

NEW HOME CONSTRUCTION
NOVA SCOTIA ASSOCIATION OF REAL ESTATE LAWYERS
Continuing Education Program
April 21, 1994

Protecting the Builder, Protecting the Buyer and Protecting the Lawyer

- Panel
- Richey Clarke, Q.C., Boyne Clarke
 - David Cook, Coffin & Cook
 - Stephen Russell, Huestis Holm

The panel discussion will cover the following topics with regard to protecting the buyer, the builder and the lawyer:

1. GST and GST Rebate
2. Occupancy Permits
3. Mechanics' Lien Holdback
4. Deficiency Holdback
5. Atlantic New Home Warranty Program
6. PST Rebate

Specific emphasis will be placed on the wording of the clauses contained in the Building Contract and the Agreement of Purchase and Sale for New Home Construction.

The agreements and clauses contained in these materials are being provided for discussion purposes only. Legal advice should be obtained prior to using these clauses in a particular fact situation.

THIS AGREEMENT made this day of , A.D. 1994.

BETWEEN:

(hereinafter called the "Owner")

OF THE FIRST PART

- and -

(hereinafter called the "Contractor")

OF THE SECOND PART

WHEREAS the Owner is or is about to be the owner of lands known as
in the County of Halifax, and Province of Nova Scotia (hereinafter referred to as the "Lot");

AND WHEREAS the legal description to the Lot is attached hereto as Schedule "A";

AND WHEREAS the plans for the house to be built on the Lot are attached hereto as
Schedule "B";

AND WHEREAS the specifications for the house to be built on the Lot are attached
hereto as Schedule "C";

AND WHEREAS all Atlantic New Home Warranty forms, GST forms, PST forms,
insurance particulars, surveys, location certificates, overriding interests, subdivision
requirements, restrictive covenants and building restrictions applicable to the Lot shall be
attached hereto as further schedules;

AND WHEREAS the Agreement of Purchase and Sale for the purchase of the Lot from
the developer or previous owner shall be attached hereto as a further schedule if it contains any
items or conditions that pertain to the work required by this Agreement;

AND WHEREAS amendments to this Agreement and the attached schedules are also to
be attached hereto as further schedules upon being signed by the parties hereto;

NOW THIS INDENTURE WITNESSETH that in consideration of the mutual covenants
and undertakings contained herein the parties hereto covenant and agree with each other as
follows:

1. **PAYMENT**

(a) The Owner shall pay to the Contractor

Contract Price	\$
+ GST	
Total Price Including GST	\$ _____

The Owner shall pay \$ _____ to the Contractor as follows:

FIRST DRAW:-

(i) \$ _____ + GST of \$ _____ = net payment of: \$ _____
(being 15% of the contract price upon the foundation being complete)

SECOND DRAW:-

(ii) \$ _____ + GST of \$ _____ = net payment of: \$ _____
(being 30% of the contract price upon the house being roof tight)

THIRD DRAW:-

(iii) \$ _____ + GST of \$ _____ = net payment of: \$ _____
(being 30% of the contract price upon the drywall and the exterior finish being complete)

FOURTH DRAW:-

(iv) \$ _____ + GST of \$ _____ = net payment of: \$ _____
(being the balance of the contract price on the completion date or occupancy date, whichever comes first)

Total Price Including GST Payable to Contractor	\$ _____
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(b) **GST**

The 7% GST shall be paid in addition to the contract price and shall be paid on each draw.

(c) **GST Rebate**

The Contractor shall complete and provide to the Owner the forms necessary to complete the GST rebate application which is the responsibility of the Owner to submit. The Owner

acknowledges that it is the responsibility of the Owner to confirm that the Owner qualifies to apply for the GST rebate.

(d) **PST Rebate**

The Contractor shall complete and provide to the Owner the forms necessary to complete the PST rebate application which is the responsibility of the Owner to submit. The Owner acknowledges that it is the responsibility of the Owner to confirm that the Owner qualifies to apply for the PST rebate.

(e) **Late Payment**

The Owner shall pay the Contractor as aforesaid. Should the Owner fail to pay any of the payments in the manner provided herein after receiving seven (7) days written notice from the Contractor to do so, then the Contractor may terminate this Agreement and be released from all of its covenants hereunder. Such a termination shall not constitute a waiver of any claims which the Contractor may have against the Owner hereunder. In any event the Contractor may charge to the Owner in addition to the payments contemplated above, interest costs incurred by the Contractor as a result of a late payment by the Owner. Said interest cost shall not exceed the equivalent of 12% per annum.

2. **COMPLETION DATE**

(a) The work required by this Agreement shall be carried on with all reasonable dispatch by the Contractor and shall be completed by _____, 1994.

(b) Should the work required by this Agreement not be completed by the completion date, the Owner shall be entitled to a \$ _____ penalty payment from the Contractor for each additional day until completion.

(c) Should the work required by this Agreement not be completed within 7 days of the completion date the Owner shall be entitled to terminate this Agreement and proceed pursuant to paragraph 15 hereof.

(d) Should the Contractor be prevented from completing the work required by this Agreement on or before the completion date, due to some act or neglect of the Owner or of any employee or agent of the Owner, or of any other contractor employed by the Owner, strikes, weather

conditions, fire, inability to obtain materials, the changing of the Agreement, plans, specifications or schedules by the Owner, unusual delay by common carriers or any other contingency over which the Contractor has no control then, notwithstanding anything contained in this Agreement, the aforesaid penalty payment shall not apply and the completion date shall be extended for such reasonable time as the parties may mutually agree upon, but at least as long as the time period lost by the delay, and the Owner shall not be entitled to terminate the Agreement as aforesaid. No such extension shall be made for the aforesaid delays unless the Owner is advised by the Contractor in writing within seven (7) days of the occurrence of the delay, provided, however that in case of a continuing cause of delay, only one advisement shall be necessary.

(e) The Contractor shall be reimbursed by the Owner for reasonable costs incurred by the Contractor as a result of a delay due to some act or neglect of the Owner or of an employee or agent of the Owner. The Contractor shall not be entitled to be reimbursed by the Owner for costs incurred by the Contractor as a result of a delay for any other reason.

3. **OWNER'S COVENANTS**

(a) The Owner shall grant the Contractor, its employees sub-trades, agents and sub-contractors access to the Lot during the currency of this Agreement for the purpose of completing this Agreement;

(b) **Owner To Hold Legal Title to the Lot**

This Agreement is subject to and conditional upon the Owner holding legal title to the Lot. The Contractor is under no obligation to commence work on the Lot until such time as the Owner holds the legal title to the Lot. Further, the Owner hereby warrants to the Contractor to be the owner of the Lot and confirms that the Contractor's obligations herein are not binding until the Owner holds the legal title to the Lot.

(c) **Insurance**

The Owner shall maintain and pay for appropriate builders' risk insurance coverage with standard supplemental risk endorsement in the name of the Owner and the Contractor or with

loss payable to the Owner and the Contractor so that any loss under such policy shall be payable to the Contractor and the Owner as their respective interests may appear. The parties hereto hereby agree to have the particulars of insurance coverage added as a schedule to this Agreement on or before breaking ground.

4. **CONTRACTOR'S COVENANTS**

(a) **Quality of Work**

The Contractor shall build the house on the Lot and carry out all work in a good workmanlike manner in accordance with (i) the terms and conditions contained herein; (ii) the plans, specifications, revisions and amendments attached hereto; (iii) the National Building Code of Canada; (iv) all relevant subdivision requirements, restrictive covenants and building restrictions; (v) all relevant requirements contained in the Agreement of Purchase and Sale for the purchase of the Lot from the developer or previous owner; (vi) all local, municipal, provincial and other applicable building by-laws and regulations.

(b) **Permits**

That the Contractor shall be responsible at its own expense for obtaining all permits, certificates, surveys and approvals necessary for the completion of this Agreement and unless otherwise stated, the Contractor shall provide, pay and be responsible for all materials, labour, water, tools, equipment, light and power necessary for the completion of this Agreement.

(c) **Occupancy Permit**

The Contractor shall provide the Owner with the Occupancy Permit upon completion of this Agreement. The Owner shall be entitled to insist that funds held back for deficiencies and mechanics' liens not be released to the Contractor until such time as the Occupancy Permit has been issued.

(d) **Insurance**

The Contractor shall maintain such insurance and pay such assessments as are required to protect itself and the Owner from claims under Workers' Compensation Acts and from any other claims for damages for personal injury, including death, and from claims for property damage which may arise from its operations under this Agreement.

(e) **Liens or Debts**

The Contractor hereby agrees to save the Owner harmless from any liens or debts which may attach to this property and are properly attributable to the Contractor on account of its performance of this Agreement. Further, the Contractor agrees to provide the Owner with declarations and clearances from any employees, sub-trades, agents, the Workmens' Compensation Board, The Labour Standards Board, the Power Corporation, Revenue Canada, or any other agency, within reason pursuant to the realm of this agreement, upon the written request of the Owner.

(f) **Clean**

The Contractor shall at all times keep the Lot free from accumulation of rubbish caused by its employees or workmen and at the completion of its work, shall remove all the rubbish and tools, scaffolding and surplus material and leave its work "broom-clean" or its equivalent.

(g) **Payment Obligations**

The Contractor shall accept full and exclusive liability for the payment of any and all taxes and contributions for unemployment insurance, old age retirement benefits and life pensions and annuities which may now or hereafter be imposed by Canada or the Province of Nova Scotia, whether measured by the wages, salaries or remunerations paid to persons employed by the Contractor or otherwise for the work required to be performed hereunder, and in particular, but not so as to limit the generality of the foregoing, shall be responsible for the payment required of an employer under the Workmen's Compensation Act, R.S.N.S. 1967 - and amendments thereto. The Contractor shall comply with all Federal and Provincial laws on such subjects, and all rules and regulations promulgated hereunder, and shall maintain suitable forms,

books, and records and save the Owners harmless from the payment of any and all such taxes and contributions or penalties. The Contractor shall likewise pay any and all taxes, excises, assessments or other charges levied by any governmental authority on or because of the work to be done hereunder, or on any equipment, supplies or materials used in the performance thereof.

(h) **Damage Repair**

The Contractor shall repair to the Owner's satisfaction any damage to roadways, curbs, gutters and abutting or adjacent lands caused by the Contractor's building operations.

5. **MECHANICS' LIEN HOLDBACK**

The Owner shall pay over to the Contractor the monies as specified in paragraph 1 and the Contractor's solicitor shall hold the 10% Mechanics' Lien Holdback in an interest bearing trust account with interest to be credited to the Contractor. The Mechanics' Lien holdback monies shall otherwise be administered in accordance with the Mechanics' Lien Act.

6. **OVERRIDING INTERESTS**

The Owner hereby warrants to the Contractor and the Contractor hereby warrants to the Owner to have investigated, given their respective positions with regard to this Agreement, all relevant overriding interests that may in any way whatsoever have an impact on the work required by this Agreement, such as environmental, health and safety interests, municipal, provincial and federal regulations and contractual obligations, and to have given notice of any such overriding interest by attaching the overriding interest as a Schedule to this Agreement so as to ensure that there is no conflict between any such overriding interest and this Agreement.

7. **INSPECTION**

The Owner or authorized representatives, shall have the right to inspect the work of the Contractor at the Lot at any time, but shall not unduly impede the progress of the work. The Contractor shall keep at all times one copy of this Agreement including plans, specifications, schedules and amendments in good order and on the Lot and available for perusal by the Owner or authorized representatives.

8. **CHANGES**

At any time during the progress of the work upon giving reasonable notice to the Contractor, the Owner may in writing request changes to the work described in this Agreement. If the changes are capable of being made the Contractor will confirm to the Owner in writing the additional cost of the changes which are to be paid for by the Owner or the reduction in the cost which will reduce the contract price to the Owner. An appropriate amendment shall be attached to this Agreement as a Schedule. Upon the written request of the Contractor, the Owner shall consent to a reasonable extension of the date of completion, if required, as a result of the requested changes.

9. **EXTRAS**

The Contractor shall only receive additional remuneration for and only be bound to provide extra services and materials when both parties have agreed to the cost and the date of completion and the amendment has been attached to this Agreement as a Schedule. The Owner is to pay the Contractor for the extras promptly upon their completion.

10. NOTICE

Any written notice of communication to be given by any party to the others hereunder shall be deemed to be duly given when served upon such party or sent by registered mail or delivered to such party addressed as follows:

- (a) To the Contractor- Stephen A. Russell
Huestis Holm
Royal Bank Building
P. O. Box 913
Dartmouth, N.S.
B2Y 3Z6
Phone: 469-3080

- (b) To the Owner -

11. ARBITRATION

The parties hereto agree that should any dispute arise relating to the quality of workmanship, defective materials, the cost of extras, or the cost of deficiencies that such disputes shall be resolved by arbitration. Both the Contractor and the Owner shall each appoint one arbitrator, who together shall appoint a third independent arbitrator. These three arbitrators acting together shall resolve all disputes relating to the foregoing and any decision or decisions made by the arbitrators shall be binding on both parties.

12. SURVEY

- (a) The Contractor agrees to provide the Owner with a location certificate prepared by a Nova Scotia Land Surveyor and certified in the name of the Owner when it becomes available.
- (b) The Contractor agrees to replace any survey stakes that were altered during the course of construction.

13. **ATLANTIC NEW HOME WARRANTY & DEFICIENCIES**

This property is to be covered by the New Home Certification Program of the Atlantic Provinces. Before occupancy of the house by the Owner, the parties hereto shall complete the final inspection and the Certification of Completion and Possession form provided by the Contractor shall be executed. Deficiencies, if any, existing at the time, shall be listed on the said Certificate form and the parties hereto shall agree in writing to an amount to be held back from the Contractor for each deficiency item and to the date by which each deficiency item shall be completed, weather permitting. The funds comprising the deficiency holdback shall be held by the Contractor's solicitor in trust. The itemized dollar amount designated for each deficiency item shall be released to the Contractor upon the Owner's instruction immediately upon completion of each deficiency item. Should a deficiency item not be completed by the date designated for completion, weather permitting, the dollar amount designated for that deficiency item shall at the Owner's option be released to the Owner or held pending completion of the deficiency item by a newly agreed upon date of completion. The Contractor hereby undertakes to complete the work as soon as reasonably possible and the Owner agrees to cooperate with the Contractor in the completion of the work.

14. **EXCLUSIVE CONTRACTORS RIGHTS**

The parties hereby agree that the Contractor's rights hereunder shall be exclusive during the terms of this Agreement and all workmen, sub-trades, employees, and sub-contractors are to be retained by the Contractor exclusively during the currency of this Agreement unless the Contractor consents in writing to the contrary.

15. **TERMINATION**

(a) That should the Contractor:

- (i) be adjudged a bankrupt either by way of assignment or by way of a receiver order;
- or

- (ii) at any time:
 - (a) refuse or neglect to supply a sufficient supply of properly skilled workmen and materials of the proper quality;
 - (b) fail in any way to perform work required by this Agreement;
 - (c) fail to prosecute the work required by this Agreement in a diligent manner;
 - (d) fail to complete this Agreement pursuant to paragraph 2;
 - (e) commit a breach of any of the terms of the Agreement; or
- (iii) fail to replace or repair any work required by this Agreement which is defective;

then, upon the Contractor having received from the Owner seven (7) days written notice, the Owner shall be at liberty to terminate this agreement and shall also be at liberty to provide any such labour or material and to deduct the cost thereof from any moneys due or hereinafter to become due to the Contractor and to enter upon the Lot and take possession for the purpose of completion of the work required by this Agreement, of all the materials thereon, and to employ any person or persons to finish the work required by this Agreement and to provide the materials therefore; and in case of such termination of this Agreement and discontinuance of the employment of the Contractor, the Contractor shall not be entitled to receive any further payments until the work required by this Agreement shall be wholly finished, at which time, if the unpaid balance of the total contracted price of the work required by this Agreement shall exceed the expenses incurred by the Owner to complete the work required by this Agreement, such excess shall be paid by the Owner to the Contractor, but if such expenses shall exceed the unpaid balance of the total contracted price of the work required by this Agreement, the Owner shall have a claim against the Contractor, its assigns, successors and representatives for the said excess expense. Such termination by the Owner of this Agreement shall not constitute a waiver of any claim which the Owner may have against the Contractor hereunder.

- (b) That should the Owner:
- (i) be adjudged a bankrupt either by way of assignment or by way of a receiver order;
 - (ii) not make payments to the Contractor as provided in paragraph 1 hereof; or
 - (iii) commit a breach of any of the terms of this Agreement;

then the Contractor may be at liberty to terminate this Agreement upon the Owner having received from the Contractor seven (7) days written notice and the Contractor shall upon said termination be released from all its covenants hereunder. Upon such termination the Contractor shall be entitled to be paid for all work performed including reasonable profit. Such termination, however, shall not constitute a waiver of any claims which the Contractor may have against the Owner hereunder.

16. **NEGLIGENCE**

The parties hereto agree that each shall be responsible to the other for negligence and that each shall reimburse the other for any damages sustained by either party by reason of the negligence of the other party, his agents, servants, employees, or anyone acting on his behalf.

17. **KEYS**

The Contractor shall provide the keys to the house to the Owner upon the final draw, less deficiencies, if any, being paid to the Contractor.

18. **INTERPRETATION**

(a) The plans, specifications, schedules and amendments attached hereto are to be read herewith and form part of this Agreement as fully and completely as to all intents and purposes as though the stipulations thereof were contained in this Agreement and set out verbatim.

(b) The plans, specifications and amendments attached hereto are intended to co-operate so that any works shown on the plans and not shown in the specifications or vice-versa are to be executed the same as if mentioned in the specifications and set forth on the plans to the true intent and meaning of the said plans, specifications and amendments attached hereto. Dimensions shown by figures shall be followed in preference to scale dimensions.

(c) In the event of any conflict between the National Building Code of Canada, subdivision requirements, restrictive covenants, building restrictions, requirements contained in the Agreement of Purchase and Sale for the purchase of the Lot from the developer or previous owner, local, municipal, provincial or other applicable by-laws or regulations and the work required by this Agreement, then, the National Building Code of Canada, subdivision requirements, restrictive covenants, building restrictions, requirements contained in the Agreement of Purchase and Sale for the purchase of the Lot from the developer or previous owner, local, municipal, provincial or other applicable building by-laws or regulations shall govern.

(d) That a waiver by either party hereto of the strict performance by the other of any of the provisions of this Agreement shall not of itself constitute a waiver of any prior or subsequent breach of the provisions or of any other provision of this Agreement.

(e) That this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, but neither the Agreement or any part thereof may be assigned by either of the parties hereto to any person, firm or corporation whatsoever without the prior written consent of the other party. Such written consent shall not be unreasonably withheld.

(f) That whenever the singular and/or masculine is used throughout this Agreement, the same shall be construed as meaning the plural and/or feminine or a body corporate where the context of the parties hereto so require, and where the plural is used or implied, the rights, obligations, and liabilities arising therefrom shall be joint as well as several.

(g) This Agreement is to be governed and interpreted by the laws of the Province of Nova Scotia.

(h) The parties hereto hereby agree that this Agreement and the attached plans, specifications, schedules, revisions, and amendments constitute the entire contract as between

the parties and that all amendments to this Agreement must be incorporated herewith in order to be binding upon the parties hereto.

(i) Time shall in all respects be of the essence in this Agreement.

IN WITNESS WHEREOF the owner has properly executed this Agreement on the day of _____, 1994, and the Contractor has properly executed this Agreement on the day of _____, 1994.

SIGNED, SEALED and DELIVERED
in the presence of

)
)
) Contractor:
)
)
)
)
)
) Per: _____
)
)
)
)
) Owner:
)
)
) _____
)
) _____
)
)

DATED: , A.D. 19

BETWEEN:

OF THE FIRST PART

- and -

OF THE SECOND PART

BUILDING CONTRACT

HUESTIS HOLM
Barristers and Solicitors
44 Portland Street
P. O. Box 913
Dartmouth, Nova Scotia
B2Y 3Z6

(STEPHEN A. RUSSELL)

ALTERNATE CLAUSES - BUILDING CONTRACT

1. PAYMENT:-

The Owner shall pay \$_____ to the Contractor as follows:-

Draws shall be paid as determined by the Owner's financial institution with the balance of the contract price being paid upon completion.

2. COMPLETION DATE:-

The work required by the Agreement shall be completed by the ____ day of _____, 1994.

3. OWNER'S COVENANTS:-

Lot Preparation

(d) The Owner shall be responsible for, in addition to the Contract Price herein, all costs incurred by the Contractor in the preparation of the Lot if it has not been satisfactorily prepared by the Owner, including costs of blasting, fill and any other costs with respect to the preparation of the site for the construction of the foundation as specified in the plans and specifications which were not known to the Contractor prior to the commencement of construction herein.

5. MECHANICS' LIEN HOLDBACK

The Mechanics' Lien holdback shall be administered pursuant to the Mechanics' Lien Act.

5. MECHANICS' LIEN HOLDBACK

There shall be no holdback for Mechanics' Liens.

5. MECHANICS' LIEN HOLDBACK

There shall be no holdback for Mechanics' Liens and the Contractor shall provide an indemnification supported by a personal guarantee saving the Owner harmless from any damages resulting from a Mechanics' Lien being recorded against the Lot that is properly attributable to the Contractor.

12. SURVEY

The Contractor agrees to provide the Owner with a copy of a Location Certificate. The Contractor makes no representations as to the accuracy of the certificate and any reliance on the certificate by the Purchaser as to the Purchasers' risk.

NEW HOME CONSTRUCTION SCHEDULE "AA"

This Schedule "AA" forms part of the Agreement of Purchase and Sale for the property located at
as made between the Vendor,
and the Purchaser,

(1) **LEGAL DESCRIPTION**

The legal description for the Lot is attached hereto as Schedule "A";

(2) **PLANS**

The plans for the house to be built on the Lot are attached hereto as Schedule "B";

(3) **SPECIFICATIONS**

The specifications for the house to be built on the Lot are attached hereto as Schedule "C";

(4) **OTHER SCHEDULES**

The Atlantic New Home Warranty forms, GST rebate forms, PST rebate forms, surveys, location certificates, overriding interests, subdivision requirements, restrictive covenants, building restrictions applicable to the Property and any amendments to this Agreement or to these schedules shall be attached hereto as further schedules;

(5) **GST**

The 7% GST is included in the purchase price.

The Purchaser hereby assigns to the Vendor the 36% GST rebate and acknowledges that in consideration of this assignment the rebate has already been credited to the Purchaser in the calculation of the purchase price.

The Purchaser hereby confirms, certifies and warrants to the Vendor that the Purchaser qualifies for and meets the conditions required to receive the New Housing Rebate pursuant to the Excise Tax Act.

The Purchaser and the Vendor shall complete and sign the GST Rebate application form and attach it to this Agreement as a Schedule immediately upon the signing of this Agreement.

(6) **PST REBATE**

The Vendor hereby confirms, certifies and warrants to the Purchaser that the property qualifies and meets the conditions required to be eligible for the PST rebate. The Vendor shall provide to the Purchaser prior to closing the forms necessary to complete the PST rebate application which is the responsibility of the Purchaser to submit. The Purchaser acknowledges that it is the responsibility of the Purchaser to confirm that the Purchaser qualifies to apply for the PST rebate.

(7) **CLOSING DATE**

Should the Vendor be prevented from completing the work required by this Agreement on or before the closing date, due to some act or neglect of the Purchaser or of any employee or agent of the Purchaser, or of any other contractor employed by the Purchaser, strikes, weather conditions, fire, inability to obtain materials, the changing of the Agreement, plans, specifications or schedules by the Purchaser, unusual delay by common carriers or any other contingency over which the Vendor has no control then the closing date shall be extended for such reasonable time as the parties may mutually agree upon, but at least as long as the time period lost by the delay. No such extension shall be made for the aforesaid delays unless the Purchaser is advised by the Vendor in writing within seven (7) days of the occurrence of the delay, provided, however that in case of a continuing cause of delay, only one advisement shall be necessary.

(8) **QUALITY OF WORK**

The Vendor shall build the house on the Lot and carry out all work in a good workmanlike manner in accordance with (i) the terms and conditions contained herein; (ii) the plans, specifications, revisions and amendments attached hereto; (iii) the National Building Code of Canada; (iv) all local, municipal, provincial and other applicable building by-laws and regulations.

(9) **PERMITS**

The Vendor shall be responsible at its own expense for obtaining all permits, certificates, surveys, materials, labour, water, tools, equipment, light, power and approvals necessary for the completion of this Agreement.

(10) **OCCUPANCY PERMIT**

The Vendor shall provide the Purchaser with the Occupancy Permit prior to closing. The Purchaser shall be entitled to insist that funds held back for deficiencies and mechanics' liens not be released to the Vendor until such time as the Occupancy Permit has been issued.

(11) **CLEAN**

The Vendor shall deliver the property to the Purchaser free from accumulation of rubbish caused by its employees or workmen and prior to the closing date, shall remove all the rubbish and tools, scaffolding and surplus material and leave the property in a clean state.

(12) **DAMAGE REPAIR**

The Vendor shall, prior to the closing date, repair to the Purchaser's satisfaction any damage to the curbs abutting the property caused by the Vendor's building operations.

(13) **MECHANICS' LIEN HOLDBACK**

The Purchaser shall pay over to the Vendor the purchase price as specified and the Vendor's solicitor shall hold the 10% Mechanics' Lien Holdback in an interest bearing trust account with interest to be credited to the Vendor. The Mechanics' Lien holdback monies shall otherwise be administered in accordance with the Mechanics' Lien Act.

(14) **INSPECTION**

The Purchaser or authorized representatives, shall have the right to inspect the work of the Vendor at the property at any time, but shall not unduly impede the progress of the work. The Vendor shall keep at all times one copy of this Agreement including plans, specifications, schedules and amendments in good order and on the Lot and available for perusal by the Purchaser or authorized representatives.

(15) **CHANGES**

At any time during the progress of the work upon giving reasonable notice to the Vendor, the Purchaser may in writing request changes to the work described in this Agreement. If the changes are capable of being made the Vendor will confirm to the Purchaser in writing the additional cost of the changes which are to be paid for by the Purchaser or the reduction in the cost which will reduce the purchase price to the Purchaser. An appropriate amendment shall be attached to this Agreement as a Schedule. Upon the written request of the Vendor, the Purchaser shall consent to a reasonable extension of the closing date, if required, as a result of the requested changes.

(16) **EXTRAS**

The Vendor shall only receive additional remuneration for and only be bound to provide extra services and materials when both parties have agreed to the cost and the date of completion and the amendment has been attached to this Agreement as a Schedule. The Purchaser is to pay the Vendor for the extras upon closing.

(17) **ARBITRATION**

The parties hereto agree that should any dispute arise relating to the quality of workmanship, defective materials, the cost of extras, or the cost of deficiencies that such disputes shall be resolved by arbitration. Both the Vendor and the Purchaser shall each appoint one arbitrator, who together shall appoint a third independent arbitrator. These three arbitrators acting together shall resolve all disputes relating to the foregoing and any decision or decisions made by the arbitrators shall be binding on both parties.

(18) **SURVEY**

(i) The Vendor agrees to provide the Purchaser with a Location Certificate prepared by a Nova Scotia Land Surveyor and certified in the name of the Purchaser prior to closing. The Vendor makes no representations as to the accuracy of the certificate and any reliance on the certificate by the Purchaser shall be at the Purchaser's risk.

(ii) The Vendor agrees to replace any survey stakes that were altered during the course of construction.

(19) **ATLANTIC NEW HOME WARRANTY & DEFICIENCIES**

This property is to be covered by the New Home Certification Program of the Atlantic Provinces. Before occupancy of the house by the Purchaser, the parties hereto shall complete the final inspection and the Certification of Completion and Possession form provided by the Vendor shall be executed. Deficiencies, if any, existing at the time, shall be listed on the said Certificate form and the parties hereto shall agree in writing to an amount to be held back from the Vendor for each deficiency item and to the date by which each deficiency item shall be completed, weather permitting. The funds comprising the deficiency holdback shall be held

by the Vendor's solicitor in trust. The itemized dollar amount designated for each deficiency item shall be released to the Vendor upon the Purchaser's instruction immediately upon completion of each deficiency item. Should a deficiency item not be completed by the date designated for completion, weather permitting, the dollar amount designated for that deficiency item shall at the Purchaser's option be released to the Purchaser or held pending completion of the deficiency item by a newly agreed upon date of completion. The Vendor hereby undertakes to complete the work as soon as reasonably possible and the Purchaser agrees to cooperate with the Vendor in the completion of the work.

(20) **KEYS**

The Vendor shall provide the keys to the house to the Purchaser upon the purchase price being received by the Vendor upon closing.

(21) **INTERPRETATION**

(a) The plans, specifications, schedules and amendments attached hereto are to be read herewith and form part of this Agreement as fully and completely as to all intents and purposes as though the stipulations thereof were contained in this Agreement and set out verbatim.

(b) The plans, specifications and amendments attached hereto are intended to co-operate so that any works shown on the plans and not shown in the specifications or vice-versa are to be executed the same as if mentioned in the specifications and set forth on the plans to the true intent and meaning of the said plans, specifications and amendments attached hereto. Dimensions shown by figures shall be followed in preference to scale dimensions.

(c) In the event of any conflict between the National Building Code of Canada, local, municipal, provincial or other applicable by-laws or regulations and the work required by this Agreement, then, the National Building Code of Canada, local, municipal, provincial or other applicable building by-laws or regulations shall govern.

(d) That a waiver by either party hereto of the strict performance by the other of any of the provisions of this Agreement shall not of itself constitute a waiver of any prior or subsequent breach of the provisions or of any other provision of this Agreement.

(e) That this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, but neither the Agreement or any part thereof may be assigned by either of the parties hereto to any person, firm or corporation whatsoever without the prior written consent of the other party. Such written consent shall not be unreasonably withheld.

(f) That whenever the singular and/or masculine is used throughout this Agreement, the same shall be construed as meaning the plural and/or feminine or a body corporate where the context of the parties hereto so require, and where the plural is used or implied, the rights, obligations, and liabilities arising therefrom shall be joint as well as several.

(g) This Agreement is to be governed and interpreted by the laws of the Province of Nova Scotia.

(h) The parties hereto hereby agree that this Agreement and the attached plans, specifications, schedules, revisions, and amendments constitute the entire contract as between the parties and that all amendments to this Agreement must be incorporated herewith in order to be binding upon the parties hereto.

(i) Time shall in all respects be of the essence in this Agreement.

IN WITNESS WHEREOF the Purchaser has properly executed this Agreement on the _____ day of _____, 1994, and the Vendor has properly executed this Agreement on the _____ day of _____, 1994.

SIGNED, SEALED and DELIVERED)
 in the presence of) Vendor:
)
)
) Per: _____
)
) Purchaser:
)
) _____
)
) _____
)