

PENACHIO MALARA, LLP  
Anne J. Penachio, Esq.  
245 Main Street - Suite 450  
White Plains, New York 10601  
T: (914) 946-2889  
F: (914) 206-4884

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

**HEARING DATE and TIME:  
FEBRUARY 15, 2019 AT 10:00 AM**

-----X  
In re :  
JEANETTE CALICCHIA, :  
Debtor. :  
-----X

CHAPTER 11  
CASE NO.: 18-23840 (RDD)

**NOTICE OF THE DEBTOR’S APPLICATION FOR (I) APPROVAL OF THE SALE OF REAL PROPERTY AT 18 STEPHANIE LANE, MAHOPAC, NY 10541 TO CINDY GURKA AND STEVEN GURKA FREE AND CLEAR OF ALL CLAIMS PURSUANT TO 11 U.S.C. §§363 (b) AND (f); (II) APPROVING DISTRIBUTION OF PROCEEDS OF THE SALE PURSUANT TO 11 U.S.C. § 506(a) AND 506(c) ; AND (III) GRANTING SUCH OTHER AND FURTHER RELIEF AS IS APPROPRIATE**

**PLEASE TAKE NOTICE** that a hearing on the application of **JEANETTE CALICCHIA**, the above-referenced Debtor (the “Debtor”) for approval of the sale of her interest in the home at 18 Stephanie Lane, Mahopac, NY 10541 (the “Home”) pursuant to 11 U.S.C. §§ 363 (b) and (f) will be held before the Honorable Robert D. Drain, United States Bankruptcy Judge, in his Courtroom in the Charles L. Brieant, Jr. Federal Building and Courthouse, 300 Quarropas St., White Plains, New York 10601 at 10:00 am on February 15, 2019 at 10:00 AM.

**PLEASE TAKE FURTHER NOTICE**, that the terms of the sale are fully set forth in detail in the application and consist of the following material terms:

1. The asset transferred consists of the Home.
2. The contract price is \$599,900.00 to be paid as follows: \$59,900.00 deposit with balance to be paid at closing.
3. The sale is not predicated on the purchasers obtaining a mortgage commitment.
4. The sale is free and clear of all liens, claims and encumbrances which will attach to the proceeds.

**PLEASE TAKE FURTHER NOTICE** that the sale is subject to higher and better offers.

**PLEASE TAKE FURTHER NOTICE** that the Debtor also seeks permission to distribute the sale proceeds as set forth in the application.

**PLEASE TAKE FURTHER NOTICE** that a copy of the Application can be obtained from the Bankruptcy Court website, [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov) or from the undersigned upon request.

**PLEASE TAKE FURTHER NOTICE** objections, if any, to the relief sought in the application, must comply with applicable law and be served upon and received by the undersigned, with a copy to the Bankruptcy Judge and the Office of the United States Trustee (201 Varick Street, Suite 1006, New York, New York 10014) at least 7 days prior to the return date..

**PLEASE TAKE FURTHER NOTICE** that, unless objections are interposed, the relief sought in the application may be granted.

Dated: White Plains, New York  
December 7, 2018

/s/ Anne Penachio  
Anne Penachio  
PENACHIO MALARA, LLP  
Counsel for the Debtor  
245 Main Street - Suite 450  
White Plains, New York 10601  
T: (914) 946-2889  
F: (914) 206-4884

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**TO: THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE**

The application of **JEANETTE CALICCHIA**, (the “Debtor”), through her counsel, **PENACHIO MALARA, LLP**, for (i) approval of the sale of real property located at 18 Stephanie Lane, Mahopac, NY 10541 (the “Home”) to Cindy Gurka and Steven Gurka (the “Purchasers”) pursuant to 11 U.S.C. §§ 363 (b) and (f); (ii) approving the distribution of proceeds pursuant to 11 U.S.C. § 506(a) and (c), and (iii) granting such other and further relief as is just and proper, respectfully sets forth and alleges as follow:

**I. DEBTOR'S BANKRUPTCY BACKGROUND**

1. On November 30, 2018 the Debtor filed a voluntary petition for

relief under Chapter 11 of Title 11 of the United States Code, as amended (the “Bankruptcy Code”) with the Clerk of this Court and the case was referred to the Bankruptcy Judge herein.

2. Since the filing, the Debtor, an individual, has remained in the possession and control of her property in accordance with 11 U.S.C. §§ 1107 and 1108. No committee, trustee or examiner has been appointed.

3. The Debtor filed for bankruptcy relief to enable her to reorganize her financial affairs. The Debtor had suffered financial losses from business losses from J. Cali Enterprises and Caladri, Inc.

## **II. FACTUAL BACKGROUND**

4. The Debtor’s primary asset is the Home.

5. The Debtor wishes to sell the Home and relocate to an apartment owned by her brother-in-law. The Debtor engaged Exprop Real Estate, Inc. (“Exprop”). An application for Exprop’s retention is forthcoming.

6. For approximately 2 years, the Debtor has been trying to sell the Home.

7. In or about July 2018, the Debtor entered into a contract to sell the Home to the Purchasers. A copy of the Contract is annexed hereto as Exhibit A. Unfortunately, the Debtor was not able to consummate the sale pre-petition due primarily to the inability to convey clear title to the Purchasers. Travelers Insurance (“Travelers”) had obtained a judgment against the Debtor based upon the guaranty of a bond.

## **III. THE PROPOSED SALE OF THE HOME**

8. The Contract, which was negotiated pre-petition, is fairly straightforward and simple. There are two (2) principal terms.

9. First, the asset transferred consists of the Home. Second, the contract

price is \$599,900.00 to be paid as follows: \$59,900.00 deposit currently held in escrow by Debtor's counsel and balance of \$540,000.00 payable at closing. There is no mortgage contingency.

10. There are three (3) mortgages on the Home. The first mortgage is held by M&T Bank with an approximate amount due of \$380,000.00. The second mortgage is held by Citi with an approximate amount due of \$45,566.00. The third mortgage is held by M&T Bank with an approximate amount due of \$55,000.00. Travelers holds a judgment in the amount of \$1.6 million.

#### **IV. RELIEF REQUESTED HEREIN**

11. By this Application, the Debtor seeks an order from this Court (i) authorizing the sale of the Home to the Purchasers pursuant to the terms set forth in the contract free and clear of all liens and encumbrances; (ii) approving distribution of the proceeds and payment of fees under 11 U.S.C. §§ 506(a) and (c) ; and (iii) granting such other relief as is just proper.

#### **V. JURISDICTION AND STATUTORY PREDICATES FOR RELIEF**

12. This Court has jurisdiction over the Application pursuant to 28 U.S.C. §§157 and 134 and the "Standing Order of Referral of Cases to Bankruptcy Judges" dated July 10, 1984 (Ward, Acting C.J.). The statutory predicates for the relief sought herein are Sections 105, 522(f), 327, 363(b) and (f) of the Bankruptcy Code, Rule of the Federal Rules of Bankruptcy Procedure and the Local Rules for the United States Bankruptcy Court for the Southern District of New York.

#### **VI. THE SALE SHOULD BE APPROVED UNDER 11 U.S.C. § 363(b)**

13. Pursuant to Section 541(a) of the Bankruptcy Code, upon the filing of the

Debtor's Chapter 11 petition, the Home became property of its estate in bankruptcy.

14. Section 363(b)(1) of the Bankruptcy Code provides that, after notice and a hearing, a debtor may sell property of the estate other than in the ordinary course of business.

15. The standard for determining whether a sale outside the ordinary course of business should be approved is whether the sale is in the best interests of the estate. Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983); In re Ionosphere Clubs, 100 B.R. 670, 674-75 (Bankr. S.D.N.Y. 1989). Indeed, there must be some articulated business justification for the sale. Lionel at 1070.

16. In determining whether a sale is in the best interests of the estate, the following factors are considered<sup>1</sup>: (i) The amount of time that has elapsed since the filing; (ii) the proceeds to be obtained in relationship to any valuations of the property to be sold; and (iii) whether the assets are decreasing or increasing in value. See Oneida Lake Development, Inc., 114 B.R. 353 (Bankr. N.D.N.Y.1990).

17. In applying the foregoing factors to the instant case, it is clear that the proposed sale is in the best interests of the Debtor's estate and the creditors therein. First, although a brief amount of time has passed since the filing of the Debtor's Chapter 11 petition, one of the goals of the Debtor's Chapter 11 case was to liquidate the Home in an economical manner free of liens. The Home is simply cost prohibitive for the Debtor at this time. The

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<sup>1</sup> Although the Court in Lionel set forth seven (7) factors to be considered, only the following three (3) factors are relevant where, as here, a debtor proposes to sell all or substantially all of its assets pursuant to 11 U.S.C. 363(b). The other factors cited in Lionel, while not relevant, are: (i) the proportionate value of the asset to be sold to the estate as a whole; (ii) the effect of the proposed disposition to the debtor's plan of reorganization; (iii) which of the alternatives of use, sale or lease of the proposal envisions; (iv) the likelihood that a plan of re-organizational will be confirmed in the near future.

Home, which does not generate income for the Debtor, is a burden to the Debtor and her estate.

A sale will serve to maximize a distribution to creditors.

18. Second, the proposed sale will benefit the Debtor and her creditors in that it will enable her to move. Second, creditors will receive a distribution from the proceeds of the sale.

19. Third, the Home is a financial burden to the Debtor and her estate. The expenses associated with the Home, including the mortgage, real property taxes, and insurance, are depleting the Debtor's resources. The Home is essentially a "wasting asset."

20. Finally, given the current instability in the real estate market, the Debtor is fortunate to be selling the Premises.

**VII. SALE SHOULD BE FREE AND CLEAR OF  
LIENS UNDER 11 U.S.C. § 363(f)**

21. Section 363(f) of the Bankruptcy Code permits a debtor to sell property of the bankruptcy estate free and clear of all liens and encumbrances, only if:

- a. Applicable non-bankruptcy law would permit such a sale;
- b. The entity holding the lien consents;
- c. The interest is a lien and the sales price exceeds the aggregate value of all liens;
- d. The interest is in bona fide dispute; or
- e. The entity holding the lien could be compelled in a legal or equitable proceeding to accept money in satisfaction of its interest.

22. In the instant case, the sale meets the requirements set forth in 11 U.S.C. § 363(f). The purchase price is equal to the determined value of liens on the Home by reference to 11 U.S. §506(a). See In Re Boston Generating LLC, 440 B.R. 302, 316-19 (Bankr. S.D.N.Y. 2010).

**VIII. THE PROCEEDS OF THE SALE**

23. Following the sale, the following approximate amounts should be paid pursuant to 11 U.S.C. § 506(a) and (c):

- A. First Mortgage held by M&T Bank – Approximately \$348,000.00;
- B. Second Mortgage held by Citi - Approximately \$45,000.00;
- C. Third Mortgage held by M&T Bank- Approximately \$55,000.00;
- D. Transfer fees (TP-584) - \$10,000.00; and
- E. Real Estate Broker's fees and legal fees (subject to Court approval) at \$50,000.00 under 506(c).

24. Alternatively, the Debtor requests that the Court approve of the sale with the proceeds, but for title charge and transfer taxes, to be held in escrow pending further application to the Court.

25. It is expected that M&T Bank will not receive payment on the third mortgage as the sale proceeds are sufficient only to pay the expenses associated with the sale and the senior mortgages.

**IX. NOTICE AND WAIVER OF MEMO OF LAW**

26. Notice and a copy of the Application have been served on all parties in interest and their attorneys, if known (including the Office of the United States Trustee, counsel for the Buyers, and all creditors). It is respectfully submitted that such service is appropriate under the circumstances.

27. Because the facts and circumstances set forth herein do not present novel issues of law, it is respectfully requested that this Court waive the requirement of the filing of a memorandum of law.



**WHEREFORE**, it is respectfully requested that this Court grant the relief requested herein and all other relief that it deems necessary.

Dated: White Plains, New York  
December 7, 2018

/s/ Anne J. Penachio  
Anne J. Penachio  
PENACHIO MALARA, LLP  
245 Main Street - Suite 450  
White Plains, New York 10601  
T: (914) 946-2889  
F: (914) 206-4884

A-125—Residential contract of sale, 11-2000

Jointly prepared by the Real Property Section of the New York State Bar Association, the New York State Land Title Association, the Committee on Real Property Law of the Association of the Bar of the City of New York and the Committee on Real Property Law of the New York County Lawyers' Association.

WARNING: NO REPRESENTATION IS MADE THAT THIS FORM OF CONTRACT FOR THE SALE AND PURCHASE OF REAL ESTATE COMPLIES WITH SECTION 5-702 OF THE GENERAL OBLIGATIONS LAW ("PLAIN LANGUAGE").

CONSULT YOUR LAWYER BEFORE SIGNING THIS AGREEMENT

**NOTE: FIRE AND CASUALTY LOSSES AND CONDEMNATION.**

This contract form does not provide for what happens in the event of fire, or other casualty loss or condemnation before the title closing. Unless different provision is made in this contract, Section 5-1311 of the General Obligations Law will apply. One part of that law makes a Purchaser responsible for fire and casualty loss upon taking possession of the Premises before the title closing.

Residential Contract of Sale

**Contract of Sale** made as of July \_\_, 2018 **BETWEEN**

**JEANETTE CALICCHIA**  
Address: 18 Stephanie Lane, Mahopac, New York, 10541

Social Security Number/ Fed. I.D. No(s):

hereinafter called "Seller" and

**CINDY GURKA & STEVEN GURKA**  
Address: 15 Villa Drive, Peekskill NY 10566  
Social Security I.D. No(s):

hereinafter called "Purchaser".

The parties hereby agree as follows:

1. **Premises.** Seller shall sell and convey and Purchaser shall purchase the property, together with all buildings and improvements thereon (collectively the "Premises"), more fully described on a separate page marked "Schedule A", annexed hereto and made a part hereof and also known as:

Street Address: 18 Stephanie Lane, Mahopac, New York, 10541

Tax Map Designation: 87.10-1-3

Together with Seller's ownership and rights, if any, to land lying in the bed of any street or highway, opened or proposed, adjoining the Premises to the center line thereof, including any right of Seller to any unpaid award by reason of any taking by condemnation and/or for any damage to the Premises by reason of change of grade of any street or highway. Seller shall deliver at no additional cost to Purchaser, at Closing (as hereinafter defined), or thereafter, on demand, any documents that Purchaser may reasonably require for the conveyance of such title and the assignment and collection of such award or damages.

2. **Personal Property.** This sale also includes all fixtures and articles of personal property now attached or appurtenant to the Premises, unless specifically excluded below. Seller represents and warrants that at Closing they will be paid for and owned by Seller, free and clear of all liens and encumbrances, except any existing mortgage to which this sale may be subject. They include, but are not limited to, plumbing, heating, lighting and cooking fixtures, chandeliers, bathroom and kitchen cabinets and counters, mantels, door mirrors, switch plates and door hardware, venetian blinds, window treatments, shades, screens, awnings, storm windows, storm doors, window boxes, mail box, TV aerials, weather vane, flagpole, pumps, shrubbery, fencing, outdoor statuary, tool shed, dishwasher, washing machine, clothes dryer, garbage disposal unit, range, oven, built-in microwave oven, refrigerator, freezer, air conditioning equipment and installations, wall to wall carpeting and built-ins not excluded below (~~strike out inapplicable items~~).  
Washer, dryer, refrigerator, range, microwaves, wall-to-wall carpeting;  
Microwave oven; A/C Units, Microwave, Refrigerator, Wall Oven,

Generator, diving board, pool steps, extra pool pump,<sup>2</sup> all pool accessories, canopy top for pool area gazebo, extra windows and flooring & tile ladders in the garage  
Excluded from this sale are furniture and household furnishings.

3. **Purchase Price.** The purchase price is \$599,900.00

(a) on the signing of this contract, by Purchaser's good check payable to the Escrowee (as hereinafter defined), subject to collection, the receipt or which is hereby acknowledged, to be held in escrow pursuant to paragraph 6 of this contract (the "Downpayment"): \$59,900.00

(b) by allowance for the principal amount unpaid on the existing mortgage on the date hereof, payment of which Purchaser shall assume by joinder in the deed: \$

(c) by a purchase money note and mortgage from Purchaser to Seller: \$

(d) balance at Closing in accordance with paragraph 7:

*Handwritten:* \$540,000.00 ~~\$599,910.00~~

4. ~~Existing Mortgage (Delete if inapplicable) If this sale is subject to an existing mortgage as indicated in paragraph 3(b) above:~~

~~(a) The Premises shall be conveyed subject to the continuing lien of the existing mortgage, which is presently payable, with interest at the rate of \_\_\_\_\_ percent per annum, in monthly installments of \$ \_\_\_\_\_ which include principal, interest and escrow amounts, if any, and with any balance of principal being due and payable on \_\_\_\_\_~~

~~(b) To the extent that any required payments are made on the existing mortgage between the date hereof and Closing which reduce the unpaid principal amount thereof below the amount shown in paragraph 3(b), then the balance of the price payable at Closing under paragraph 3(d) shall be increased by the amount of the payments of principal. Seller represents and warrants that the amount shown in paragraph 3(b) is substantially correct and agrees that only payments required by the existing mortgage will be made between the date hereof and Closing.~~

~~(c) If there is a mortgage escrow account, Seller shall assign it to~~

Purchaser, if it can be assigned, and in that case Purchaser shall pay the amount in the escrow account to Seller at Closing.

(d) Seller shall deliver to Purchaser at Closing a certificate dated not more than 30 days before Closing signed by the holder of the existing mortgage, in form for recording, certifying the amount of the unpaid principal, the date to which interest has been paid and the amounts, if any, claimed to be unpaid for principal and interest, itemizing the same. Seller shall pay the fees for recording such certificate. If the holder of the existing mortgage is a bank or other institution as defined in Section 274-a of the Real Property Law it may, instead of the certificate, furnish a letter signed by a duly authorized officer, employee or agent, dated not more than 30 days before Closing, containing the same information.

(c) Seller represents and warrants that (i) Seller has delivered to Purchaser true and complete copies of the existing mortgage, the note secured thereby and any extensions and modifications thereof, (ii) the existing mortgage is not now, and at the time of Closing will not be, in default, and (iii) the existing mortgage does not contain any provision that permits the holder of the mortgage to require its immediate payment in full or to change any other term thereof by reason of the sale or conveyance of the Premises.

5. ~~Purchase Money Mortgage. (Delete if inapplicable) If there is to be a purchase money mortgage as indicated in paragraph 3(c) above:~~

(a) ~~The purchase money note and mortgage shall be drawn by the attorney for Seller in the form attached or, if not, in the standard form adopted by the New York State Land Title Association. Purchaser shall pay at Closing the mortgage recording tax, recording fees and the attorney's fees in the amount of \$ for its preparation.~~

(b) ~~The purchase money note and mortgage shall also provide that it is subject and subordinate to the lien of the existing mortgage and any extensions, modifications, replacements or consolidations of the existing mortgage, provided that (i) the interest rate thereof shall not be greater than \_\_\_\_\_ percent per annum and the total debt service thereunder shall not be greater than \$ \_\_\_\_\_ per annum, and (ii) if the principal amount thereof shall exceed the amount of principal owing and unpaid on the existing mortgage at the time of placing such new mortgage or consolidated mortgage, the excess be paid to the holder of such purchase money mortgage in reduction of the principal thereof. The purchase money mortgage shall also provide that such payment to the holder thereof shall not alter or affect the regular installments, if any, of principal payable thereunder and that the holder thereof will, on demand and without charge therefore, execute, acknowledge and deliver any agreement or agreements further to effectuate such subordination.~~

6. **Downpayment in Escrow.** (a) Seller's attorney ("Escrowee") shall hold the Downpayment in escrow in a segregated bank account at THE WESTCHESTER BANK  
Address 464 Mamaroneck Avenue, White Plains, NY 10605

until Closing or sooner termination of this contract and shall pay over or apply the Downpayment in accordance with the terms of this paragraph. Escrowee shall hold the Downpayment in a(n) interest-bearing account for the benefit of the parties. If interest is held for the benefit of the parties, it shall be paid to the party entitled to the Downpayment and the party receiving the interest shall pay any income taxes thereon. If interest is not held for the benefit of the parties, the Downpayment shall be placed in an IOLA account or as otherwise permitted or required by law. The Social Security or Federal Identification numbers of the parties shall be furnished to Escrowee upon request. At Closing, the Downpayment shall be paid by Escrowee to Seller. If for any reason Closing does not occur and either party gives Notice (as defined in paragraph 25) to Escrowee demanding payment of the Downpayment, Escrowee shall give prompt Notice to the other party of such demand. If Escrowee does not receive Notice of objection from such other party to the proposed payment within 10 business days after the giving of such Notice, Escrowee is hereby authorized and directed to make such payment. If Escrowee does receive such Notice of objection within such 10 day

period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by Notice from the parties to this contract or a final, non-appealable judgment, order or decree of a court. However, Escrowee shall have the right at any time to deposit the Downpayment and the interest thereon with the clerk of a court in the county in which the Premises are located and shall give Notice of such deposit to Seller and Purchaser. Upon such deposit or other disbursement in accordance with the terms of this paragraph, Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

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

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

(d) Escrowee acknowledges receipt of the Downpayment by check subject to collection and Escrowee's agreement to the provisions of this paragraph by signing in the place indicated on the signature page of this contract.

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

(f) The party whose attorney is Escrowee shall be liable for loss of the Downpayment.

7. **Acceptable Funds.** All money payable under this contract, unless otherwise specified, shall be paid by:

(a) Cash, but not over \$ 1,000.00;

(b) Good certified check of Purchaser drawn on or official check issued by any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York, uncashed and payable to the order of Seller, or as Seller may otherwise direct upon reasonable prior notice (by telephone or otherwise) to Purchaser;

(c) As to money other than the purchase price payable to Seller at Closing, uncashed check of Purchaser up to the amount of \$ 1,000.00; and

(d) As otherwise agreed to in writing by Seller or Seller's attorney.

8. ~~Mortgage Commitment Contingency. (Delete paragraph if inapplicable. For explanation, see Notes on Mortgage Commitment Contingency Clause.)~~

(a) ~~The obligation of Purchaser to purchase under this contract is conditioned upon issuance, on or before 45 days after a fully executed copy of this contract is given to Purchaser or Purchaser's attorney in the manner set forth in paragraph 25 or subparagraph 3(j) (the "Commitment Date"), of a written commitment from an Institutional Lender pursuant to which such Institutional Lender agrees to make a first mortgage loan, to Purchaser, at Purchaser's sole cost and expense, of \$579,500.00 for a term of at least 30 years (or such lesser sum or shorter term as Purchaser shall be willing to accept) at the prevailing fixed or adjustable rate of interest and on other customary commitment terms (the "Commitment"). To the extent a Commitment is conditioned on the sale of Purchaser's current home, payment of any outstanding debt, no material adverse change in Purchaser's financial condition or any other customary conditions, Purchaser accepts the risk that such~~

conditions may not be met; however, a commitment conditioned on the Institutional Lender's approval of an appraisal shall not be deemed a "Commitment" hereunder until an appraisal is approved (and if that does not occur before the Commitment Date, Purchaser may cancel under subparagraph 8(e) unless the Commitment Date is extended). Purchaser's obligations hereunder are conditioned only on issuance of a Commitment. Once a Commitment is issued, Purchaser is bound under this contract even if the lender fails or refuses to fund the loan for any reason.

(b) Purchaser shall (i) make prompt application to one or, at Purchaser's election, more than one Institutional Lender for such mortgage loan, (ii) furnish accurate and complete information regarding Purchaser and members of Purchaser's family, as required, (iii) pay all fees, points and charges required in connection with such application and loan, (iv) pursue such application with diligence, and (v) cooperate in good faith with such Institutional Lender(s) to obtain a Commitment. Purchaser shall accept a Commitment meeting the terms set forth in subparagraph 8(a) and shall comply with all requirements of such Commitment (or any other commitment accepted by Purchaser). Purchaser shall furnish Seller with a copy of the Commitment promptly after receipt thereof.

(c) ~~(Delete this subparagraph if inapplicable)~~ Prompt submission by Purchaser of an application to a mortgage broker registered pursuant to Article 12-D of the New York Banking Law ("Mortgage Broker") shall constitute full compliance with the terms and conditions set forth in subparagraph 8(b)(i), provided that such Mortgage Broker promptly submits such application to such Institutional Lender(s). Purchaser shall cooperate in good faith with such Mortgage Broker to obtain a Commitment from such Institutional Lender(s).

(d) If all Institutional Lenders to whom applications were made deny such applications in writing prior to the Commitment Date, Purchaser may cancel this contract by giving Notice thereof to Seller, with a copy of such denial, provided that Purchaser has complied with all its obligations under this paragraph 8.

(e) If no Commitment is issued by an Institutional Lender on or before the Commitment Date, then, unless Purchaser has accepted a written commitment from an Institutional Lender that does not conform to the terms set forth in subparagraph 8(a), Purchaser may cancel this contract by giving Notice to Seller within 5 business days after the Commitment Date, provided that such Notice includes the name and address of the Institutional Lender(s) to whom application was made and that Purchaser has complied with all its obligations under this paragraph 8.

(f) If this contract is canceled by Purchaser pursuant to subparagraphs 8(d) or (e), neither party shall thereafter have any further rights against or obligations or liabilities to, the other by reason of this contract, except that the Downpayment shall be promptly refunded to Purchaser and except as set forth in paragraph 27.

(g) If Purchaser fails to give timely Notice of cancellation or if Purchaser accepts a written commitment from an Institutional Lender that does not conform to the terms set forth in subparagraph 8(a), then Purchaser shall be deemed to have waived Purchaser's right to cancel this contract and to receive a refund of the Downpayment by reason of the contingency contained in this paragraph 8.

(h) If Seller has not received a copy of a commitment from an Institutional Lender accepted by Purchaser by the Commitment Date, Seller may cancel this contract by giving Notice to Purchaser within 5 business days after the Commitment Date, which cancellation shall become effective unless Purchaser delivers a copy of such commitment to Seller within 10 business days after the Commitment Date. After such cancellation, neither party shall have any further rights against or obligations or liabilities to, the other by reason of this contract, except that the Downpayment shall be promptly refunded to Purchaser (provided Purchaser has complied with all its obligations under this paragraph 8) and except as set forth in paragraph 27.

(i) For purposes of this contract, the term "Institutional Lender" shall mean any bank, savings bank, private banker, trust company, savings and loan association, credit union or similar banking institution whether organized under the laws of this state, the United States or any

other state, foreign banking corporation licensed by the Superintendent of Banks of New York or regulated by the Comptroller of the Currency to transact business in New York State; insurance company duly organized or licensed to do business in New York State; mortgage banker licensed pursuant to Article 12-D of the Banking Law; and any instrumentality created by the United States or any state with the power to make mortgage loans.

(j) For purposes of subparagraph 8(a), Purchaser shall be deemed to have been given a fully executed copy of this contract on the third business day following the date of ordinary or regular mailing, postage prepaid.

9. Permitted Exceptions. The Premises are sold and shall be conveyed subject to:

(a) Zoning and subdivision laws and regulations, and landmark, historic or wetlands designation, provided that they are not violated by the existing buildings and improvements erected on the property or their use;

(b) Consents for the erection of any structures on, under or above any streets on which the Premises abut;

(c) Encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway;

(d) Real estate taxes that are a lien, but are not yet due and payable; and

(e) The other matters, if any, including a survey exception, set forth in a Rider attached.

10. Governmental Violations and Orders. (a) Seller shall comply with all notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued as of the date of closing by any governmental department having authority as to lands, housing, buildings, fire, health, environmental and labor conditions affecting the Premises. The Premises shall be conveyed free of them at Closing. Seller shall furnish Purchaser with any authorizations necessary to make the searches that could disclose these matters.

(b) ~~(Delete if inapplicable)~~ All obligations affecting the Premises pursuant to the Administrative Code of the City of New York incurred prior to Closing and payable in money shall be discharged by Seller at or prior to Closing.

11. Seller's Representations. (a) Seller represents and warrants to Purchaser that:

(i) The Premises abut or have a right of access to a public road;

(ii) Seller is the sole owner of the Premises and has the full right, power and authority to sell, convey and transfer the same in accordance with the terms of this contract;

(iii) Seller is not a "foreign person", as that term is defined for purposes of the Foreign Investment in Real Property Tax Act, Internal Revenue Code ("IRC") Section 1445, as amended, and the regulations promulgated thereunder (collectively "FIRPTA");

(iv) The Premises are not affected by any exemptions or abatements of taxes; and

(v) Seller has been known by no other name for the past ten years, except NONE.

(b) Seller covenants and warrants that all of the representations and warranties set forth in this contract shall be true and correct at Closing.

(c) Except as otherwise expressly set forth in this contract, none of Seller's covenants, representations, warranties or other obligations contained in this contract shall survive Closing.

12. Condition of Property. Purchaser acknowledges and represents that Purchaser is fully aware of the physical condition and state of repair of the Premises and of all other property included in this sale, based on Purchaser's own inspection and investigation thereof, and that Purchaser is entering into this contract based solely upon such inspection and



investigation and not upon any information, data, statements or representations, written or oral, as to the physical condition, state of repair, use, cost of operation or any other matter related to the Premises or the other property included in the sale, given or made by Seller or its representatives, and shall accept the same "as is" in their present condition and state of repair, subject to reasonable use, wear, tear and natural deterioration between the date hereof and the date of Closing (except as otherwise set forth in paragraph 16(f)), without any reduction in the purchase price or claim of any kind for any change in such condition by reason thereof subsequent to the date of this contract. Purchaser and its authorized representatives shall have the right, at reasonable times and upon reasonable notice (by telephone or otherwise) to Seller, to inspect the Premises before Closing.

**13. Insurable Title.** Seller shall give and Purchaser shall accept such title as: any reputable Title Company licensed to do business in the State Of New York shall be willing to approve and insure in accordance with its standard form of title policy approved by the New York State Insurance Department, subject only to the matters provided for in this contract.

**14. Closing, Deed and Title.** (a) "Closing" means the settlement of the obligations of Seller and Purchaser to each other under this contract, including the payment of the purchase price to Seller, and the delivery to Purchaser of a Bargain & Safe Deed with Covenants against Grantor's Acts deed in proper statutory short form for record, duly executed and acknowledged, so as to convey to Purchaser fee simple title to the Premises, free of all encumbrances, except as otherwise herein stated. The deed shall contain a covenant by Seller as required by subd. 5 of Section 13 of the Lien Law.

(b) If Seller is a corporation, it shall deliver to Purchaser at the time of Closing (i) a resolution of its Board of Directors authorizing the sale and delivery of the deed, and (ii) a certificate by the Secretary or Assistant Secretary of the corporation certifying such resolution and setting forth facts showing that the transfer is in conformity with the requirements of Section 909 of the Business Corporation Law. The deed in such case shall contain a recital sufficient to establish compliance with that Section.

**15. Closing Date and Place.** Closing shall take place at the office of: **PENACHIO MALARA, LLP 235 Main Street, White Plains, NY 10601**  
at 10:00am o'clock on or About ~~July 31, 2018~~ *August 31, 2018*  
or, upon reasonable notice (by email to [malara@pmlawllp.com](mailto:malara@pmlawllp.com) or [jraggo@pmlawllp.com](mailto:jraggo@pmlawllp.com)) by Purchaser, at the office of Purchaser's Lending Institution located in Westchester County, NY.

**16. Conditions to Closing.** This contract and Purchaser's obligation to purchase the Premises are also subject to and conditioned upon the fulfillment of the following conditions precedent:

(a) The accuracy, as of the date of Closing, of the representations and warranties of Seller made in this contract.

(b) The delivery by Seller to Purchaser of a valid and subsisting Certificate of Occupancy or other required certificate of compliance, or evidence that none was required, covering the building(s) and all of the other improvements located on the property authorizing their use as a ONE (1) family dwelling at the date of Closing.

(c) The delivery by Seller to Purchaser of a certificate stating that Seller is not a foreign person, which certificate shall be in the form then required by FIRPTA or a withholding certificate from the I.R.S. If Seller fails to deliver the aforesaid certificate or if Purchaser is not entitled under FIRPTA to rely on such certificate, Purchaser shall deduct and withhold from the purchase price a sum equal to 10% thereof (or any lesser amount permitted by law) and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.

(d) The delivery of the Premises and all building(s) and improvements comprising a part thereof in broom clean condition, vacant and free of leases or tenancies, together with keys to the Premises.

(e) All plumbing (including water supply and septic systems, if

any), heating and air conditioning, if any, electrical and mechanical systems, equipment and machinery in the building(s) located on the property and all appliances which are included in this sale being in working order as of the date of Closing.

(f) If the Premises are a one or two family house, delivery by the parties at Closing of affidavits in compliance with state and local law requirements to the effect that there is installed in the Premises a smoke detecting alarm device or devices.

(g) The delivery by the parties of any other affidavits required as a condition of recording the deed.

**17. Deed Transfer and Recording Taxes.** At Closing, certified or official bank checks payable to the order of the appropriate State, City or County officer in the amount of any applicable transfer and/or recording tax payable by reason of the delivery or recording of the deed or mortgage, if any, shall be delivered by the party required by law or by this contract to pay such transfer and/or recording tax, together with any required tax returns duly executed and sworn to, and such party shall cause any such checks and returns to be delivered to the appropriate officer promptly after Closing. The obligation to pay any additional tax or deficiency and any interest or penalties thereon shall survive Closing.

**18. Apportionments and Other Adjustments; Water Meter and Installment Assessments.** (a) To the extent applicable, the following shall be apportioned as of midnight of the day before the day of Closing:

(i) taxes, water charges and sewer rents, on the basis of the fiscal period for which assessed; (ii) fuel; (b) If Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the tax rate for the immediately preceding fiscal period applied to the latest assessed valuation.

(c) If there is a water meter on the Premises, Seller shall furnish a reading to a date not more than 30 days before Closing and the unfixed meter charge and sewer rent, if any, shall be apportioned on the basis of such last reading.

(d) If at the date of Closing the Premises are affected by an assessment which is or may become payable in annual installments, and the first installment is then a lien, or has been paid, then for the purposes of this contract all the unpaid installments shall be considered due and shall be paid by Seller at or prior to Closing.

(e) Any errors or omissions in computing apportionments or other adjustments at Closing shall be corrected within a reasonable time following Closing. This subparagraph shall survive Closing.

**19. Allowance for Unpaid Taxes, etc.** Seller has the option to credit Purchaser as an adjustment to the purchase price with the amount of any unpaid taxes, assessments, water charges and sewer rents, together with any interest and penalties thereon to a date not less than five business days after Closing, provided that official bills therefor computed to said date are produced at Closing.

**20. Use or Purchase Price to Remove Encumbrances.** If at Closing there are other liens or encumbrances that Seller is obligated to pay or discharge, Seller may use any portion of the cash balance of the purchase price to pay or discharge them, provided Seller shall simultaneously deliver to Purchaser at Closing instruments in recordable form and sufficient to satisfy such liens or encumbrances of record, together with the cost of recording or filing said instruments. As an alternative Seller may deposit sufficient monies with the title insurance company employed by Purchaser acceptable to and required by it to assure their discharge, but only if the title insurance company will insure Purchaser's title clear of the matters or insure against their enforcement out of the Premises and will insure Purchaser's Institutional Lender clear or such matters. Upon reasonable prior notice (by telephone or otherwise), Purchaser shall provide separate certified or official bank checks as requested to assist in clearing up these matters.

**21. The Examination; Seller's Inability to Convey; Limitations of Liability.** (a) Purchaser shall order an examination of title in respect of the Premises from a title company licensed or authorized to issue title

insurance by the New York State Insurance Department or any agent for such title company promptly after the execution of this contract or, if this contract is subject to the mortgage contingency set forth in paragraph 8, after a mortgage commitment has been accepted by Purchaser. Purchaser shall cause a copy of the title report and of any additions thereto to be delivered to the attorney(s) for Seller promptly after receipt thereof.

(b)(i) If at the date of Closing Seller is unable to transfer title to Purchaser in accordance with this contract, or Purchaser has other valid grounds for refusing to close, whether by reason of liens, encumbrances or other objections to title or otherwise (herein collectively called "Defects"), other than those subject to which Purchaser is obligated to accept title hereunder or which Purchaser may have waived and other than those which Seller has herein expressly agreed to remove, remedy or discharge and if Purchaser shall be unwilling to waive the same and to close title without abatement of the purchase price, then, except as hereinafter set forth, Seller shall have the right, at Seller's sole election, either to take such action as Seller may deem advisable to remove, remedy, discharge or comply with such Defects or to cancel this contract; (ii) if Seller elects to take action to remove, remedy or comply with such Defects, Seller shall be entitled from time to time, upon Notice to Purchaser, to adjourn the date for Closing hereunder for a period or periods not exceeding 30 days in the aggregate (but not extending beyond the date upon which Purchaser's mortgage commitment, if any, shall expire), 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 10 days after such adjourned date; (iii) notwithstanding the foregoing, the existing mortgage (unless this sale is subject to the same) and any matter created by Seller after the date hereof shall be released, discharged or otherwise cured by Seller at or prior to Closing.

(c) 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: (i) Seller shall promptly refund or cause the Escrowee to refund the Downpayment to Purchaser and, unless cancelled as a result of Purchaser's default or pursuant to paragraph 8, to reimburse Purchaser for the net cost of examination of title, including any appropriate additional charges related thereto, and the net cost, if actually paid or incurred by Purchaser, for updating the existing survey of the Premises or of a new survey, and (ii) the obligations under paragraph 27 shall survive the termination of this contract.

22. Affidavit as to Judgments, Bankruptcies, etc. If a title examination discloses judgments, bankruptcies or other returns against persons having names the same as or similar to that of Seller, Seller shall deliver an affidavit at Closing showing that they are not against Seller.

23. Defaults and Remedies. (a) If Purchaser defaults hereunder, Seller's sole remedy shall be to receive and retain the Downpayment as liquidated damages, it being agreed that Seller's damages in case of Purchaser's default might be impossible to ascertain and that the Downpayment constitutes a fair and reasonable amount of damages under the circumstances and is not a penalty.

(b) If Seller defaults hereunder, Purchaser shall have such remedies as Purchaser shall be entitled to at law or in equity, including, but not limited to, specific performance.

24. Purchaser's Lien. All money paid on account of this contract, and the reasonable expenses of examination of title to the Premises and of any survey and survey inspection charges, are hereby made liens on the Premises, but such liens shall not continue after default by Purchaser under this contract.

25. Notices. Any notice or other communication ("Notice") shall be in

writing and either (a) sent by either of the parties hereto or by their respective attorneys who are hereby authorized to do so on their behalf or by the Escrowee, by registered or certified mail, postage prepaid, or

(b) delivered in person or by overnight courier, with receipt acknowledged, to the respective addresses given in this contract for the party and the Escrowee, to whom the Notice is to be given, or to such other address as such party or Escrowee shall hereafter designate by Notice given to the other party or parties and the Escrowee pursuant to this paragraph. Each Notice mailed shall be deemed given on the third business day following the date of mailing the same, except that any notice to Escrowee shall be deemed given only upon receipt by Escrowee and each Notice delivered in person or by overnight courier shall be deemed given when delivered, or

(c) with respect to ¶7 (b) or ¶20, sent by fax to the party's attorney. Each Notice by fax shall be deemed given when transmission is confirmed by the sender's fax machine. A copy of each Notice sent to a party shall also be sent to the party's attorney. The attorneys for the parties are hereby authorized to give and receive on behalf of their clients all Notices and deliveries.

26. No Assignment. This contract may not be assigned by Purchaser without the prior written consent of Seller in each instance and any purported assignment(s) made without such consent shall be void.

27. Broker. Seller and Purchaser each represents and warrants to the other that it has not dealt with any broker in connection with this sale other than: LISTING BROKER Gary Margolis/Exprop Real Estate, Inc and Nicholas Misch/ ReMax Classic Realty ("Broker") and Seller shall pay Broker any commission earned pursuant to a separate agreement between Seller and Broker. Seller and Purchaser shall indemnify and defend each other against any costs, claims and expenses, including reasonable attorneys' fees, arising out of the breach on their respective parts of any representation or agreement contained in this paragraph. The provisions of this paragraph shall survive Closing or, if Closing does not occur, the termination of this contract.

28. Miscellaneous. (a) All prior understandings, agreements, representations and warranties, oral or written, between Seller and Purchaser are merged in this contract; it completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this contract.

(b) Neither this contract nor any provision thereof may be waived, changed or cancelled except in writing. This contract shall also apply to and bind the heirs, distributees, legal representatives, successors and permitted assigns of the respective parties. The parties hereby authorize their respective attorneys to agree in writing to any changes in dates and time periods provided for in this contract.

(c) Any singular word or term herein shall also be read as in the plural and the neuter shall include the masculine and feminine gender, whenever the sense of this contract may require it.

(d) The captions in this contract are for convenience or reference only and in no way define, limit or describe the scope of this contract and shall not be considered in the interpretation of this contract or any provision hereof.

(e) This contract shall not be binding or effective until duly executed and delivered by Seller and Purchaser.

(f) Seller and Purchaser shall comply with IRC reporting requirements, if applicable. This Subparagraph shall survive Closing.

(g) Each party shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other in order to carry out the intent and purpose of this contract. This subparagraph shall survive Closing.

(h) This contract is intended for the exclusive benefit of the parties hereto and, except as otherwise expressly provided herein, shall not be for the benefit of, and shall not create any rights in, or be enforceable by, any other person or entity.

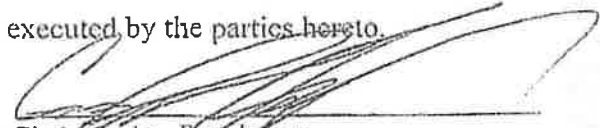
Continued on Rider attached hereto. *Delete if inapplicable.*

(i) If applicable, the complete and fully executed disclosure of information on lead-based paint and/or lead-based paint hazards is

attached hereto and made a part hereof.

In Witness Whereof, this contract has been duly executed by the parties hereto.

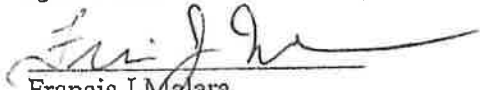
  
JEANETTE CALICCHIA Seller

  
Cindy Gurka, Purchaser

  
Steven Gurka, Purchaser

<b>Attorney for Seller: Francis J Malara, Esq.</b> Penachio Malara, LLP 235 Main Street, White Plains NY 10601 Tel.: 914-946-2889 Fax: 914-946-2889 <a href="mailto:fmalara@pmlawllp.com">fmalara@pmlawllp.com</a>	William A. Shilling, Jr. 122 Old Rt. 6 Carmel, NY 10512 <a href="mailto:waslaw@shillinglegal.com">waslaw@shillinglegal.com</a> Fax #845-225-5692 Phone #845-225-7500
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Receipt of the downpayment is acknowledged and the undersigned agrees to act in accordance with the provisions of paragraph 6 above.

  
Francis J Malara  
Escrowee

### NOTES ON MORTGAGE COMMITMENT CONTINGENCY CLAUSE for

#### RESIDENTIAL CONTRACT OF SALE

1. WARNING: the mortgage commitment contingency clause for the Residential Contract of Sale is a bar association form that attempts to provide a mechanism that makes the rights and obligations of the parties clear in sales or residences in ordinary circumstances. It should be reviewed carefully by Seller and Purchaser and their attorneys in each and every transaction to make sure that all the provisions are appropriate for that transaction. Negotiated modifications should be made whenever necessary.
2. Under the clause, the obligation of Purchaser to purchase under the contract of sale is contingent on Purchaser's obtaining a mortgage commitment letter from an Institutional Lender within the number of days specified for the amount specified. This refers to calendar days. Seller's attorney should state his/her calculation of the Commitment Date in the letter delivering the executed contract to Purchaser's attorney, to prevent confusion later. Purchaser should promptly confirm or correct that date. In applying for a loan, Purchaser should inform its lender of the scheduled date of closing in the contract and request that the expiration date of the commitment occur after the scheduled date of closing. Purchaser must comply with deadlines and pursue the application in good faith. The commitment contingency is satisfied by issuance of a commitment in the amount specified on or before the Commitment Date, unless the commitment is conditioned on approval of an appraisal. If the commitment is conditioned on approval of an appraisal and such approval does not occur prior to the Commitment Date, Purchaser should either cancel the contract or obtain an extension of the Commitment Date. If the commitment is later withdrawn or not honored, Purchaser runs the risk of being in default under the contract of sale with Seller.
3. If there are loan terms and conditions that are required or would not be acceptable to Purchaser, such as the interest rate, term of the loan, points, fees or a condition requiring sale of the current home, those terms and conditions should be specified in a rider.
4. This clause assumes that initial review and approval of Purchaser's credit will occur before the commitment letter is issued. Purchaser should confirm with the lender that this is the case before applying for the commitment.
5. If, as has been common, the commitment letter itself is conditioned on sale of Purchaser's home or payment of any outstanding debt or no material adverse change in Purchaser's financial condition, such a commitment will satisfy the contract contingency nonetheless, and Purchaser will take the risk of fulfilling those commitment conditions, including forfeiture or the downpayment if Purchaser defaults on its obligation to close. Under New York case law, a defaulting purchaser may not recover any part of the downpayment, and Seller does not have to prove any damages. If Purchaser is not willing to take that risk, the clause must be modified accordingly.
6. Purchaser may submit an application to a registered mortgage broker instead of applying directly to an Institutional Lender.
7. This clause allows Seller to cancel if a commitment is not accepted by Purchaser by the Commitment Date, unless Purchaser timely supplies a copy of the commitment, to allow Seller the option to avoid having to wait until the scheduled date of closing to see if Purchaser will be able to close. Seller may prefer to cancel rather than to wait and settle for forfeiture of the downpayment if Purchaser defaults. Because of Seller's right to cancel, Purchaser may not waive this contingency clause. This

clause means that Purchaser is subject to cancellation by Seller even if Purchaser is willing to risk that he/she will obtain the Commitment after the Commitment Date. Some Purchasers may not want to be subject to such cancellation by Seller.

8. Purchaser may want to add to paragraph 22 that Purchaser's reimbursement should include non-refundable financing and inspection expenses of Purchaser, which should be refunded by Seller if Seller

willfully defaults under the contract or sale [alternative: if Seller is unable to transfer title under the contract of sale].

Distributed by  
**Chicago Title Insurance Company**



**RIDER TO RESIDENTIAL CONTRACT OF SALE**

Between:  
**JEANETTE CALICCHIA, as SELLER**  
and  
**CINDY GURKA & STEVEN GURKA**

**PREMISES: 18 Stephanie Lane, Mahopac, New York, 10541**

29. In case of any inconsistency between the provisions of this Rider and those contained in the Contract of Sale which this Rider is annexed, the provisions of this Rider shall prevail.
30. The Seller shall have no liability after the Closing for any obligation, statement or representation of Seller set forth in the Contract unless it is accompanied by a statement signed by the Seller, that it shall survive the closing, or by its terms survives the closing of title. This provision shall survive Closing.
31. The acceptance by Purchaser of the deed of conveyance shall be deemed and construed as a conclusive acknowledgment by Purchaser of the deed and its contents as well as full performance by Seller of all the terms, covenants, conditions and provisions of the within Agreement, both express and implied, on the part of the Seller to be kept and performed, excepting those, if any, which by express provision, survive the delivery to be a full performance of the deed herein. This provision shall survive Closing.
32. Permitted exceptions continued (exception 9)
- f) Subject to any state of facts which an accurate survey would disclose, provided the same does not render the title uninsurable.
  - g) Subject to covenants, easements, restrictions, and other matters of record, if any, provided that same are not violated and do not prohibit the current use of the premises as set forth in paragraph 16(b) of the form contract .
  - h) Variations and/or encroachments between record lines and hedges, party walls, fences and the like shall not be considered as exceptions to title, provided the title company will insure against forced removal thereof.
  - i) Minor, variations between record lines and tax maps.
33. In the event that any included appliance is not in working order at the time of the closing of title, or of possession by Purchaser, whichever shall last occur, Seller's limit of liability shall be limited to the value of an appliance of similar type and age at the time of the contract. Any such defective appliance shall not be deemed to be a breach of contract or exception to closing provided that Seller agrees to provide an escrow for its repair or credit for its value as yet unspecified.

34. ~~If the closing does not take place within the county in which the property is located or within Westchester, then purchaser shall pay sellers attorney travel fee of \$200.00~~
35. Seller represents that they know of no municipal violations affecting the Premises and to the best of their knowledge, premises complies with paragraph(s) 10 & 16 (b) hereof. However, if Seller shall be required to take any action with regard to removing or remedying any municipal or other violations or to comply in any other way with provisions of this contract, and such action will require the structural alteration of the premises and/or an expenditure in excess of \$3,000.00 (Three Thousand Dollars) in the aggregate, then Seller shall have the option of canceling this contract and returning to the Purchaser any sums paid hereunder (plus reimburse purchaser for the cost of title and surveyed not to exceed \$500.00) at which point this contract shall be deemed null, void and of no further force or effect, or the purchaser may elect to accept the premises in its current condition without diminishing in price. Seller is not obligated to obtain certificates of occupancy for finished basements, if any.
36. Purchaser represents that he has sufficient income and creditworthiness to qualify for the mortgage as set forth herein and he is relying upon no income or contributions of any third parties to pay for or subsidized the purchase or to guarantee the mortgage debt unless set their parties and the nature of their involvement are disclosed herein.
37. No part of the purchase price paid hereunder is allocated to any of the personality included in the conveyance herein contemplated.
38. It is the parties' understanding that this Agreement shall not be binding upon the parties unless and until the agreement is executed by both Purchaser and Seller, a fully executed copy has been delivered to Purchaser, a brokerage agreement satisfactory to seller has been signed, and down payment check has been collected.
39. Seller shall not be required to bring any action or proceeding or incur a cost in excess of \$500.00 in the aggregate in order to comply with any provision hereof except as same may be otherwise set forth herein. Seller shall have the option, in connection with delivering insurable title, at their sole discretion, to bring such action or proceeding or to incur such cost. In the event that the Seller refuses to take any action then, the Purchaser shall have the option to take such title or to take the premises in such condition as the Seller is able to give without any abatement purchase price or declare the contract null, void and of no further force and effect and receive the return of their down payment monies plus reimburse Purchaser for the cost of title and survey not to exceed \$500.00.
40. This contract is expressly not conditioned upon the sale or closing of Purchaser's existing home. Any loan commitment issued to Purchaser that is conditional upon the sale or closing of the Purchaser's home, or any rejection by a lending institution of the Purchaser's mortgage application due to Purchaser's lack of

funds available to close title herein, shall be deemed, as between Seller and Purchaser, and unconditional mortgage commitment satisfying the mortgage contingency in this Contract.

41. If the down payment made by Purchaser under this contract is by check, if the check fails of collection, and if Purchaser fails to remedy the failure within 3 business days after receipt of notice of the dishonored, then Seller at its option may declare the contract null, void and of no force and effect. If such failure is due to intentional act or fault of Purchaser, seller may pursue his remedies against the Purchaser upon the check or in any matter permitted by law, such remedies being cumulative. Any personal checks received by the Seller from, or on behalf of, Purchaser for payment of the purchase price or otherwise, shall be received subject to collection. Until collection, Purchaser shall remain liable for any and all obligations evidenced by such personal checks, and any costs incurred by seller in collection thereof. The provisions of this paragraph shall survive the Closing.

42. Lead Paint Disclosure


- a) Purchaser is advised as follows: *"Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."*
- b) Seller represents the seller has no actual knowledge of the presence of lead-based paint or lead-based paint hazards within the Premises, as except as may be inferred under subsection (a) above. Seller makes no other representation.
- c) Purchaser represents that it has either (i) received the opportunity, for a period of 10 days, to inspect the premises for lead-based paint or lead-based paint hazards; or (ii) expressly weight the opportunity to inspect the premises for lead-based paint or lead-based paint hazards.

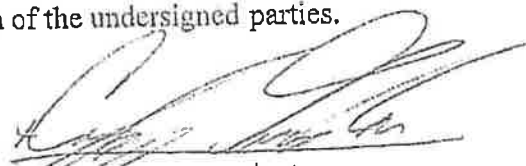
43. Purchaser and Seller acknowledge that Seller has elected not to deliver the Property Condition Disclosure Statement ("PCDS") provided for under the

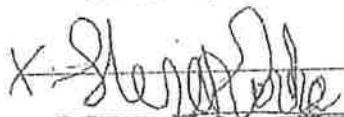
Property Condition Disclosure Act ("PCDA") in Article 14 of the Real Property Law of the State of New York. Seller agrees to deliver to Purchaser the sum of Five Hundred and 00/100 (\$500.00) Dollars at closing as a credit against the purchase price pursuant to Section 465 of the PCDA.

Notwithstanding any PCDA statements, the parties acknowledge that same are being made to the best of Seller's knowledge, and Seller shall assume no liability whatsoever for any representation therein set forth unless said representation shall be proven by clear and convincing evidence to have been made fraudulently and with the intent to defraud.

44. Purchaser acknowledges that all inspections, including engineering, radon and termite inspections, have been completed prior to the signing of this contract. Based on the Purchaser's inspection, Purchaser acknowledges purchasing the premises **AS IS**, subject to paragraph 16e, in connection with the foregoing issues in this paragraph.
- 45.
46. THIS CONTRACT IS NOT CONTINGENT UPON THE PURCHASER OBTAINING A MORTGAGE OR MORTGAGE COMMITMENT.
47. THE PURCHASER HAS WAIVED ALL CONTINGENCIES. THIS CONTRACT IS NOT CONTINGENT UPON THE PURCHASER: I. OBTAINING AND REVIEWING AN INSPECTION OR CONTINGENT UPON THE RESULTS OR INFORMATION CONTAINED IN ANY INSPECTION INCLUDING A RADON INSPECTION OR PEST INSPECTION.
- 48.
49. Any errors or omissions in computing apportionments at closing shall be corrected and payment made to the proper party promptly after discovery. The provisions of this paragraph shall survive closing and delivery of the deed.
50. This contract may be executed and delivered in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. The Contract may be executed and delivered electronically, by facsimile, or portable document format (PDF) with the same force and effect as if an original had otherwise been executed and delivered, which execution and delivery shall constitute an effective, binding agreement that may be relied upon by each of the undersigned parties.

  
JEANETTE CALICCHIA, Seller

  
CINDY GURKA

X   
STEVE GURKA

PURCHASER'S RIDER TO CONTRACT OF SALE BETWEEN

**Cindy Gurka and Steven Gurka**

From

**Jeanette Calicchia**

**DATED: July , 2018**

1. It is agreed by the parties that the plumbing, heating, septic and electrical systems and appliances included in this sale shall be in working order at the time of closing of title hereunder. However, these representations shall not survive the closing of title, and the premises shall be conveyed "as is".
2. The premises herein shall be delivered vacant and broom clean for occupancy by Purchaser upon the closing of title and the property free from debris of any kind.
3. The down payment made upon the signing of this contract shall be held in escrow by Seller's attorney until the closing of title.
4. Purchaser reserves the right to inspect the premises to be conveyed hereunder at any time within forty-eight (48) hours prior to closing, upon prior notice.
5. Seller shall provide prior to closing, for the subject premises, as well as any and all decks, shed, addition, porches, garages, additional dwelling units, pools, pellet stove/wood burning stoves, fireplaces, finished basements, etc., a certificate of occupancy or a letter from the appropriate municipal official that said premises pre-dates such requirements.
6. Seller shall be responsible for all risk of loss or damage to the premises pending closing of title.
7. Seller represents that the basement is dry and without leaks and that the roof is free from leaks.
8. Seller shall maintain the grounds until the closing of title.
9. Seller represents that there are no underground oil tank(s) or pipes located on the Premises, other than that represented to and inspected by Purchaser, and Seller represents that no oil tanks have been abandoned nor removed prior to this contract. Seller further represents, that there have been no fuel oil leaks and the subject premises are not contaminated by any oil or petroleum product or other hazardous waste which, if known to the applicable authorities, could result in mandatory remedial clean-up work and expense to the Purchaser subsequent to the passing of title. This provision shall survive the closing of title.
10. In the event of the death or permanent and disabling injury of either or both of the Purchaser's prior to closing of the Agreement and the delivery of the deed hereunder, the surviving Purchasers or the Purchaser's legal representative, as the case may be, is hereby given the option of

declaring the same null and void, and all sums paid on account hereof, shall be forthwith returned to the Purchasers or the said legal representative, by the Sellers.

Notice of exercise of this option, predicated upon the foregoing condition, shall be given in writing, by the Purchasers or Purchaser's legal representative not later than ten (10) days subsequent to the occurrence of the death of either or both of the Purchasers. For purposes of this clause, the Purchaser's legal representative shall be deemed their attorney.

This Amendment is attached to and made a part of the above referenced Contract. In the event of any conflict between the terms of this Rider and the terms of the printed portion of the Contract, the terms of this Rider shall govern and control.

PURCHASER'S RIDER TO CONTRACT OF SALE BETWEEN

**Cindy Gurka and Steven Gurka**

From

**Jeanette Calicchia**

**DATED: July , 2018**

1. It is agreed by the parties that the plumbing, heating, septic and electrical systems and appliances included in this sale shall be in working order at the time of closing of title hereunder. However, these representations shall not survive the closing of title, and the premises shall be conveyed "as is".
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6. Seller shall be responsible for all risk of loss or damage to the premises pending closing of title.
7. Seller represents that the basement is dry and without leaks and that the roof is free from leaks.
8. Seller shall maintain the grounds until the closing of title.
9. Seller represents <sup>to the best of her knowledge,</sup> that there are no underground oil tank(s) or pipes located on the Premises, other than that represented to and inspected by Purchaser, and Seller represents that no oil tanks have been abandoned nor removed prior to this contract. Seller further represents that there have been no fuel oil leaks and the subject premises are not contaminated by any oil or petroleum product or other hazardous waste which, if known to the applicable authorities, could result in mandatory remedial clean-up work and expense to the Purchaser subsequent to the passing of title. This provision shall survive the closing of title.
10. In the event of the death or permanent and disabling injury of either or both of the Purchaser's prior to closing of the Agreement and the delivery of the deed hereunder, the surviving Purchasers or the Purchaser's legal representative, as the case may be, is hereby given the option of

declaring the same null and void, and all sums paid on account hereof, shall be forthwith returned to the Purchasers or the said legal representative, by the Sellers.

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**This Amendment is attached to and made a part of the above referenced Contract. In the event of any conflict between the terms of this Rider and the terms of the printed portion of the Contract, the terms of this Rider shall govern and control.**