

**NEW CONSTRUCTION PURCHASE AGREEMENT
FOR PROPERTY LOCATED**

Rev.4/15/05

_____ COUNTY, NEW YORK

This is a legally binding agreement, if not fully understood, we recommend consulting an attorney before signing. This Agreement, made as of the date set forth below between THE MICHAELS GROUP, LLC., a New York corporation with its principal office at 10 Blacksmith Drive, Malta, New York 12020 (herein after referred to as the "SELLER"), and _____, (herein after referred to as the "PURCHASER").

1. **AGREEMENT:** The SELLER agrees to sell and the PURCHASER agrees to purchase the premises described in Section 2 of this Agreement under all terms and conditions stated in this Agreement and attached Joint Escrow Agreement.

2. **PREMISES:** The property being sold and purchased is a single family type home (the "Home") to be constructed on _____ (the "Lot"), Town of _____ County of _____, State of New York (the Home and the Lot being collectively referred to as the "Premises").

3. **SURVEY EXPENSES:** The survey shall be provided by PURCHASER, at PURCHASER'S expense, and the PURCHASER shall pay the cost thereof at the time of Final Payment. Changes by PURCHASER resulting in an increased cost of the survey shall also be at the expense of PURCHASER.

4. **DISCHARGE OF LIENS:** SELLER may pay and discharge any liens and not provided for herein out of the monies paid by PURCHASER on the transfer of title.

5. **CONSTRUCTION OF HOME AND IMPROVEMENT TO THE LOT:** (A) The Home shall be constructed substantially in accordance with plans and specifications on file with the SELLER. The standard features of the Home (as revised) and the floor plan of the Home (showing approximate room dimensions and layout) are attached to this Agreement. The positioning of the Home on the lot shall be determined solely by the SELLER in accordance with lot conditions and/or local ordinances. All room dimensions are recognized to be approximate. The SELLER reserves the right to substitute materials and/or amenities due to shortages, delay and/or discontinuance, and such substitutions are to be of like or superior quality and utility.

(B) **LANDSCAPING/DRAINAGE:** All grading, fill, disposition of trees and control of water flow will be performed in a lawful manner, but otherwise will be completed at SELLER'S sole discretion. Certain areas of the Premises may be left in their natural state and may not be landscaped in any way. At Closing, SELLER'S responsibility with respect to soil erosion, soil conditions, drainage, grass, shrubbery and landscaping terminates and YOUR responsibility begins. SELLER is not liable for damage or destruction of trees on the property and make no warranty whatsoever as to the type, location or amount of trees which will be on the property and/or the condition of those trees before, after or during construction.

(C) **AIR QUALITY:** Warning: Microorganisms, including, but not limited to, mold, mildew, spores, or any other form of fungi or bacteria (AMicroorganisms@), occur naturally in the environment and may be present, during or after construction, in the indoor air and/or on the interior surfaces of the Building including, without limitation to, wall cavities, attics, windows, basements, and/or on the exterior surfaces of the Building, or any part thereof. Concentration of moisture in the Building may result from cooking, showering, or similar activities inside the Building, the outside atmosphere, and/or the design, construction means and methods, and/or the building materials used in the construction of the Building. This moisture may cause the growth, release, discharge, dispersal, or

presence of Microorganisms which, at certain levels, can cause deterioration of building materials, damage to property, health hazards, personal injuries and/or other irritant effects such as, without limitation to, skin irritation, respiratory problems and/or allergic reactions. Likewise, concentrations of radon released from soil or chemicals released from household furnishings, appliances, mechanical equipment, personal possessions, or building materials may, at certain levels, create health hazards and/or other irritant effects such as, without limitation to, skin irritation, respiratory problems and allergic reactions. Because Microorganisms and radon occur naturally in the environment, Builder cannot eliminate the possibility that radon may be present or that Microorganisms may grow in, on, or about the Building. Purchaser may minimize these effects by proper utilization and maintenance of heating, cooling, dehumidification, or ventilation equipment, interior maintenance and cleaning, and exterior maintenance such as, but not limited to, proper grading, landscaping, painting, and caulking. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS BEEN INFORMED OF SUCH EFFECTS AND PURCHASER ASSUMES ALL RISKS AND HEREBY RELEASES SELLER FROM ANY CLAIM OF DAMAGE, PERSONAL INJURY, OR DESTRUCTION OF OR INJURY TO PROPERTY THAT MAY ARISE AS A RESULT OF OR IN ANY WAY CONNECTED WITH THE INDOOR AIR QUALITY OR THE PRESENCE OF MICROORGANISMS, RADON, OR CHEMICALS IN, ON OR ABOUT THE BUILDING.

(D) NOTWITHSTANDING ANY OTHER CONTRARY PROVISION IN THE CONTRACT, PURCHASER FULLY, FINALLY, AND FOREVER RELEASES AND DISCHARGES, AND FURTHER AGREES TO INDEMNIFY AND DEFEND, BUILDER/SELLER, ITS SUCCESSORS AND ASSIGNS, SUBCONTRACTORS, MATERIAL SUPPLIERS AND THE OFFICERS, EMPLOYEES, AGENTS OF EACH OF THEM, FROM AND AGAINST ANY AND ALL CLAIMS, OBLIGATIONS, DEMANDS, DAMAGES, CAUSES OF ACTION, LIABILITIES, LOSSES, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS= AND EXPERT FEES, WHETHER NOW KNOWN OR HEREAFTER KNOWN, FORESEEN OR UNFORESEEN, THAT PURCHASER OR ANY OCCUPANT OF THE BUILDING HAD, HAS, OR MAY HAVE IN THE FUTURE, IN LAW OR IN EQUITY (THE ACLAIM@) THAT ARE ATTRIBUTABLE TO (1) BODILY INJURY, SICKNESS, EMOTIONAL DISTRESS, DISEASE, DEATH, OR ANY OTHER PERSONAL INJURY OR ADVERSE HEALTH EFFECTS, OR (2) INJURY TO OR DESTRUCTION OF TANGIBLE PERSONAL PROPERTY, INCLUDING LOSS OF USE THEREOF, ARISING OUT OF, RELATING TO, OR IN ANY WAY CONNECTED WITH, INDOOR AIR QUALITY, MOISTURE, OR THE GROWTH, RELEASE, DISCHARGE, DISPERSAL, OR PRESENCE OF ANY MICROORGANISMS, RADON, OR ANY CHEMICAL OR TOXIN SECRETED THEREFROM, IN THE INDOOR AIR, ON THE INTERIOR SURFACES OF THE BUILDING INCLUDING, WITHOUT LIMITATION TO, WALL CAVITIES, THE ATTIC, WINDOWS, AND THE BASEMENT, OR ON THE EXTERIOR SURFACES OF THE BUILDING, OR ON ANY PART THEREOF, WHETHER OR NOT THE CLAIM IS CAUSED BY, IN WHOLE OR IN PART, BUILDER=S BREACH OF THE CONTRACT OR ANY ACT OR OMISSION OF BUILDER, ITS SUBCONTRACTORS OR MATERIAL SUPPLIERS, IN THEIR PERFORMANCE UNDER THE CONTRACT, INCLUDING, BUT NOT LIMITED TO, BUILDER=S, OR ITS SUBCONTRACTORS= OR MATERIAL SUPPLIERS=, CONSTRUCTION MEANS AND METHODS, MATERIAL SELECTION AND INSTALLATION, AND/OR DESIGN SERVICES, IF ANY. BUILDER MAKES NO EXPRESS OR IMPLIED WARRANTY OF HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR GOOD WORKMANSHIP AS TO BUILDING MATERIALS AND/OR CONSTRUCTION MEANS AND METHODS WITH REGARD TO INDOOR AIR QUALITY OR THE PRESENCE OF MICROORGANISMS, RADON, OR CHEMICALS INCLUDING, WITHOUT LIMITATION TO, ANY CHEMICAL OR TOXIN SECRETED THEREFROM IN, ON OR ABOUT THE BUILDING.

6. **LIMITED WARRANTY:** The Home on the Lot herein described, or to be completed thereon is hereby sold with SELLER'S LIMITED WARRANTY, annexed hereto and made a part hereof, and the conveyance of the Premises hereunder shall be made in its condition on the date of transfer of title, except that in the case of any destruction within the meaning of the provisions of Section 5-1311 of the General Obligations Law of the State of New York entitled "Uniform Vendor and PURCHASER Risk Act," such section shall apply to this contract. The Limited Warranty is provided by SELLER to PURCHASER, the terms and conditions of the Limited Warranty shall survive delivery of the deed. The PURCHASER does hereby acknowledge receipt of said Limited Warranty prior to the execution of this Agreement. THE SELLER MAKES NO HOUSING MERCHANT IMPLIED WARRANTY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT, AND ALL SUCH WARRANTIES ARE EXCLUDED, EXCEPT AS PROVIDED IN THE LIMITED WARRANTY ANNEXED TO THIS AGREEMENT.

THE EXPRESS TERMS OF THE LIMITED WARRANTY ARE HEREBY INCORPORATED IN THIS AGREEMENT AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND WHAT IS SPECIFICALLY INCLUDED IN THE ANNEXED LIMITED WARRANTY.

7. **PURCHASE PRICE AND DEPOSIT SCHEDULE:** The purchase price is \$ _____ (\$ _____ base price + \$ _____ options listed) and shall be payable as follows:

- \$ _____ Initial Deposit
- \$ _____ Second deposit due on _____
- \$ _____ Additional Deposit (Design Agr. deposit paid)
- \$ _____ In cash or certified check within 10 days of C.O.
- \$ _____ TOTAL PRICE

8. **DEED HELD IN ESCROW:** PURCHASER and SELLER agree to be bound by the terms in the Joint Escrow Agreement that is attached hereto and made a part hereof.

9. **MORTGAGE FINANCIAL APPROVAL AND PRE-QUALIFYING LETTER:** This Purchase Agreement is contingent upon PURCHASER obtaining a commitment for a mortgage loan in the amount no more than \$ _____ for a term of not more than 30 years at the prevailing rate of interest, and PURCHASER shall pay all points and fees for the procurement of said mortgage. PURCHASER agrees to use diligent efforts to obtain said approval and shall apply for such mortgage loan to two lending institutions, if necessary. This contingency shall be deemed waived unless PURCHASER shall notify SHANLEY, SWEENEY, REILLY & ALLEN, P.C., in writing, by certified mail, return receipt requested, no later than _____ of his inability to obtain said commitment. Upon such notice by PURCHASER, this Agreement shall be terminated and all payments hereunder shall be promptly returned to PURCHASER. The date stated herein by which the PURCHASER must obtain a mortgage commitment may be extended only in writing signed by both the parties or their attorneys. PURCHASER shall provide SELLER with a Pre-Qualifying letter from a prospective mortgage lender/broker in form and substance as annexed hereto, with terms and conditions satisfactory to SELLER within five (5) days from the date hereof. PURCHASER AGREES TO PROVIDE SELLER WITH A COPY OF A SIGNED MORTGAGE COMMITMENT LETTER PROMPTLY UPON RECEIPT THEREOF.

10. **OPTIONAL ITEMS INCLUDED:** (A) Optional items to be included in the total purchase price are as listed in the attached "Option Agreement" which is a part of this Agreement. ANY OPTIONS IN ADDITION TO THOSE PROVIDED IN THE OPTION AGREEMENT ATTACHED HERETO, MUST BE SUBMITTED BY SALES CHANGE ORDER. Additional options or special requests purchased prior to the Pre-Construction package approval and sign off of the building plans by Purchaser must be accompanied with a down payment equivalent to a minimum of \$200 or 20% of the total change orders or special price request, whichever is **greater**. (SELLER reserves the right to require 100% payment of the amount for a special change order for any item, which in its sole discretion, determines to be of a special nature, not in the normal course of its business procedures.) Any options purchased after the acceptance and sign off of the Pre-Construction package by the Purchaser are subject to A DOUBLING of the latest published price. Any special pricing requests after the acceptance and sign off of the Pre-Construction package are subject to a \$1000 PROCESSING FEE prior to their consideration and pricing. SELLER reserves the right to deny any Sales Change Order requests.

(B) Certain items displayed in the models and or outside models such as decorator items, extra fencing, special landscaping, and any other items displayed for merchandising purposes are not standard construction items and are therefore not included in this agreement. In

the event of any conflict between Seller=s model homes and the plans and standard features for the Home, the plans and standard features shall control. Identification of such items should be obtained from Sellers sales representatives.

11. **REAL ESTATE BROKER:** THE PARTIES agree that The Michaels Group Realty, Inc. brought about this sale and SELLER agrees to pay The Michaels Group Realty, Inc. and _____ (Co-operative Broker or sub-agent) in accordance with a separate agreement.

12. **FINAL PAYMENT:** (A) Final Payment for the Premises is expected to be completed on or about approximately _____ months from pre-construction sign off. The parties acknowledge this target closing date is subject to **Purchaser signing off on their Pre-Construction package within five weeks of acceptance of this contract** and has provided all documents required by the Joint Escrow agreement, which is attached hereto and a part hereof. In the event the PURCHASER does not approve and sign off on the Pre-construction package in accordance with the terms of this Agreement (for any reason other than default by SELLER) PURCHASER shall be subject to all price increases as published on SELLER=s website or the SELLER at its option may cancel this contract.

(B) SELLER will make every reasonable effort to provide a more definite delivery date on or about the time of installation of sheetrock for said Home. Such actions by the SELLER are provided as a matter of courtesy and accommodation, and shall in no way relieve the PURCHASER from the due and timely performance of all his obligations hereunder, and in particular the PURCHASER'S obligation with respect to his mortgage and financial approvals as provided herein. It is the PURCHASER'S responsibility to comply with all conditions of his commitment to facilitate timely Final Payment. IT IS PURCHASER'S RESPONSIBILITY TO ARRANGE THE DATE, TIME AND PLACE OF CLOSING WITH HIS LENDER (IF ANY) AND TO COMMUNICATE SUCH INFORMATION TO SELLER'S CLOSING COORDINATOR. PURCHASER SHALL, UPON REASONABLE NOTICE, CONDUCT A WALK THROUGH INSPECTION AT THE TIME REQUESTED BY SELLER. In the event the final walk through does not take place as scheduled by SELLER, Final Payment shall nonetheless take place and any punch list items shall be dealt with subsequent to the Final Payment. In any event, however, the SELLER assumes no responsibility for failure to meet the "on or about" Final Payment date due to legal matters over which attorneys have control, government agency requirements, weather conditions, acts of God, fires, strikes, problems with subcontractors, material delays or shortages, installation delays of municipal or public utilities or other matters beyond SELLER'S reasonable control. In the event of such delay, the Final Payment date shall be automatically extended to reflect the time delay due to the above mentioned matters, and the Final Payment shall take place within ten (10) days following the issuance of the Certificate of Occupancy. IN THE EVENT THE FINAL PAYMENT IS DELAYED BY PURCHASER, HIS LENDER AND/OR THEIR ATTORNEYS BEYOND SUCH DATE, INTEREST AT THE PER ANNUM RATE EQUAL TO KEY BANK PRIME RATE PLUS TWO (2%) PERCENT SHALL ACCRUE ON THE UNPAID BALANCE OF THE PURCHASE PRICE THEREAFTER UNTIL FINAL PAYMENT.

13. **INSURANCE.** Seller agrees to name Purchaser as an additional insured on its general liability insurance policy for construction at the Lot.

14. **CONDITION OF PREMISES.** Except as otherwise herein provided, Final Payment shall take place within ten (10) days after the SELLER receives a Certificate of Occupancy for the Home. It is agreed that at the time of Final Payment, SELLER shall deliver to the PURCHASER said Certificate of Occupancy issued by the municipality where the Premises are located indicating that the Home has been constructed in accordance with the building codes and the ordinances of such municipality. It is further agreed that construction shall be sufficiently complete for Final Payment when a Certificate of Occupancy for the Home is issued and final approval of the leading institution making a mortgage loan, if any, has been obtained. In the event that there are any items of construction exceeding \$1,000.00 in value, as determined by SELLER, which are not completed as of the time of Final Payment, the cost of completing same shall be held in escrow by SELLER'S attorney until the SELLER certifies that said items have been completed. In the event the value thereof is less than \$1,000.00, there shall be no escrow (the PURCHASER paying the entire amount due at Final Payment) and such details shall be completed within a reasonable time after Final Payment.

15. **ENTIRE AGREEMENT:** This contract contains all agreements of the parties hereto. There are no promises, agreements, terms, conditions, warranties, representations or statements other than contained herein, the attached standard features and off-site exclusions, limited warranty and the Joint Escrow Agreement that is also attached hereto and made a part hereof. This Agreement shall apply to and bind the heirs, legal representatives, successors and assigns of the respective parties. It may not be changed orally but may only be changed by a writing signed by both SELLER and PURCHASER.

16. **DEFINITIONS:** The term "PURCHASER" shall be read as "PURCHASERS" if more than one person be named herein as the PURCHASER, in which case their obligations under this Agreement shall be deemed joint and several.

17. **GENDER; PLURAL:** The use of the masculine gender in this Agreement shall be deemed to refer to the feminine gender or neuter whenever the context so requires. The use of the singular shall be deemed to include the plural whenever the context so requires.

18.. **NOTICES:** Any notice to be given hereunder shall be in writing, and sent by certified mail, return receipt requested, to the PURCHASER at his address set forth in the first paragraph hereof, and to the SELLER at 10 Blacksmith Drive, Malta, New York 12020 (with a copy to J. Stephen Reilly, Esq., Shanley, Sweeney, Reilly & Allen, P.C., 10 Thurlow Terrace, Albany, New York 12203) or at such other address as either party may hereafter designate to the other in writing. If properly addressed and mailed as previously provided, the date of mailing shall be deemed to be the date of the giving of notice, except that the date of actual receipt shall be deemed to be the date of the giving of any notice of change of address.

19. **CAPTIONS:** The captions in this Agreement are for convenience of reference only and in no way define, limit or describe the scope of this Agreement or the intent of any provision hereof.

20 **ATTORNEY APPROVAL:** This Agreement is contingent upon PURCHASER obtaining approval of this Agreement by their attorney no later than 5 business days from acceptance by SELLER as to all matters contained herein, with exception of purchase price. This contingency shall be deemed waived unless PURCHASER'S attorney on behalf of their client notifies SELLER in writing of their disapproval of this Agreement by certified mail, return receipt requested, post marked no later than 5 business days from acceptance by SELLER, or by personal service by such date. If PURCHASER'S or SELLER'S attorney so notifies, then this Agreement shall be deemed canceled, null and void and all deposits made hereunder shall be returned to PURCHASER(S).

(Purchaser)

THE MICHAELS GROUP, LLC

(Purchaser)

By:

Title:

Dated: _____

Dated:

FOR ADMINISTRATIVE USE ONLY

Print PURCHASER(S) LEGAL NAME(S):

SOCIAL SECURITY No.:

ADDRESS:

_____ ZIP

TELEPHONE: Home () _____ Office () _____

PURCHASER(S)

ATTORNEY:

PHONE:

Address:

SELLER'S ATTORNEY:

J. Stephen Reilly, Esq.
Shanley, Sweeney, Reilly & Allen
10 Thurlow Terrace
Albany, NY 12203
Phone: 463-1415
Fax: 463-3210

SALES REPRESENTATIVE: _____

COMMITMENT LETTER AUTHORIZATION

I/We hereby authorize _____ (bank) to send a photocopy of my/our Mortgage Commitment Letter, if one is offered, to the parties indicated below.

Date:

Address of Home Being Purchased

Borrower Attorney

Co-Borrower Address

Sales Agent City, State, Zip Code

Please send commitment to: The Michaels Group, L.L.C.
 10 Blacksmith Drive Malta, New York 12020
 Facsimile #: 518-899-6260
 Attn: Karen Bristol-Closing Coordinator

ESCROW AGENT CERTIFICATION

I, THE MICHAELS GROUP, L.L.C., (escrow agent) hereby certify that I am holding the sum of -
_____ dollars, \$ _____, which represents part of
the down payments required for the purchase of property located at _____
_____, New York _____.

_____ For: The Michaels Group, L.L.C.
Escrow Agent 10 Blacksmith Drive
Malta, New York 12020
(518) 899-6311

PRESENT HOME NOT TO BE
CONTINGENT UPON
PURCHASE OF TMG HOME

Re: Premises:
Purchasers:
Contract Dated: _____

Gentlemen:

In connection with the above, we are making arrangements to sell our existing home at _____ . However, we do not make the purchase of the above property from The Michaels Group, L.L.C. contingent upon said sale.

Accordingly, we do hereby waive any condition which would make our purchase from The Michaels Group, L.L.C. contingent upon the sale of our present home. We also warrant and represent that the mortgage commitment which we obtain, shall not have as a condition for closing, the sale of our present home.

We recognize that The Michaels Group, L.L.C., in reliance upon this waiver shall undertake the construction of our new home and specify a delivery date according to the contract terms.

We agree that this letter shall become and be a part of our contract of purchase and sale with The Michaels Group, L.L.C.

Very truly yours,

PURCHASER

PURCHASER

AGREED TO:
The Michaels Group, L.L.C.

BY:

TITLE: