included in the sale are fixtures which are defined as personal property that have become so attached to the real property that they are not readily removable having become fixed, e.g. by nail, screw, bolt, glue, etc.
- c. Specifically excluded from the sale are: **(None)**
- d. If any fixtures are leased, the leased item, and corresponding name and contact information of the lessor is as follows: **(None)**

6. **TITLE.**

- a. If, upon the date for the delivery of the deed as hereinafter provided, the SELLER shall be unable to deliver or cause to be delivered a deed or deeds conveying a good and marketable title to the Premises, subject only to the items set forth in Schedule A and Paragraph 6(e) hereof, then the SELLER shall be allowed a reasonable postponement of closing not to exceed thirty (30) days, or such shorter time as may be within the term of the BUYER's mortgage commitment, within which to perfect title. If at the end of said time the SELLER is still unable to deliver or cause to be delivered a deed or deeds conveying a good and marketable title to said Premises, subject as aforesaid, then the BUYER may elect to accept such title as the SELLER can convey, without modification of the purchase price, or may reject such title. Upon such rejection, all sums paid on account hereof, together with any expenses actually incurred by the BUYER, which expenses, however, shall be limited in the aggregate so as not to exceed the gross premium cost of fee title insurance based on the amount of the purchase price, for attorneys' fees, nonrefundable fees of lending institutions, survey costs and inspection fees, shall be paid to the BUYER without interest thereon. Upon receipt of such payment, this Agreement shall terminate and the parties hereto shall be released and discharged from all further claims and obligations hereunder.
- b. The title herein required to be furnished by the SELLER shall be marketable, subject only to the items set forth in Schedule A and Paragraph 6(e) hereof, and the marketability thereof shall be determined in accordance with the Standards of Title of the Connecticut Bar Association now in force. Any and all defects in or encumbrances against the title, which come within the scope of said Title Standards, shall not constitute valid objections on the part of the BUYER, if such Standards do not so provide, and provided the SELLER furnishes any affidavits or other instruments which may be required by the applicable Standards, and further provided title will be insurable at standard premiums by a title insurance company licensed in the State of Connecticut.
- c. **NO VIOLATIONS:** The SELLER represents that the Premises and the present use thereof are not in violation of any governmental rules, codes, permits, regulations or limitations, unless same have become legally nonconforming, and there are no violations of any restrictive covenant, agreement or condition subject to which title to the Premises is to be conveyed in accordance with the terms hereof. Between the date of this Agreement and the date of closing the SELLER will not do anything or allow anything to be done on or about the Premises which will result in any such violation. The SELLER represents that SELLER has not received any notice of zoning or building violations and that there has been no attempt to enforce same against the SELLER during the time in which the SELLER has owned the Premises. SELLER represents that SELLER has no knowledge of any special assessments levied or to be levied against the Premises, which are not yet a lien on the Premises and has no knowledge of any existing improvements or work done on the Premises

which may result in special taxes or assessments to be paid thereon.

- d. **RELEASE OF MORTGAGES:** Notwithstanding anything to the contrary contained in this Agreement or any riders attached hereto, in the event SELLER's title is encumbered by mortgage lien(s) for which SELLER'S attorney is unable to deliver release(s) of mortgage(s) at closing, the parties shall close the transaction, provided that the following procedure is followed with respect to each mortgage lien: (a) the SELLER's attorney shall provide to the BUYER's attorney the following documents at the time of closing: SELLER's Indemnification letter in the form provided by the Greater Bridgeport Bar Association Closing Customs, copy of mortgage payoff statement provided by the mortgagee, mortgage payoff transmittal letter issued by the SELLER's attorney in the form provided by the Greater Bridgeport Bar Association Closing Customs, and a copy of the overnight airbill for transmittal; (b) the SELLER's attorney, upon receiving the release of mortgage from the mortgagee, shall send it, with payment for the recording fee, to the BUYER's attorney who shall then record the release of mortgage; (c) if SELLER has not obtained such release within sixty (60) days after closing, the SELLER's attorney and BUYER's attorney shall take all necessary steps towards compliance with the Section 49-8a of the Connecticut General Statutes for the purpose of filing a statutory affidavit in lieu of release of mortgage should such filing become necessary; (d) with respect to an equity line of credit, in addition to the aforesaid requirements, the SELLER's attorney shall notify the lender to terminate all future borrowing rights as the time at which the payoff statement is requested, a copy of this notification shall be provided to BUYER at closing; (e) in the event BUYER's title insurance company will not issue a fee policy at no additional premium taking no exception for said mortgage or mortgages, or which provides affirmative coverage against loss or damage by reason of said unreleased mortgage or mortgages, BUYER shall not be obligated to proceed to closing; and (f) the provisions of this paragraph 6(d) shall survive the closing.
- e. **EXCEPTIONS TO TITLE:** The Premises will be conveyed to and accepted by the BUYER subject to:
- i. Any and all zoning and/or building restrictions, limitations, regulations, ordinances, and/or laws; any and all building lines; and all other restrictions, limitations, regulations, ordinances and/or laws imposed by any governmental authority and any and all other provisions of any governmental restrictions, limitations, regulations, ordinances and/or public laws, provided the Premises are not in violation of same at the time of closing.
  - ii. Real Property Taxes on the Current Grand List and any and all existing tax payments, municipal liens and assessments, coming due on or after the date of closing; the BUYER shall by acceptance of the deed assume and agree to pay, any and all such tax payments, liens and assessments which may on or after the date hereof be assessed, levied against or become a lien on the Premises.
  - iii. Any state of facts which a survey and/or physical inspection of the Premises might reveal, provided same do not render title unmarketable (such exception is for purposes of this Agreement only and shall not be included in the deed, unless it was in the deed which SELLER received upon purchasing the property).
  - iv. Common law, riparian or littoral rights of others and/or other rights, if any, in and to any natural watercourse or body of water flowing through or adjoining the Premises, and all statutory and other rights of others in and to any such watercourse or body of water.
  - v. Unless otherwise specifically agreed between the parties in writing, any municipal assessment and/or lien other than taxes shall be paid on a current basis by the SELLER and the balance assumed by the BUYER at closing.
  - vi. Such encumbrances as shown on Schedule A, if any.
7. **LIEN.** All sums paid on account of this Agreement and the reasonable expenses as set forth in Paragraph 6 or 11 hereof are hereby made liens on the Premises, but such liens shall not continue after default by the BUYER under this Agreement.
8. **CONDITION OF PREMISES [THIS AGREEMENT IS NOT SUBJECT TO ANY INSPECTION CONTINGENCIES].** The BUYER agrees that he has inspected said Premises, is satisfied with the physical condition thereof and agrees to accept at closing the Premises in the condition that it was in at the time that all the Buyer's building inspections were completed, on an "as is" basis, reasonable wear and tear excepted, subject to the provisions of Paragraph 11 hereof. SELLER represents that all appliances and systems on the Premises (including the furnace, heating and air conditioning systems and any appliances included in the sale) are in working order and will be in the same

condition at the time of closing as they were on the date that all the BUYER's building inspections were completed, reasonable wear and tear excepted. SELLER represents that the floor areas under any area rugs or furniture, and the wall areas behind any furniture, wall hangings or other objects, are of substantially the same condition and material as the floor and wall areas that are visible to inspection by BUYER without moving any of the foregoing, and there are no holes in the floors or walls hidden by the same, with the exception that reasonable nail holes shall be deemed to be acceptable. Neither SELLER nor SELLER's agents have made any representations or warranties as to said Premises on which BUYER has relied other than as expressly set forth in this Agreement. The SELLER agrees that the condition of the Premises shall be the same on the date of closing of title as of the date that all the BUYER's building inspections were completed, reasonable wear and tear excepted, subject to the provisions of Paragraph 11 hereof.

9. **BROKER(S).** The parties hereto agree William Ravels Real Estate are the broker(s) who negotiated the sale of the Premises, and the SELLER agrees to pay the commission for such services pursuant to separate agreement. This Agreement is consummated by the SELLER in reliance on the representation of the BUYER that no other broker or agent brought the Premises to the BUYER's attention or was, in any way, a procuring cause of this sale and purchase. The SELLER represents to the BUYER that no other broker or agent has any exclusive sale or exclusive agency listing on the Premises. The BUYER (jointly and severally, if more than one) hereby agrees to indemnify and hold harmless the SELLER against any liability by reason of the claim of any other broker or agent for a commission on account of this sale, provided that it is adjudged by a court of competent jurisdiction that a commission is due by reason of such other broker or agent being the procuring cause of this sale, said indemnity to include all costs of defending any such claim, including reasonable attorney's fees. In the event of any such claim, SELLER shall promptly notify BUYER, and BUYER shall have the right, but not the obligation, to assume the defense of such claim. The provisions of this paragraph shall survive the closing.
10. **APPORTIONMENT.** Real estate taxes, fire district taxes, sewer taxes, sewer assessments and sewer use charges or other municipal assessments, water charges, rents, service contracts, dues and ordinary assessments of private associations, and common charges, if any, shall be apportioned over the fiscal period for which levied. BUYER shall reimburse SELLER at closing for any fuel remaining on the Premises at then market rates. All adjustments shall be apportioned in accordance with the custom of the Bar Association of the community where the Premises are located. Condominium special assessments due and payable prior to the date set forth in Paragraph 4 of this Agreement shall be SELLER's responsibility. Any errors or omissions in computing apportionment or other adjustments at closing shall be corrected within a reasonable time following the closing. The preceding sentence shall survive the closing.
11. **RISK OF LOSS.** The risk of loss or damage by fire or other casualty to the buildings on the Premises until the time of the delivery of the deed is assumed by the SELLER. Throughout the period between the date of this Agreement and the delivery of deed, SELLER shall continue to carry his existing fire and extended coverage insurance on the buildings on the Premises. In the event that such loss or damage does occur prior to the delivery of the deed, the SELLER shall immediately notify BUYER and shall be allowed a reasonable time thereafter, not to exceed thirty (30) days from such loss or damage or such shorter time as may be within the term of BUYER's mortgage commitment, within which to repair or replace such loss or damage to the BUYER's reasonable satisfaction. In the event the SELLER does not repair or replace such loss or damage within said time, the BUYER shall have the option:
  - a. Of terminating this Agreement, in which event all sums paid on account hereof, together with any expenses actually incurred by the BUYER for attorneys' fees, nonrefundable fees of lending institutions, survey costs and inspection fees (in the aggregate not to exceed the cost of fee title insurance based on the amount of the purchase price), shall be paid to the BUYER without interest thereon. Upon receipt of such payment, further claims and obligations between the parties hereto, by reason of this Agreement, shall be released and discharged; or
  - b. Of accepting a deed conveying the Premises in accordance with all the other provisions of this Agreement upon payment of the aforesaid purchase price and of receiving the benefit of all insurance monies recovered or to be recovered on account of such loss or damage, to the extent they are attributable to loss or damage to any property included in this sale, less the amount of any monies actually expended by the SELLER on said repairs.

The SELLER shall not be responsible for loss or damage to trees or other plantings due to natural causes.

12. **AFFIDAVITS.** The SELLER agrees to execute, at the time of closing of title, an affidavit,
  - a. Verifying the non-existence of mechanics' and materialmen's lien rights,



- b. Verifying the non-existence of any tenants' rights, other than as set forth herein,
  - c. Verifying the non-existence of any security interests in personal property and fixtures being sold with the Premises,
  - d. Updating to the extent of SELLER's knowledge, any available survey, and
  - e. Affirming that SELLER is not a "foreign person" pursuant to Internal Revenue Code Section 1445; together with any other affidavit reasonably requested by the BUYER's lender or title company as to facts within SELLER's knowledge.
13. **MAINTENANCE.** The grounds shall be maintained by the SELLER between the date of BUYER's signing hereof and the closing of title, including the mowing of lawns, the raking of fallen leaves, the removal of fallen trees and large branches (except in uncultivated areas), and the removal of snow and ice from walks and driveways. In the event there is a pool that has been opened prior to the closing, SELLER shall continue to perform normal maintenance of same.
14. **DELIVERY OF PREMISES.** The SELLER agrees to deliver, simultaneously with the closing of title, exclusive possession of the Premises (except as may be otherwise provided herein), broom-clean, free of all debris, litter and furnishings and shall deliver all keys in SELLER's possession to the BUYER. BUYER shall have the right to make a final inspection of the Premises prior to the closing of title.
15. **LIABILITY FOR DELAYED CLOSING.** In the event of a delay in closing as set forth herein, other than as provided for under the provisions of this Agreement, through no fault of the SELLER, beyond five (5) business days, then the BUYER will reimburse the SELLER from the sixth (6th) business day to the day of actual closing of title for the SELLER's carrying costs of said property, including taxes, mortgage interest, utilities and per diem interest on SELLER's equity in the Premises, which amount shall be calculated at the rate of 1/30th of 1% of the purchase price for each day of delay up to the actual date of closing. Further, in the event of a delay in the closing by more than five (5) business days, through no fault of the BUYER, SELLER shall reimburse the BUYER for carrying costs for temporary housing, temporary storage of personal property, living expenses and other miscellaneous expenses at the same per diem rate of 1/30th of 1% of the purchase price for each day of delay from the sixth (6th) business day to the day of actual closing up to the actual date of closing. [For example, the per diem cost of a \$450,000 transaction would be \$150 per day.]
16. **DEFAULT.** If BUYER is in default hereunder, or, on or before the date of closing as set forth herein, indicates that BUYER is unable or unwilling to perform and SELLER stands ready to perform SELLER's obligations, SELLER's sole remedy shall be the right to terminate this Agreement by written notice to BUYER or BUYER's attorney and retain the down payment as reasonable liquidated damages for BUYER's inability or unwillingness to perform. It is the intention of the parties hereto freely to make advance provision on the date of this Agreement for such event in order (a) to avoid controversy, delay and expense, and (b) to specify now a reasonable amount agreeable to both for compensation to the SELLER for losses which may not be readily ascertainable or quantifiable, such as any of the following which might be necessary to place SELLER in the position SELLER would have been in had BUYER made timely performance: costs of carrying, maintaining, insuring and protecting the property; loss of interest income on the proceeds; loss of optimum market time, value and conditions; the uncertainty, delay, expense and inconvenience of finding a substitute buyer; additional commissions, fees, taxes and borrowing expenses to meet obligations entered into in anticipation of performance. In such event and upon SELLER's written notice of termination, the Premises shall be free of any claims or interest of the BUYER therein by virtue of this Agreement. If SELLER defaults hereunder, BUYER shall have such remedies as BUYER shall be entitled to at law or in equity, including, but not limited to, specific performance. However, failure to comply by the SELLER as a result of encumbrances or defects in title shall be governed by the provisions of Paragraph 6 of this Agreement and failure to comply as a result of risk of loss shall be governed by Paragraph 11 of this Agreement.

The foregoing notwithstanding, a delay in the closing occasioned by the SELLER, which results in either the loss of the BUYER's mortgage commitment or an adverse change in the terms of such commitment shall entitle BUYER to rescind this Agreement and the SELLER shall forthwith refund all sums heretofore paid by the BUYER on account of the purchase price, whereupon all rights and liabilities of the parties hereto by reason of this Agreement shall terminate.

In no event shall the closing, or any extension thereof, take place later than four (4) weeks from the date of closing set forth in Paragraph 4 hereof, subject to the provisions of Paragraphs 6 and 11 of this Agreement. In the event closing has not taken place by the end of said four (4) week period, through no fault of the non-delaying party, the delaying party shall be deemed in default.

**17. MORTGAGE CONTINGENCY. N/A**

18. **PROPERTY CONDITION DISCLOSURE FORM.** Attached hereto as a Rider is the Property Condition Disclosure Form required by Section 20-327b of the Connecticut General Statutes. In the event the SELLER has not furnished BUYER with the Property Disclosure Form, as required by Section 20-327b of the Connecticut General Statutes, with or prior to the BUYER's execution of this Agreement, the SELLER shall give and the BUYER shall receive a credit of \$500.00 against the purchase price at closing.
19. **LEAD-BASED PAINT.** By signing this contract, BUYER acknowledges that the lead paint contingency granted pursuant to 42 USC 4852d as set forth in the Lead Paint Disclosure report attached to this Agreement has been waived or has been satisfied, and that the BUYER has no further testing period for lead paint.
20. **UTILITIES.** The SELLER represents that no utility lines cross the property of an adjoining owner to serve the Premises unless specifically set forth in this Agreement, and that no utility lines cross the Premises and serve property of an adjoining owner unless specifically set forth herein.
21. **BUILDING PERMITS.** The SELLER represents that during SELLER's period of ownership, no work has been performed on the Premises for which a building permit has been required other than that for which building permits were obtained and for which Certificates of Occupancy have been Issued.
22. **INSULATION AND ASBESTOS.** The SELLER represents that the Premises are not insulated in whole or in part with urea formaldehyde or any other type of foam insulation and do not contain any asbestos related material.
23. **KNOWLEDGE OF HEARINGS.** The SELLER represents that SELLER has neither knowledge nor notice of any pending public agency (including but not limited to Planning, Zoning, Inland Wetlands, etc.) hearings or appeals therefrom affecting the Premises or any abutting property and will promptly notify the BUYER if the SELLER receives notice or learns of any such hearings after the signing of this Agreement and prior to closing. If the purpose of such hearing would have an adverse effect on the property and/or BUYER's use and enjoyment thereof, either party can either: 1). Cancel this agreement; 2). Postpone closing date until after said hearing to determine if the requested use(s) or change(s) has/have been granted; or 3). Proceed to closing pursuant to the terms contained herein.
24. **DELIVERY OF DOCUMENTS.** The SELLER shall deliver to the BUYER prior to closing any documents, informational materials, building plans and any surveys in the SELLER's possession pertaining to the Premises, the appliances and the systems on the Premises.
25. **BASEMENT AND ROOF.** The SELLER represents that, during the period of the SELLER's ownership of the Premises, the basement has been free of any water except as disclosed herein, and represents that the roof currently is free of leaks.
26. **SEPTIC.** Unless the premises are served by public sewer, the SELLER represents that the Premises are served by a septic tank and leaching fields located entirely within the Premises' lot lines, that said tank and fields serve no other Premises and that, during the SELLER's entire period of ownership, said septic system has required only normal maintenance and cleaning.
27. **WELL.** Unless the Premises are served by public water supply, the SELLER represents that the Premises are supplied by a well and pipes located entirely within the Premises' lot lines, that said well and pipes serve no other premises and that, during the SELLER's entire period of ownership, the well has produced sufficient clear and potable water for normal domestic use.
28. **UNDERGROUND STORAGE TANKS.** The SELLER represents that there are no above-ground or underground storage tanks on the Premises which leak or have leaked and that any such storage tank(s) are not currently in disrepair and SELLER has no knowledge of any underground storage tank(s), except as disclosed in the Property Condition Disclosure Form attached hereto. The SELLER further represents that the Premises are not contaminated by any oil, petroleum product or hazardous waste which, if known to the state and federal authorities, could result in remedial clean-up work and expense to the BUYER subsequent to the passing of title. In the event that any such Underground Storage Tank(s) (UST) was/were removed and/or abandoned by SELLER, or SELLER has knowledge of any such removal and/or abandonment, then SELLER shall provide to BUYER prior to closing of title any documentary evidence of such removal and/or abandonment, including but not limited to permitting, correspondence, testing data and/or results, disposal manifests, etc. that SELLER may possess. Further, SELLER represents that any such removal was done in accordance with all applicable state/town regulations by a company licensed to engage in the removal or abandonment of USTs, and that if the

work was not done in accordance with applicable regulations by a licensed company, the SELLER shall provide BUYER reasonable soil testing and/or other inspections at SELLER's sole cost and expense, as shall be necessary to comply with such regulations.

- 29. **NON-MATERIAL FACT CONCERNING REAL PROPERTY.** The BUYER hereby advises the SELLER that knowledge of any non-material fact concerning real property, as defined in Connecticut General § 20-329cc et seq with regard to the Premises is important to his decision to purchase the Premises. The SELLER represents to BUYER that he has no knowledge of any non-material fact concerning real property, as defined in Connecticut General § 20-329cc et seq with regard to the Premises.
- 30. **NOTICES.** All notices under this Agreement shall be in writing and shall be delivered personally and receipted or shall be sent by facsimile transmission or registered or certified mail or by overnight courier, addressed to the attorney for the respective party. Notice signed by the respective attorneys shall be deemed sufficient within the meaning of this paragraph without the signature of the parties themselves.

*Notices to the SELLER shall be sent to:*

Attorney Michael B. Nahoum  
103 South Main Street  
Newtown, CT 06470  
Phone: (203) 426-2332  
Fax: (203) 426-9018  
E-mail: michael@nahoum-law.com

*Notices to the BUYER shall be sent to:*

Attorney Timothy Enright  
60 Washington Avenue, Suite 104  
Hamden, CT 06518  
Phone: (203) 288-1333  
Fax: (877) 608-9168  
E-mail: tim@ncglawyers.com

- 31. **RIGHT TO WITHDRAW.** This Agreement shall not be considered or construed as an offer by the SELLER. The SELLER reserves the right to withdraw this proposed Agreement at any time prior to the signature by both parties hereto, receipt by the SELLER's attorney of the full payment of the deposit set forth herein, and delivery of a fully executed Agreement to the BUYER's Attorney.
- 32. **ASSIGNMENT.** This Agreement and BUYER'S rights hereunder may not be assigned by BUYER without the written consent of SELLER, and any purported assignment without such written consent shall be void and of no effect. Consent of the SELLER to assignment shall not unreasonably be withheld or delayed. Upon any effective assignment of BUYER's rights hereunder, BUYER and BUYER's assignee shall be jointly and severally liable hereunder, unless otherwise agreed by SELLER.
- 33. **IRS REPORTING COMPLIANCE.** Unless otherwise required by law or as set forth in a separate designation agreement, BUYER shall cause BUYER's attorney to comply with any reporting requirements of the Internal Revenue Service as to this transaction. The provisions of this paragraph shall survive the closing.
- 34. **ACCEPTANCE OF DEED.** The delivery and acceptance of the deed herein described shall be deemed to constitute full compliance with all the terms, conditions, covenants and representations contained herein, or made in connection with this transaction, except as may herein be expressly provided and except for the warranties of title.
- 35. **REPRESENTATIONS.** Unless otherwise specified in writing to the contrary, none of the representations made in this Agreement or any addenda attached hereto shall survive delivery of the deed and all representations by SELLER are made to the best of SELLER's knowledge and belief.
- 36. **EFFECT.** This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and permitted assigns of the respective parties.
- 37. **COSTS OF ENFORCEMENT.** Except as otherwise expressly provided herein, in the event of any litigation brought to enforce any material provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the other party.
- 38. **GENDER.** In all references herein to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within Agreement may require.
- 39. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of which when taken together shall constitute one and the

same Agreement; and said counterparts shall be delivered personally and receipted or shall be sent by facsimile transmission or registered or certified mail or by overnight courier, addressed to the attorney for the respective party.

40. **ENTIRE AGREEMENT.** All prior understandings, agreements, representations and warranties, oral and written, between Seller and Purchaser are merged in this Agreement. This Agreement completely expresses the agreement of the parties, and has been entered into by the parties after discussion with their respective attorneys and after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this Agreement. Neither this Agreement nor any provision hereof may be waived, changed or cancelled except by a written instrument signed by both parties.
41. **CAPTIONS.** The captions preceding the paragraphs in this Agreement are for ease of reference only and shall be deemed to have no effect whatsoever on the meaning or construction of the provisions of this Agreement.
42. **SEVERABILITY.** The invalidity or unenforceability of any one or more provisions of this Agreement shall not render the remaining terms and provisions invalid or unenforceable.
43. **ALTERATION OF STANDARD FORM.** The Parties agree that unless a provision which is not a part of, or which varies from the Standard Form, is printed in bold typeface of not less than 16 points or handwritten, such provision shall be deemed not to be a part of this Agreement for any purpose, and any provision of the Standard Form that has been eliminated shall be deemed to be a part of this Agreement unless a reference to its deletion in such typeface or handwriting is inserted in its place and is described in a separate cover letter. Addenda, exhibits and riders to this Agreement are not subject to the foregoing requirement of this paragraph.
44. **BANKRUPTCY.** SELLER represents that no SELLER is a "Debtor" in a proceeding presently pending in any Bankruptcy Court. If, between the date of SELLER's execution of the Agreement and the closing of title, a Bankruptcy petition is filed naming a SELLER as a Debtor under any Bankruptcy Code, then this Agreement shall terminate and Buyer shall be entitled to the return of any and all sums paid on account hereof, together with any expenses actually incurred by the BUYER, which expenses, however, shall be limited in the aggregate so as not to exceed the gross premium cost of fee title insurance based on the amount of the purchase price, for attorneys' fees, nonrefundable fees of lending institutions, survey costs and inspection fee, shall be paid to the BUYER without interest thereon. Whereupon, this Agreement shall terminate and the parties hereto shall be released and discharged from all further claims and obligations hereunder. This representation shall be deemed material and shall survive the closing of title.
45. **BOUNDARY LINES.** SELLER represents that all buildings, appurtenances, systems, and driveways are entirely within the boundary lines of said premises.
46. **NO FURTHER ENCUMBRANCES.** SELLER agrees that he will not further encumber the premises and that he will notify the Buyer immediately of any matters including, but not in limitation of, attachments, liens and any notice zoning matters which may affect the premises during the pendency of this agreement.
47. **RECORD OWNER.** SELLER is record owner in fee simple of the premises being conveyed herein.
48. **ABUTS PUBLIC STREET.** SELLER represents that the property abuts a public highway.
49. **MUNICIPAL ASSESSMENTS.** SELLER represents that Seller has no knowledge of the existence of any municipal lien and/or assessment, nor improvements for which a lien or assessment could be levied in the future.

## 50. SMOKE AND CARBON MONOXIDE DETECTORS

Pursuant to Conn. Public Act 14-219 SELLER shall:

- (i) Provide BUYER with an Affidavit stating that the house was issued a Certificate of Occupancy after October 1, 2005; or

(ii) Provide BUYER with an Affidavit certifying that the residential dwelling is equipped with smoke detection and warning equipment (smoke detectors) and that the residential dwelling is equipped with carbon monoxide (CO) detection and warning equipment (CO detector) or that the dwelling does not pose a risk of CO poisoning because it is not equipped with a fuel-burning appliance or attached garage.

The SELLER is required to credit the BUYER the sum of TWO HUNDRED FIFTY (\$250.00) DOLLARS should the SELLER fail to furnish the requisite Affidavit.


51. HOUSE MUST APPRAISE AT OR ABOVE THE SALES PRICE.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day first above written.

In the presence of:


\_\_\_\_\_(L.S.)

\_\_\_\_\_(L.S.)

  
\_\_\_\_\_, SELLER  
Dennis E. Darcy  
Tax ID# 120-62-1998

\_\_\_\_\_(L.S.)

\_\_\_\_\_(L.S.)

  
\_\_\_\_\_, SELLER  
Meredith F. Darcy  
Tax ID# 041-74- 4041

\_\_\_\_\_(L.S.)

\_\_\_\_\_(L.S.)

\_\_\_\_\_, BUYER  
John Doyle  
Tax ID#

\_\_\_\_\_(L.S.)

\_\_\_\_\_(L.S.)

\_\_\_\_\_, BUYER  
Robert Wilson  
Tax ID#

Title to said Premises is to be taken in the name or names of John Doyle and Robert Wilson as Joint Tenants WROS.

**ATTACHMENTS:**

- 1. Schedule A
  - a. Description of Premises
  - b. Exceptions to Title [see Paragraph 6(e)(vi)]
- 2. Property Condition Disclosure Form [see Paragraph 18]
- 3. Lead Disclosure
- 4. Bankruptcy Addendum

*Greater Bridgeport Bar Association Residential Real Estate Sales Agreement, rev. 11-10-2009.*

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day first above written.

In the presence of:

\_\_\_\_\_(L.S.)

\_\_\_\_\_(L.S.)

Dennis E. Darcy  
Tax ID#

SELLER

\_\_\_\_\_(L.S.)

\_\_\_\_\_(L.S.)

Meredith F. Darcy  
Tax ID#

SELLER

\_\_\_\_\_(L.S.)

\_\_\_\_\_(L.S.)

John Doyle  
Tax ID#

BUYER

\_\_\_\_\_(L.S.)

\_\_\_\_\_(L.S.)

Robert Wilson  
Tax ID#

BUYER

Title to said Premises is to be taken in the name or names of John Doyle and Robert Wilson as Joint Tenants WROS,

**ATTACHMENTS:**

- 1. Schedule A
  - a. Description of Premises
  - b. Exceptions to Title (see Paragraph 8(e)(vi))
- 2. Property Condition Disclosure Form (see Paragraph 18)
- 3. Lead Disclosure
- 4. Bankruptcy Addendum

*Greater Bridgeport Bar Association Residential Real Estate Sales Agreement, rev. 11-10-2009.*

## CFPB CLOSING DISCLOSURE ADDENDUM TO CONTRACT

This CFPB Closing Disclosure Addendum to Contract is made and entered into as of the \_\_\_\_ day of August, 2016 and is hereby made part of and incorporated into that certain Connecticut Residential Purchase and Sale Agreement dated August 5, 2016 (the "Contract") by and between DENNIS E. DARCY AND MEREDITH F. DARCY (herein and hereinafter referred to as "SELLER"), and JOHN DOYLE AND ROBERT WILSON (herein and hereinafter referred to as "BUYER" or "PURCHASER"), and pertaining to the real property commonly known as 4 MOHAWK TRAIL, NEWTOWN, CONNECTICUT 06482 ("Property");


1. This Addendum shall apply if the BUYER is obtaining a mortgage loan subject to the jurisdiction of the Federal Consumer Finance Protection Bureau ("CFPB").
2. Federal regulation requires timely and accurate disclosure of closing costs in residential mortgage transactions and Lender policies and practices pertaining to the mandated CFPB Closing Disclosure may result in the Lender both 1) preparing the Closing Disclosure containing all final closing costs for both SELLER and BUYER and 2) providing the Closing Disclosure to the BUYER within three (3) business days prior to closing. These procedures may result in a delay in the consummation of the transaction if final and accurate closing cost information is not supplied to the Lender in a timely manner.
3. SELLER and BUYER recognize that these potential delays may cause material financial hardship to one or both parties in the event the BUYER's Lender does not receive and disclose timely and accurate information pertaining to a) all components of SELLER and BUYER closing costs, b) items such as fuel oil, propane gas or other utility charges or adjustments in favor of the SELLER (all such costs, adjustments and additions are referred to herein as "utility" or "utilities" costs) and/or c) the cost of pre-closing inspection property damage or the cost to deliver the property in the condition contracted for.
4. The intent of this Addendum is 1) to set forth the respective responsibilities of the SELLER and BUYER to transmit to each other in a timely manner all closing costs required to be included in the Closing Disclosure and 2) to specify financial consequences for failure to do so. The parties agree that the responsibilities set forth in this Addendum shall be carried out by their respective attorneys from information obtained by such attorneys with the cooperation of the parties or other designated agents.
5. Therefore, the parties agree as follows:
  - a. To the extent the Contract stipulates that time shall be of the essence regarding the closing date, the parties hereby waive that stipulation. The parties shall agree as soon as possible on a preliminary date of closing which may be subject to change. The preliminary date of closing shall be referred to for purposes of this Addendum as the "closing date". The closing date may be identical to the Closing Date set forth in the Contract.
  - b. The SELLER shall transmit to the BUYER's attorney at least 10 days prior to the closing date or revised closing date (the 10-day period prior to the closing date shall be referred to as the Blocked Out Period) all mortgage and lien payoffs, SELLER attorney fees, commission amounts and breakdowns, State and Town conveyance taxes, the number of pages of the conveyancing deed and any other expenses required to be disclosed on the Closing Disclosure. Unless specifically permitted by the BUYER's lender, there shall be no Paid Outside of Closing ("POC") items.
  - c. The SELLER shall be obligated to obtain and transmit to the BUYER, prior to the Blocked Out Period, information sufficient to calculate usual and customary utility adjustments to be paid by the BUYER to the SELLER and final utility charges to be paid by the SELLER at closing.
  - d. The SELLER and BUYER shall collaborate to arrive at an appropriate real estate tax adjustment prior to the Blocked Out Period.
  - e. A utility charge shall not be adjusted unless the following information is transmitted by fax, mail or email to the BUYER's attorney prior to the Blocked Out Period: 1) in the case of fuel (whether oil, propane or other fuel), an accurate reading of the fuel remaining in the tank and the price of such fuel calculated in accordance with




the Contract or 2) in the case of other applicable utilities, statements from the appropriate authority(ies) for water, sewer or other utility. If the cost of fuel is to be an adjustment in favor of the SELLER, the resultant adjustment shall be reduced by the cost of 4 gallons of oil per day (and/or a proportionate amount if propane) from the day of transmittal of the information to the day of closing if the day of transmittal occurs during the months of December, January, February or March. Furthermore, the SELLER agrees not to add fuel to the tank prior to the closing without the express permission of the BUYER.

- f. If the SELLER fails to transmit to the BUYER all utility adjustments in favor of the SELLER prior to the Blocked Out Period, the BUYER may perform the calculations using all reasonable and obtainable information. Such calculation shall be final and binding upon the parties.
- g. If the SELLER and BUYER do not agree on a real estate tax adjustment prior to the Blocked Out Period, the BUYER shall make the adjustment which shall be final and binding, provided the BUYER's adjustment is based on current real estate tax data for the property and the adjustment is based upon the Uniform Fiscal Year method or such other method provided for in the contract of purchase and sale:
- h. In the event the parties discover at a pre-closing inspection that the property or dwelling sustained damage after the initial physical inspection or that the SELLER failed to deliver the property or dwelling to the BUYER in the condition agreed to in the contract of sale and purchase or any amendments thereto, the SELLER agrees, at their own cost and expense, to restore the property or dwelling to its condition prior to the damage, or, to deliver the property or dwelling to the BUYER at their own cost and expense in the condition agreed to in the Contract or any amendments thereto. The parties may agree on a method of fulfilling the intent of the previous sentence.
- i. Notwithstanding anything to the contrary in the Contract or this Addendum, in the event the BUYER's lender requires a redisclosure of the Closing Disclosure resulting in a delay of the closing, such event shall not cause the BUYER to pay the SELLER any sums of money for such delay unless 1) the Contract contains a liquidated damage clause or a per diem charge for failure to close on or by a specific date and 2) the need for the redisclosure was caused by the failure of the BUYER to provide the Lender with information known to the BUYER or transmitted by the SELLER to BUYER prior to the Blocked Out Period.
- j. Nothing contained in this Addendum shall be construed to make the closing date in the Contract to be of the essence.

IN WITNESS WHEREOF, SELLER and BUYER have entered into this Addendum as of the Effective Date specified above.

  
\_\_\_\_\_  
SELLER: Dennis E. Darcy date 08 / 05 / 2016

\_\_\_\_\_  
BUYER: John Doyle date \_\_\_\_\_

  
\_\_\_\_\_  
SELLER: Meredith F. Darcy date 08 / 05 / 2016

\_\_\_\_\_  
BUYER: Robert Wilson date \_\_\_\_\_


ADOPTED AND APPROVED BY THE CONNECTICUT BAR ASSOCIATION REAL PROPERTY SECTION MAY 2015

the Contract or 2) in the case of other applicable utilities, statements from the appropriate authority(ies) for water, sewer or other utility. If the cost of fuel is to be an adjustment in favor of the SELLER, the resultant adjustment shall be reduced by the cost of 4 gallons of oil per day (and/or a proportionate amount if propane) from the day of transmittal of the information to the day of closing if the day of transmittal occurs during the months of December, January, February or March. Furthermore, the SELLER agrees not to add fuel to the tank prior to the closing without the express permission of the BUYER.

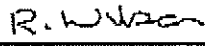
- f. If the SELLER fails to transmit to the BUYER all utility adjustments in favor of the SELLER prior to the Blocked Out Period, the BUYER may perform the calculations using all reasonable and obtainable information. Such calculation shall be final and binding upon the parties.
- g. If the SELLER and BUYER do not agree on a real estate tax adjustment prior to the Blocked Out Period, the BUYER shall make the adjustment which shall be final and binding, provided the BUYER's adjustment is based on current real estate tax data for the property and the adjustment is based upon the Uniform Fiscal Year method or such other method provided for in the contract of purchase and sale.
- h. In the event the parties discover at a pre-closing inspection that the property or dwelling sustained damage after the initial physical inspection or that the SELLER failed to deliver the property or dwelling to the BUYER in the condition agreed to in the contract of sale and purchase or any amendments thereto, the SELLER agrees, at their own cost and expense, to restore the property or dwelling to its condition prior to the damage, or, to deliver the property or dwelling to the BUYER at their own cost and expense in the condition agreed to in the Contract or any amendments thereto. The parties may agree on a method of fulfilling the intent of the previous sentence.
- i. Notwithstanding anything to the contrary in the Contract or this Addendum, in the event the BUYER's lender requires a redisclosure of the Closing Disclosure resulting in a delay of the closing, such event shall not cause the BUYER to pay the SELLER any sums of money for such delay unless 1) the Contract contains a liquidated damage clause or a per diem charge for failure to close on or by a specific date and 2) the need for the redisclosure was caused by the failure of the BUYER to provide the Lender with information known to the BUYER or transmitted by the SELLER to BUYER prior to the Blocked Out Period.
- j. Nothing contained in this Addendum shall be construed to make the closing date in the Contract to be of the essence.

IN WITNESS WHEREOF, SELLER and BUYER have entered into this Addendum as of the Effective Date specified above.

\_\_\_\_\_ date \_\_\_\_\_  
SELLER: Dennis E. Darcy

 \_\_\_\_\_ date \_\_\_\_\_  
BUYER: John Doyle

\_\_\_\_\_ date \_\_\_\_\_  
SELLER: Meredith F. Darcy

 \_\_\_\_\_ date \_\_\_\_\_  
BUYER: Robert Wilson

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**SCHEDULE A**

All that certain piece or parcel of land together with all buildings and improvements thereon, situated in the Town of Newtown, County of Fairfield and State of Connecticut, consisting of 4,537 square feet, as shown on a map entitled "Map Prepared for John P. Clark & Edith M. Clark Showing Cedarhurst, Block D Map No. 1 Lots 39-44 Newtown, Connecticut Scale 1"=40' December 30, 1977 Map Revised 1/11/80" and certified substantially correct by C. James Osborne, Jr., R.L.S. bounded and described as follows:

Commencing at a point on the southerly street line of Mohawk Trail in the northwesterly corner of the premises and the northeasterly corner of property now or formerly of James E. Rickel, as shown on said map;

Thence South 52° 50' 50" East, by Mohawk Trail, 35.87 feet, to a point;

Thence South 10° 15' 12" West, by land now or formerly of John P. and Edith M. Clark, 21.34 feet, to a point;

Thence South 29° 08' 34" West, by land now or formerly of John P. and Edith M. Clark, 44.41 feet, to a point;

Thence South 15° 38' 05" West, by land now or formerly of John P. and Edith M. Clark, 91.39 feet, to a point;

Thence North 74° 21' 54" West, by land now or formerly of M.F. and S.E. Sarosky, 25 feet, to a point;

Thence North 15° 38' 05" East, by land now or formerly of James E. Rickel, 168.98 feet, to a point and place of beginning.

----- Together with the customary use of the trails as shown on Map No.-1, "Cedarhurst on Lake Zoar, -----  
Newtown, Connecticut" belonging to Cedarhurst Estates, Inc., made by Frank B. Jaynes, Surveyor, dated April 27, 1929, on file in the Newtown Town Clerk's Office, in common with owners of the other lots shown on said Map for foot or vehicle passage and repassage.

Said premises are subject to:

1. Any and all provisions of any ordinance, municipal regulation, public or private law.
2. Taxes due the Town of Newtown on the List of October 1, 2015.
3. Certain restrictions as set forth in a deed from Cedarhurst Estates, Inc. to Hafene Dorelle Jaeger, dated June 1, 1937, and recorded in Volume 85 at Page 70 and in a deed from Cedarhurst Estates, Inc. To Andrew Gerda, dated August 27, 1938, and recorded in Volume 88 at Page 331 of the Newtown Land Records.
4. Declaration of Easement dated October 1, 2012 and recorded October 18, 2012 in Volume 1019 at Page 567 of the Newtown Land Records.
5. Variance recorded May 14, 1980 in Volume 291 at Page 306 of the Newtown Land Records.


BANKRUPTCY ADDENDUM TO CONTRACT OF SALE

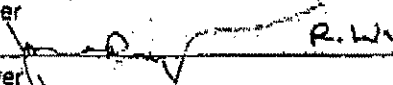
This contract will be subject to bankruptcy Court approval in the event either of the Sellers files for bankruptcy relief prior to the scheduled closing date hereunder. In such event, Buyer understands and agrees that the Seller shall have 60 days from the date of the bankruptcy filing to obtain bankruptcy court approval of the sale to purchaser. During that time, the Seller shall file a motion (the "Motion") with the Court pursuant to, *inter alia*, sections 105(a), 363, and 365 of the Bankruptcy Code for entry of an order authorizing and approving the sale of the Property to Purchaser pursuant hereto, free and clear of all liens, claims and encumbrances with such liens, claims, and encumbrances attaching to the sale proceeds (the "Sale Order"). The obligations of the parties under this Agreement (each a "Party" and collectively the "Parties") are expressly subject to, and conditioned only upon, the entry of the Sale Order. In the event the Bankruptcy Court does not enter the Sale Order for any reason, other than a default by Purchaser, within sixty (60) after the filing of the Seller's Motion seeking among other things approval of this Agreement, either the Seller or Purchaser may terminate this Agreement by written notice to the other. In such event, the Deposit with accrued interest, if any, shall be returned to the Purchaser within five (5) business days. The Parties agree to proceed to closing notwithstanding an appeal unless the Court enters an order staying the sale pending the appeal. The Sale Order shall provide that the sale shall be free and clear of all liens, claims and encumbrances affecting the Property, other than the Permitted Encumbrances (as defined herein), and at Closing the Property shall be conveyed to Purchaser free and clear of all liens, claims and encumbrances affecting the Property, other than the Permitted Encumbrances. If Purchaser or Seller shall terminate this Agreement pursuant to this paragraph then this Agreement shall be null and void and the Seller shall promptly return the Deposit with interest, if any, and upon such return of the Deposit to Purchaser, there shall be no further liabilities or obligations upon either of the parties hereto except for those which by the express terms hereof survive such a termination.

If Seller (a) is unable to transfer title to Purchaser in accordance with this Agreement, (b) terminates this Agreement for any reason other than a default by Purchaser, (c) fails to receive Bankruptcy Court authorization for any reason whatsoever, or (d) is required by the bankruptcy court to market the property and or conduct an auction sale and receives and accepts a higher or better offer for the Property prior to Closing, Seller's sole liability shall be to refund the Deposit with interest, if any, paid by Purchaser on account of this Agreement. Upon such refund this Agreement shall be considered cancelled, and neither Seller nor Purchaser shall have any further rights or obligations hereunder, except obligations under this Agreement which expressly survive the Closing or other termination of this Agreement.

Break-up fee. In the event the Seller receives a higher and better offer in the bankruptcy proceeding and this Agreement has not been sooner terminated, Purchaser shall receive a break-up fee equal to 3% of the sale price under this agreement as and for its expenses incurred in connection with this Agreement.

  
\_\_\_\_\_  
Seller

  
\_\_\_\_\_  
Seller

  
\_\_\_\_\_  
Buyer R. Wilson