



**Negotiating Complex Issues: Term Sheets and
Purchase and Sale Agreements**

Wednesday, March 20, 2013

Boston Bar Association - 16 Beacon Street, Boston, MA

Speakers:

Carla M. Moynihan, Esq.

Kathleen M. O'Donnell, Esq.

Sponsored By:

New Lawyers Section

Real Estate Section

Negotiating Complex Issues: Term Sheets and Purchase and Sale Agreements

Wednesday, March 20, 2013: 12:00 PM to 1:00 PM

Boston Bar Association, 16 Beacon Street, Boston, MA

SPEAKER BIOGRAPHIES

CARLA M. MOYNIHAN, ESQ.

Robinson & Cole LLP

Carla M. Moynihan has focused on the disposition, acquisition, permitting, development, financing, and construction of commercial real estate for over 15 years. Ms. Moynihan represents institutions, developers, retailers, individual investors, hospitals, medical professionals, hotels, public entities, and lenders in all aspects of commercial real estate transactions, including negotiating and drafting letters of intent, term sheets, purchase and sale agreements, land disposition agreements, development agreements, leases, easements, deeds, loan documents, and construction/design contracts.

A significant amount of her practice is also devoted to representing clients throughout the permitting and public approval process at the federal, state, and local levels on land use and zoning issues under the Massachusetts Environmental Protection Act, the Massachusetts Wetlands Act, Chapter 91, the Massachusetts Historical Commission, and numerous local boards, including the City of Boston Board of Appeal, the Boston Redevelopment Authority, and various architectural/landmark commissions.

Ms. Moynihan is a frequent author and lecturer on land use development and real estate transactional matters and is currently an adjunct faculty at both New England School of Law and Boston University School of Law, where she teaches contract drafting.

KATHLEEN M. O'DONNELL, ESQ.

Attorney at Law

Kathleen M. O'Donnell concentrates her practice on Massachusetts real estate law, offering representation in matters of residential real estate, title and conveyancing, affordable housing development and municipal real estate. With 30 years of experience in the field, Ms. O'Donnell established her own firm in order to provide excellent personalized service to her clients and to further her extensive speaking, teaching, writing and editorial interests.

Ms. O'Donnell began her legal career with Lawyers Title Insurance Corporation as a title attorney, spending five years underwriting titles for everything from ground leases for Copley Place to wood lots in northern Maine. She then moved into private practice, providing title expertise to commercial loan transactions and beginning her representation of buyers and sellers of residential real estate. In 1997, Ms. O'Donnell joined the mid-sized Boston firm of

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Kopelman and Paige, and expanded her knowledge base to include the particular requirements for purchases and sales of municipal real estate, particularly through the use of community preservation act funds. In 2000, she took over the management of the firm's tax title practice and worked with towns on the foreclosure of tax liens and the sale of tax title properties by auction.

With a wide array of speaking arrangements on subjects about which she is passionate, such as fair and equitable house lease agreement options, affordable housing, real estate issues for seniors, and more, Ms. O'Donnell has taught attorneys through Massachusetts Continuing Legal Education since 1986. Her goal is to not only practice law, but to continue her education and share what she knows with others.

Ms. O'Donnell is the editor of two publications, Massachusetts Real Estate Law Sourcebook & Citorator (MCLE 2007 and subsequent editions) and Handling Residential Real Estate Transactions in Massachusetts (MCLE 1996 and subsequent editions). She is also a contributing author to two other publications, Real Estate Title Practice in Massachusetts (MCLE 2010) and Examining and Evaluating Title to Real Property in Massachusetts (PESI 2003).

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Sample Offer to Purchase:

OFFER TO PURCHASE

Date

Owner
Address

RE: Purchase of Land and Improvements at _____

Dear _____:

The undersigned (together with its assignee or nominee, the “Buyer”) hereby offers to purchase the Property subject to the following terms and conditions (the “Offer”):

Property: The parcels of land, buildings, improvements, and development rights thereon now known as the _____ Project located at _____, MA, as further described on the attached Schedule A (collectively, the “**Property**”), and which Project (as defined below) consists of approximately _____ gross square feet.

Seller: Owner of Record

Project: ___ market rate units, ___ affordable units, _____ retail spaces, and ___ parking spaces to be constructed on the Property (the “**Project**”).

Deposit: An earnest money deposit of \$_____ towards the Purchase Price shall be placed in escrow with an escrow agent of Seller’s approval (the “**Escrow Agent**”) upon execution of the Purchase and Sale Agreement (the “**Initial Deposit**”). Within one (1) business day of the date of expiration of the Due Diligence Period defined _____ below (and provided the Buyer shall not have terminated the Purchase and Sale Agreement as permitted thereunder), the Buyer shall deposit with the Escrow Agent an additional deposit of \$_____ (collectively with the Initial Deposit and all interest accrued thereon, the “**Deposits**”). All Deposits made hereunder and under the Purchase and Sale Agreement shall be held by Escrow Agent and deposited forthwith in one or more interest bearing money market account(s) at one or more national banking association(s) satisfactory to Seller. All interest accrued on deposit funds shall be credited to the purchase price, or, if Buyer shall be entitled to a refund of the Deposits under this Offer or the superseding Purchase and Sale Agreement, to Buyer. If Buyer shall fail to fulfill Buyer’s obligations

under this Offer (or under the superseding Purchase and Sale Agreement), all Deposits shall be paid to Seller as full and complete liquidated damages.

Purchase Price: Buyer will pay a total of \$_____ for the Property (the “**Purchase Price**”) as follows:

At Closing, Buyer shall pay to Seller the sum \$_____, LESS the aggregate of all Deposits, by certified, bank or good funds check(s) drawn on Boston, Massachusetts clearing house funds or by wire transfer.

Conditions for Purchase of Property:

The obligation of the Buyer to proceed with the purchase of the Property is subject to its satisfaction in its sole discretion with the results of examinations, inspections, tests, and reports to be undertaken by Buyer at its sole option and expense relating to the contingencies set forth below (“**Buyer’s Due Diligence**”).

During the term of this Offer and the Purchase and Sale Agreement, Buyer and persons designated by Buyer shall be permitted access to the Property, at all reasonable times upon prior notice to the Seller, to conduct such inspections and tests as Buyer deems necessary or appropriate. Any subterranean or other invasive testing shall be subject to Seller’s consent, which shall not be unreasonably withheld or delayed. Buyer’s access to the Property and completion of its tests and inspections are further conditioned on:

- (a) Advance notification and scheduling with Seller, which shall be reasonably accommodated;
- (b) Delivery of insurance issued by such companies and in such types and coverage amounts reasonably satisfactory to Seller and naming Seller as an additional insured party (and which shall include evidence of insurance from any contractors);
- (c) A written indemnification and hold harmless agreement in favor of Seller, its officers, managers, members, agents, principals and tenants against any loss, liability, claim, charge, cost, damage or expense (including, without limitation, attorneys’ fees and costs) incurred solely as a result of Buyer’s activities.

In addition, Buyer’s access and testing shall be completed in the presence of the authorized agent of Seller and shall be completed without material disturbance to tenants and licensees of the Property. Any damage or alterations to the Property shall be restored by Buyer at its sole cost and expense to the prior existing condition.

The Buyer shall have a period of sixty (60) days following the execution of the Purchase and Sale Agreement (the “**Due Diligence Period**”) to complete the Buyer’s Due Diligence. Buyer may terminate the Agreement at any time during the Due Diligence Period for any reason whatsoever in its sole discretion by providing written notice to Seller, whereupon the Agreement shall terminate without further recourse to either party and the Deposits shall be promptly returned to Buyer. During the Due Diligence Period, Seller shall not, either directly or indirectly, offer, market, or disclose information about the Project or Buyer’s offer to any person or entity, other than Buyer or those persons and entities authorized by Buyer. If Buyer’s purchase of the Property is consummated, the Deposits shall be credited to the Purchase Price at the Closing. Buyer shall be deemed to be satisfied with any matters which were discovered or could have been discovered in connection with its activities during the Due Diligence Period and for which no written objection is made to Seller (or written termination of the Purchase and Sale Agreement delivered to Seller) on or before the expiration of the Due Diligence Period and shall have waived any contingency related thereto and right to terminate the Offer (or the superseding Purchase and Sale Agreement) in connection therewith.

Buyer’s Due Diligence may include a review of any of the following (without limitation):

1. Environmental Conditions

Seller shall provide Buyer with any historical and analytical studies of the environmental condition of the Property which are in their possession. Buyer shall be responsible for their review. In connection therewith, Buyer shall have the right to conduct environmental inspections of the Property at its expense to satisfy itself with the absence of oil, asbestos, hazardous materials and/or hazardous substances on or about the Property.

2. Title

The Seller shall deliver to Buyer any title documents which are in its possession including, without limitation, any owner’s policy of title insurance, underlying title documents, surveys, and/or plans. Buyer shall obtain during the Due Diligence Period a commitment to issue an owner’s policy of title insurance in favor of Buyer from a national title insurance company (insert names of title companies as may be applicable - all being deemed acceptable), which shall be subject to Buyer’s review during the Due Diligence Period. Any lien, encumbrance or other matter identified as an exception or requirement to said commitment shall be deemed a “Permitted Exception” and accepted by Buyer unless written objection thereto shall be made to Seller on or before expiration of the Diligence Period. The Buyer shall be responsible for the costs and expenses associated with said commitment and title policy as hereinafter provided. In connection

with said commitment and policy, Buyer shall cause to be completed at its sole cost and expense during the Diligence Period a current ALTA Survey.

Other than Permitted Exceptions, the Property shall be free from all liens and encumbrances and the Seller shall convey good, clear recordable title, insurable at standard rates with no other exceptions except as approved by Buyer, at the time of Closing other than:

- (a) Taxes for the then current fiscal year that are not due and payable on the date of the Closing;
- (b) Any liens for municipal betterments assessed and payable after the date of the Closing;
- (c) Provisions of existing building, land use, and zoning laws; and
- (d) Easements, restrictions and reservations of record.

The legal description of the Property shall be verifiable by the preparation of an ALTA survey of the Property.

3. Development Rights / Permitting Authority Information

Buyer's satisfaction with its review of all permits, entitlements, approvals, development agreements, transportation agreements, community mitigation agreements, and development feasibility reports as it relates to the aforementioned items.

Delivery of Documents:

Within Ten (10) business days after execution of the Purchase and Sale Agreement, Seller shall provide Buyer with the following documents ("**Seller Due Diligence Materials**"):

- 1. A copy of the title insurance policies for the Property and copies of all title exceptions noted thereon;
- 2. Any plans and specifications for the Property including ALTA/ACSM plans, surveys and as-built plans which are in the Seller's possession;
- 3. Any environmental reports for the Property which are in the Seller's possession including site assessment reports, 21E reports, Phase I reports or soil characterization reports;
- 4. Any permits, approvals, licenses, certificates of occupancy or other zoning or building approvals as well as any development, transportation or community mitigation agreements;
- 5. Any structural and mechanical reports for the Property which are in the Seller's possession; and

6. All leasing and historical operating expense information for the Property including a schedule of all leases, contracts and other agreements affecting the occupancy, operation, leasing or management of the Property.

Any Seller Due Diligence Materials delivered by Seller under this Offer (and under the superseding Purchase and Sale Agreement) are limited to such Seller Due Diligence Materials as now exist and are in the possession of Seller or are readily available to Seller and which are not otherwise publicly available to Buyer. All Seller Due Diligence Materials delivered by Seller are delivered to Buyer for informational purposes only and without representation or warranty of any kind or nature as to the truth, accuracy or completeness thereof. Buyer acknowledges that its determination to proceed with purchase of the Property shall be made solely in reliance on its own reviews, audits and inspections and written materials produced in connection therewith during the Due Diligence Period and no reliance is made (directly or indirectly) on the Seller Due Diligence Materials delivered by or on behalf of Seller or any other verbal or written information obtained or derived from or on behalf of Seller. Any Seller Due Diligence Materials shall be promptly returned to Seller in the event the Buyer shall not purchase the Property as herein contemplated. The Buyer shall deliver to the Seller a Certificate evidencing receipt (and the date thereof) of the Seller Due Diligence Materials and commencement of the Due Diligence Period.

Condition of Property:

The Property shall be maintained in its current condition, insured at full replacement cost, and shall be delivered at the Closing in the same condition as in at the time of expiration of the Due Diligence Period. Other than as expressly set forth in this Offer or the superseding Purchase and Sale Agreement, Seller hereby specifically disclaims any warranty, guaranty or representation, oral or written, past, present or future, of, as to, or concerning (a) the nature and condition of the Property, including, without limitation, the water, soil and geology or any other matter affecting the stability or integrity of the land or the improvements thereon, and the suitability thereof and of the Property for any and all activities and uses which Buyer may elect to conduct thereon, and the existence of any Hazardous Materials (as defined below) thereon, (b) the compliance of the Property with any law, rule, regulation or ordinance to which the Property is or may be subject, (c) except as provided in the deed, the condition of title to the Property, (d) the profitability or losses or expenses relating to the Property and the businesses conducted in connection therewith, (e) the value of the Property, (f) the existence, quality, nature or adequacy of any utility servicing the Property, (g) the physical condition of the Property, (h) the legal or tax consequences of this Offer or the superseding Purchase Agreement or the transactions contemplated hereby and thereby, and (i) the feasibility, profitability or legality of or any requirement related to the Project or the sufficiency of any of the governmental permits and authorizations in connection therewith transferred to Buyer. Buyer

acknowledges that Seller has not made an independent investigation or verification of the accuracy or completeness of any documents, studies, surveys, information or materials which were prepared by parties other than Seller and which will be provided, or made available, to Buyer or the methods employed by the preparers of such items. Buyer acknowledges that it has been or shall be granted a full and complete opportunity to conduct such investigations, examinations, inspections and analysis of the Property as Buyer, in its sole and absolute discretion, may determine. Buyer expressly acknowledges that, in consideration of the agreements of Seller herein, and other than as expressly set forth in this Offer or in the superseding Purchase and Sale Agreement, Seller makes no representations or warranties, express or implied, or arising by operation of law, including, but not limited to, any warranty of condition, habitability, merchantability, suitability or fitness for a particular purpose or otherwise. Buyer acknowledges Buyer is purchasing the Property solely in reliance on Buyer's own investigations and those of Buyer's agents, and Buyer is not relying on any statements, information, and/or other material provided by Seller or Seller's agents.

***Purchase and
Sale Agreement:***

The purpose of this letter is to memorialize certain business points. The parties mutually acknowledge that their agreement is qualified and that they, therefore, contemplate the drafting and execution of a purchase and sale agreement (the “**Purchase and Sale Agreement**”) within fifteen (15) business days from the execution of this letter (the “**Agreement Date**”), reasonably satisfactory to both parties and consistent with the terms and conditions of this Offer. The parties intend to be bound only by the execution of such agreement and not by this preliminary document. This Offer shall automatically terminate on the Agreement Date and in the event the Buyer and the Seller shall fail to execute a mutually satisfactory Purchase and Sale Agreement by said date, all Deposits paid hereunder by Buyer (absent any default by Buyer) shall forthwith be refunded to Buyer, all Seller Due Diligence Materials as aforesaid shall be returned to Seller and all obligations of the parties hereunder shall cease without recourse to the parties.

Brokers:

Buyer and Seller both represent that they have dealt with no brokers in this transaction other than _____, as to which Seller shall be solely responsible for the payment of a brokerage fee pursuant to separate agreement upon the recording of the Deed.

Closing:

A good and sufficient quitclaim deed, conveying a good and clear record and marketable fee simple title (but subject to the Permitted Exceptions) to the Property shall be delivered at 10:00 A.M. on the date which is thirty (30) days after the expiration of the aforementioned Due Diligence Period (the “Closing”), at the offices of _____ [Buyer’s law firm] or, at Buyer’s option, at the offices of the attorney for Buyer’s lender (provided the same is in metropolitan Boston, Massachusetts), unless some other time and place are mutually agreed upon in writing. Time is of the essence of this Offer and the superseding Purchase and Sale Agreement.

Confidentiality:

Buyer and Seller (including each such party’s partners, agents, officers shareholders, employees and representatives) shall hold and treat this letter (and the superseding Purchase and Sale Agreement) and its contents in the strictest confidence and shall not disclose or permit the disclosure of, by any means, the information herein, the nature of transaction hereby contemplated, or any of the Seller Due Diligence Materials, or any portion thereof to any other person or entity (excluding such party’s partners, agents, officers, shareholders, employees and representatives, lawyers, brokers, or other professionals) without the other party’s prior written consent. Buyer and Seller shall take reasonable measures necessary to avoid disclosure of the information herein or any portion thereof to any unauthorized person or for any unauthorized purpose by anyone receiving this letter or the information herein or any portion thereof.

Governmental

Applications:

Until the Closing and Seller's receipt of the full purchase price hereunder, Buyer shall make no application for licenses, permits, authorizations, approvals or consents to any governmental or quasi governmental or other authority ("**Permitting Authority**") in connection with the Property without Seller's express written consent. Notwithstanding the foregoing, Buyer shall be authorized during the Due Diligence Period to schedule and attend informal meetings with any Permitting Authority in connection with the Property in order to determine whether such Authority would support a variation in terms of the design and/or construction materials to be used in connection with the Project.

Assignability:

This Offer and the superseding Purchase and Sale Agreement may not be assigned to any party other than a title nominee owned and controlled by Buyer. Any purported assignment in violation of the foregoing shall be a default by Buyer hereunder.

Offer Expiration:

This Offer is good until **5:00 PM Eastern Standard Time**, _____, **20__**, at which time this Offer shall be signed by you, signifying acceptance of this Offer, and returned to Buyer by such date and time, otherwise this Offer shall be considered as rejected.

[the signature page is the next page]

Time is of the essence hereof. Please contact me with any questions. We look forward to hearing from you.

Sincerely,

_____ [type in Buyer Entity]

By: _____

Name:

Title:

ACKNOWLEDGED AND AGREED:

_____ [type in Owner of Record]

By: _____

Name:

Title:

Date: _____

Schedule A

Legal Description

Sample Commercial Purchase and Sale Agreement:

PURCHASE AND SALE AGREEMENT

by

and

between

as "Seller"

and

as "Buyer"

Dated as of

_____, 20__

**PURCHASE AND SALE AGREEMENT
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EXHIBITS

Exhibit A – Legal Description

*To avoid confusion, page numbers correspond to the page numbers within the Boston Bar Association materials, not a stand alone Purchase and Sale Agreement.

PURCHASE AND SALE AGREEMENT

1. IDENTIFICATION OF PARTIES

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is entered into this ___ day of _____, 20__ by and between _____, a _____ company corporation having a principal place of business at _____ ("Seller") and _____, a _____ company, having an address of _____, or its Nominee ("Buyer").

2. DESCRIPTION OF THE PROPERTY

In consideration of the mutual undertakings of the parties set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Seller hereby agrees to sell and convey to Buyer or Buyer's nominee, and Buyer hereby agrees to purchase from Seller, the following real property (hereinafter referred to as the "Property"):

(a) That certain real property located on _____ in _____, Massachusetts, containing approximately _____ acres (more or less) being tax lots _____ (and having the following addresses in the tax records of the City of _____: _____) and further described on Exhibit A, attached hereto and incorporated herein by reference (the "Land"), together with all building, structures and improvements now thereon, and the fixtures belonging to Seller and used in connection therewith (collectively, the "Improvements"), and subject to an existing lease with _____ (the "Lease");

(b) All right, title and interest in and to any and all tangible and intangible personal property, including, without limitation, all furniture, fixtures, fittings, apparatus, appliances, equipment and machinery and other articles of personal property located on, attached to, appurtenant to or used or usable in connection with any part of the Land and/or Improvements, but specifically excluding any personal property of the tenant under the Lease (collectively, the "Personal Property"); and

(c) All right, title, interest, privileges, easements, and appurtenances if any, to the Land and/or Improvements, including, without limitation, all development rights, air rights, mineral, mining and water rights, leases, licenses, certificates of occupancy, permits and approvals, all warranties and guaranties, any security deposits under the Lease, and all easements, rights-of-way, and other appurtenances used or connected with the beneficial use or enjoyment of the Land and/or Improvements, including, but not limited to, access to a public way.

3. THE PURCHASE PRICE

The purchase price of the Property is _____ Dollars (\$_____.00) (the "Purchase Price") and shall be paid to Seller by Buyer as follows:

(a) Upon execution of this Agreement by all parties, Buyer shall deposit in escrow, in a non-interest bearing account, with _____ (the "Escrow Agent") an earnest money deposit in the amount of _____ Dollars (\$_____.00) (the "Initial Deposit"). Within two (2) business days after the expiration of the Due Diligence Period, Buyer shall make an additional deposit in the amount of _____ Dollars (\$_____.00) (the "Additional Deposit"), to be held upon the same terms as the Initial Deposit. The Initial Deposit and Additional Deposit are hereafter referred to as the "Deposit." In the event the purchase and sale of the Property is consummated as contemplated hereunder, the Deposit shall be paid to Seller and credited against the Purchase Price. In the event the purchase and sale of the Property is not consummated because of the failure of any Condition Precedent, hereinafter defined, the Deposit plus all interest accrued thereon shall be refunded immediately to Buyer. In the event the purchase and sale of the Property is not consummated because of a default under this Agreement on the part of Buyer, the Deposit shall be immediately paid to and retained by Seller pursuant to Section 13.

(b) The balance of the Purchase Price shall be paid to Seller by certified or bank cashier's check or by confirmed federal funds wire transfer of immediately available funds at the Closing, hereinafter defined, net of all prorations as provided herein.

4. DUE DILIGENCE; DELIVERIES; REVIEW PERIOD

(a) Delivery of Documents. As of the date of this Agreement, Seller has caused to be delivered to Buyer copies of plans, surveys, environmental site assessments, engineering studies, property condition reports, leases, lease amendments, tax information, title insurance policies, warranties, current tax bills, water & sewer bills, certificate(s) of occupancy, rent history and other documents relevant to the condition or operation of the Property in Seller's immediate possession. Buyer agrees not to disclose such information to other persons except Buyer's lenders, consultants, employees and other persons engaged by Buyer to assist in evaluating the Property or the Property Information, or to assist in the permitting process, all of whom shall agree, as a condition for their receipt of such information, to similarly keep same confidential.

(b) Examination of Property Conditions. Buyer and its representatives shall have the right, at all mutually agreeable reasonable times, and from time to time, but only in the presence of Seller or its designated agents and subject to rights of the existing tenant, to enter onto the Property for all reasonable purposes including without limitation, for the purposes of making engineering studies, conducting environmental studies, site planning, collecting information for permitting purposes and making general inspections. Seller will reasonably cooperate with Buyer to assist Buyer in gaining such access. All work shall be at Buyer's sole expense and sole risk. Buyer shall be responsible for immediate restoration of the Property substantially to its condition prior to making such inspections, tests and studies, etc. Should Buyer fail to restore the Property substantially to its original condition, after seven (7) days written notice to Buyer of such failure, Seller may (but shall not be obligated to) access escrowed funds for such work (and must produce receipts to Buyer for all work done), which escrowed amounts shall not limit Buyer's liability for restoration costs and damages hereunder. In the event Seller accesses escrowed funds for such restoration work, Buyer shall promptly restore the Deposit held by

Escrow Agent to the full amount required hereunder. Buyer agrees to indemnify, defend and hold Seller harmless with respect to any losses, claims, damages or injuries resulting from any actions hereunder of Buyer, or its employees, agents, contractors or invitees. Buyer shall verify that any party entering onto the Property hereunder is adequately and fully insured, and upon request shall provide evidence of same to Seller for Seller's approval.

In the event that Buyer's inspection of the Property discloses the existence of violation of safety, health, wetland, environmental, zoning and building laws, and Buyer notifies Seller in writing of same prior to the expiration of the Due Diligence Period (as defined below), then Seller shall use reasonably diligent efforts (not requiring however the expenditure of more than \$_____) to remove such violations on or before thirty (30) days following the expiration of the Due Diligence Period. Notwithstanding the foregoing, if (a) in Seller's reasonable judgment, such violation(s) cannot be cured with the expenditure of \$_____, or (b) compliance with such laws is the obligation of the tenant in possession under the Lease, then, in either case, Seller shall not be obligated to cure the same, but shall notify Buyer, whereupon Buyer may elect to proceed with the purchase of the Property without reduction to the Purchase Price, or terminate this Agreement, such election to be made within seven (7) days of receipt of Seller's notification.

(c) Title. At Buyer's sole cost and expense, Buyer shall conduct such examination of title to the Property, obtain such surveys of the Property and obtain such commitments for title insurance for the Property as it shall desire. Buyer shall notify Seller in writing (the "Title Notice") prior to the expiration of the Due Diligence Period, as defined below, which exceptions to title as shown on the title commitment (including any monetary liens or mortgages encumbering the Property (collectively "Seller Mortgages") and survey matters), if any, will not be accepted by Buyer. If Buyer fails to notify Seller in writing of its disapproval of any exceptions to title by the expiration of the Due Diligence Period, Buyer shall be deemed to have approved the condition of title to the Property as of the date shown on the title commitment and survey, provided however, that Seller shall in any event be responsible for discharging Seller Mortgages at closing. If Buyer notifies Seller in writing that Buyer objects to any exceptions to title, Seller shall use reasonably diligent efforts not requiring, however, the expenditure of more than \$_____ (in addition to Seller Mortgages however, as to which no monetary limit shall apply) to remove such objectionable exceptions from title on or before thirty (30) days following the expiration of the Due Diligence Period.

If, despite such reasonably diligent efforts, Seller is unable to remove such objectionable exceptions, or if Seller reasonably determines that such objections cannot be cured with the expenditure of \$_____ (in which case, Seller shall not be obligated to cure the same, but shall notify Buyer), then Buyer may nevertheless proceed with the purchase and take title to the Property subject to such exceptions (other than Seller Mortgages) without reduction to the Purchase Price, or terminate this Agreement. If Buyer elects to terminate this Agreement pursuant to the foregoing provisions of either Section 4(b) and/or Section 4(c), then all deposits made by Buyer shall forthwith be refunded, and thereupon this Agreement shall be void, and neither party shall have any further rights or obligations hereunder (except for Buyer's indemnity obligations pursuant to the provisions of Section 4(b)) and each party shall bear its own costs incurred hereunder. Notwithstanding the foregoing, all Seller Mortgages of which Seller was notified as provided above and all Seller Mortgages granted after the date hereof shall be paid

and discharged at the Closing by Seller to the extent necessary to release the Property from the lien thereof, provided that the recording of discharges of same may be made in accordance with the provisions of paragraph 8 hereof.

Buyer's acceptance of title shall be limited to matters of record existing and properly recorded prior to date of Buyer's title commitment. Buyer hereby agrees to accept title (and a title insurance commitment and policy) subject the Lease. If any nonmonetary encumbrance, involuntary monetary encumbrance or defect in title arises after the date of Buyer's title commitment, then Seller shall use reasonably diligent efforts (not requiring, however, the expenditure of more than \$_____) to remove such objectionable exceptions from title on or before the Closing, and the date for Closing shall be extended for such period as shall be required to effect such cure, but not beyond thirty (30) days.

(d) Due Diligence Period. Buyer shall have the right, at any time on or before the expiration of thirty (30) days from the date of this Agreement (the "Due Diligence Period"), to complete investigations regarding property conditions, title/survey and environmental conditions; provided, however, that in the event that Buyer is unable to perform the investigation of the property conditions on account of non-cooperation by the tenant under the Lease, the Due Diligence period shall be extended by a period of time equal to the delay caused by tenant's non-cooperation. Buyer shall have the right, at any time prior to the end of the Due Diligence Period, to terminate this Agreement by written notice of termination to Seller for any reason whatsoever, exercisable in Buyer's sole discretion. Any such notice of termination shall be accompanied by copies of all reports obtained by Buyer pertaining to the Property. Upon receipt of such notice by Seller, if any, this Agreement shall terminate, and the Deposit shall be returned to Buyer less any amounts to which Seller is entitled hereunder.

For the purposes of this Agreement, "Hazardous Substances" shall mean all substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "petroleum," "oil," "pollutant," or "toxic pollutant" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 6091, et. seq., the Massachusetts Oil and Hazardous Material Release, Prevention and Response Act, M.G.L. c. 21E, or any other federal, state, or local acts, laws, statutes, ordinances, or bylaws, as amended, or any rules or regulations adopted thereunder (collectively, the "Environmental Laws").

If Buyer does not elect to terminate this Agreement prior to the expiration of the Due Diligence Period, Buyer shall be deemed conclusively satisfied that the title (excluding mortgage liens which shall be, in any event, satisfied at Closing), legal status (including without limitation all permits and approvals relating to the Property) and physical condition (including without limitation the environmental and geotechnical condition) of the Property conforms with all of the requirements of this Agreement, as such title, legal status and physical condition existed at the expiration of the Due Diligence Period, and Buyer acknowledges that the Property shall be sold and conveyed strictly on an "AS IS," "WHERE IS," "WITH ALL FAULTS" basis, without representation, warranty or covenant, express, implied or statutory, of any kind whatsoever by Seller or any person or party on behalf of Seller, except as otherwise expressly set forth in this Agreement.

5. REPRESENTATIONS AND WARRANTIES

(a) Seller's Representations and Warranties. Seller represents and warrants to Buyer that, to the best of Seller's knowledge, without having undertaken any investigations or studies the following matters are true and correct as of the execution of this Agreement and also will be true and correct as of the Closing:

(1) There are no agreements with any third parties except for the Lease between Seller and _____ affecting the Property that will survive the Closing.

(2) All work required to be performed by the Seller under the Lease has been completed and full payment for such work has been tendered. No tenant allowances are due to the tenant pursuant to the Lease (other than such as have been paid in full).

(3) The Lease is the entire agreement between Seller and tenant under such Lease, including all representations and warranties, and there are no other agreements between Seller and such tenant of any kind. Seller has paid in full all obligations for brokerage commissions and finders' fees incurred in entering into the Lease, whether payable before or after Closing. No brokerage commissions or finders' fees are payable upon the renewal of any existing Lease.

(4) All of the due diligence documents referenced in Section 4(a) that have been delivered by Seller to Buyer are true and correct copies in all material respects.

(5) Seller is a _____ company and is qualified to do business in the Commonwealth of Massachusetts; this Agreement has been and all the documents executed by Seller that are to be delivered to Buyer at the Closing will be duly authorized, executed, and delivered by Seller and are, and in the case of documents executed by Seller to be delivered hereunder, will be, legal, valid, and binding obligations of Seller enforceable against Seller in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the right of contracting parties generally), will be sufficient to convey title (if they purport to do so), and do not, and will not at the time of the Closing, violate any provision of any agreement to which Seller is a party or to which it is subject and the execution by Seller does not require any other consent or approval from any individual or company.

(7) Seller has not received any written notice of any action or proceeding (zoning or otherwise) or governmental investigation (including, without limitation, any eminent domain or similar proceeding) pending, or threatened, against or relating to (i) the Property including, without limitation, the tenant under the Lease, (ii) this transaction or (iii) Seller, which would affect the Property after the Closing, nor, is there any basis for such action.

(9) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

(10) Seller has not granted to any person or entity any option or other right to purchase to the Property and no person or entity has any option or other right to purchase the Property.

(11) Seller has not received any written notice from any governmental authority or agency claiming that the Property does not comply with applicable laws, ordinances, rules and regulations, including those relating to hazardous substances, which matter remains uncured.

(12) Seller has received no written notice from any governmental authority or agency of (i) any pending condemnation action with respect to the Property; (ii) any assessments for public improvements against the Property which are unpaid; and/or (iii) any written notice of any proposed increase in the assessed valuation of the Property that would be effective prior to the Closing Date.

(15) To Seller's knowledge, without investigation or inquiry, there are no Hazardous Substances existing on or affecting the Property, and Seller has received no written notice of any pending or threatened proceeding by any governmental authority with respect to any such Hazardous Substances or any written notice of any actual or alleged violation of any federal, state or local environmental law.

(16) Seller is not (i) in violation of any laws relating to terrorism or money laundering, or (ii) among the individuals or entities identified on any list compiled pursuant to Executive Order 13224 for the purpose of identifying suspected terrorists or on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/tllsdn.pdf> or any replacement website or other replacement official publication of such list.

(b) **Buyer Representations and Warranties.** Buyer represents and warrants to Seller that, to the best of Buyer's knowledge, without having undertaken any investigations or studies the following matters are true and correct as of the execution of this Agreement and also will be true and correct as of the Closing:

(1) Buyer hereby represents to Seller that this Agreement has been, and all the documents executed by Buyer which are to be delivered by Buyer to Seller at the Closing will be duly authorized, executed and delivered by Buyer, are, and in the case of the documents to be executed and delivered by Buyer will be, legal and binding obligations of Buyer, enforceable in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally), and do not, and will not at the time of the Closing, violate any provisions of any agreement to which Buyer is a party.

(2) In the event that Buyer nominates an entity to take title to the Property, such nominee is and shall be at the time of Closing, validly existing in a good standing under

the laws of the state in which such entity is formed and, if applicable, shall be qualified to do business as a foreign entity in the Commonwealth of Massachusetts, and is not and shall not be insolvent and that this document will be legally binding on the nominee and that the parties executing any agreement on behalf of the nominee have full authority to do so.

(3) There are no pending, or, to the best of Buyer's knowledge, threatened legal proceedings or actions of any kind or character, adversely affecting the Buyer's ability to complete the Purchase contemplated herein.

(4) Buyer is not (i) in violation of any laws relating to terrorism or money laundering, or (ii) among the individuals or entities identified on any list compiled pursuant to Executive Order 13224 for the purpose of identifying suspected terrorists or on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/tllsdn.pdf> or any replacement website or other replacement official publication of such list.

(c) Survival. All of the representations and warranties of Seller and Buyer set forth in this Section 5 and elsewhere in this Agreement shall be true upon the execution of this Agreement, shall be deemed to be repeated at and as of the Closing Date and shall survive the Closing for a period of _____ (__) months.

6. SELLER'S COVENANTS

Seller covenants that from the date of this Agreement through and including the Closing Date:

(a) Seller shall maintain fire and extended coverage insurance on the Property as presently insured.

(b) Seller shall not agree to any restriction, covenant, easement, taking or other matter affecting the title to the Property, without Buyer's written consent, which Buyer shall not unreasonably withhold or delay.

(c) Seller shall perform all of Seller's obligations as landlord under the Lease and will enforce all of the obligations of the tenant under the Lease.

(d) Seller shall not modify, cancel, extend, renew or otherwise change in any manner any of the terms, covenants or conditions of the Lease or enter into any new leases of space in the Property or any other occupancy agreements affecting the Property, or grant any consent to any matter requiring the consent of Seller under the Lease, each without the prior written consent of Buyer, which consent may be granted or withheld in the sole and absolute discretion of Buyer.

(e) Seller shall not modify, cancel, extend, renew or otherwise change in any manner any of the terms, covenants or conditions of any of contracts affecting the Property or enter into any new agreement affecting the Property without the prior written consent of Buyer, which consent may be granted or withheld in the sole and absolute discretion of Buyer.

(f) Seller shall operate the Property substantially in the same manner as same has been operated prior to the date of this Agreement.

(g) Seller shall maintain the Improvements in good order and repair so that same shall be in the same condition on the Closing Date as it is in on the date of this Agreement, reasonable wear and tear and casualty excepted.

(h) Seller shall cooperate with Buyer in connection with Buyer's due diligence, such cooperation to include such due diligence conducted by Buyer pursuant to Section 4 of this Agreement.

(i) Seller shall terminate all negotiations with any other parties concerning the sale of the Property and Seller shall not show or otherwise offer for sale the Property.

Notwithstanding the foregoing, Seller shall not be responsible for any obligations relating to the Property that are exclusively the responsibility of the tenant under the Lease.

7. CONDITIONS PRECEDENT TO CLOSING

The following shall be conditions precedent (the "Conditions Precedent") to Buyer's obligation to consummate the purchase and sale transaction contemplated herein. The Conditions Precedent are for the benefit of Buyer and Buyer may, at its discretion, waive any or all of such conditions and close title under this Agreement. Each such Condition Precedent must be satisfied, to Buyer's reasonable satisfaction, as of the Closing:

(a) Seller agrees to convey, and Buyer agrees to accept, the Property free of tenants and occupants except for _____, by good and sufficient quitclaim deed (the "Deed") running to the Buyer or Buyer's nominee (which nominee may be, inter alia, an intermediary appointed for the purpose of effectuating a tax deferred exchange pursuant to Section 1031 of the Internal Revenue Code), which Deed shall convey good and clear record and marketable title to the Property, insurable by a nationally recognized title insurer, free from encumbrances, except:

- i. Provisions of existing building and zoning laws;
- ii. Such taxes for the then current tax period and assessments payable in installments as are not due and payable as of the date of the Closing;
- iii. Any liens for municipal betterments assessed after the date hereof;
- iv. Such other restrictions, covenants, agreements and encumbrances of record which Buyer has not disapproved in writing or which Seller is not required to cure in pursuant to Section 4(c) hereof.

(b) Seller shall have delivered to Buyer all documents in its possession to be delivered to Buyer hereunder, on the dates specified in this Agreement.

(c) Seller shall also deliver a current estoppel certificate in a form reasonably acceptable to Buyer executed by the tenant, evidencing that the Lease is in full force and effect, that there are no defaults by either landlord or tenant under the Lease, and certifying the amount of all security deposits, Rent and prepaid Rent paid through the month of the Closing.

(d) Full possession of the Property, free of all tenants and occupants except as provided herein, shall be delivered at the Closing, with the Property then substantially in the same "as is" "where is" condition as it is in on the date of this Agreement, with no material adverse change having occurred in the condition thereof other than reasonable wear and tear or as caused by or arising from Buyer's inspections, tests, studies, etc. pursuant to Section 4 hereunder and in compliance with the provisions of any instrument referred to in Section 7(a).

(e) In any dispute as to the existence or nonexistence of a defect in the title to the Property, and as to all matters relating to acceptable conveyancing practice, the title and practice standards, respectively, formulated by the Real Estate Bar Association of Massachusetts ("REBA") shall be determinative.

8. SELLER'S CLOSING DOCUMENTS

On or before the Closing, Seller shall deliver or cause to be delivered to Buyer the following:

(a) The Deed;

(b) If the Deed refers to a plan necessary to be recorded therewith, the Seller shall deliver such plan with the Deed in form adequate for recording or registration. In addition, if title to the Property is registered, the Deed shall be in form sufficient to entitle the Buyer to a Certificate of Title covering the Property, or any registered land portion thereof, and the Seller shall deliver with the Deed all instruments, if any, necessary to enable the Buyer to obtain such Certificate of Title;

(c) Reasonable proof of the authority of Seller's signatories, in form and substance reasonably acceptable to Buyer's title insurer, including a Massachusetts tax good standing certificate, if required, and resolution of Seller;

(d) Such customary affidavits and indemnities with respect to parties in possession and mechanics liens as Buyer's title insurance company may reasonably require in order to issue title insurance policies without taking exception for so-called mechanics' and materialmen's liens and limiting the exception for parties in possession and such other documents relating to the terms of the transaction as Buyer's lender may customarily and reasonably request;

(e) Certificates of Good Standing of the Seller issued by the Secretary of the Commonwealth of Massachusetts, dated not more than 30 days prior to Closing;

(f) An affidavit certifying that Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code;

(g) The Lease (or an accurate copy thereof) and estoppel/certificate as described in Section 7 (c);

(h) An Assignment of the Lease;

(i) A bill of sale as to Personal Property and/or an assignment of contracts, permits, warranties, guaranties, property documents and other items as described in Sections 2(b) and 2(c);

(j) A certification updating the representations and warranties given by Seller pursuant to Section 5(a) of this Agreement, with qualification if applicable, executed by Seller;

(k) A signed notice to the tenant under the Lease advising of the sale and directing such tenant to make all future rent payments to Buyer; and

(l) Any keys to entrance doors, and equipment and utility rooms located in the Property, which keys shall be tagged for identification if applicable.

To enable Seller to deliver title and possession accordance with this Agreement, the Seller may, at the time of junction at the time of Closing, use the purchase money or any portion thereof to clear title of any encumbrances or interests, provided that all such instruments so procured are recorded simultaneously with a delivery of the deed or arrangements reasonably satisfactory to Buyer's title insurer have been made for subsequent recording thereof, in accordance with REBA Standards.

9. BUYER'S CLOSING DOCUMENTS

On the Closing Date, Buyer shall deliver to Seller:

(a) the Purchase Price, less Deposits previously made in accordance with Section 3 less any amounts of the Deposit released to Seller to restore the Property under Section 4 and not previously restored to the Escrow Agent by Buyer as required under Section 4, and subject to adjustments as provided in Section 10;

(b) an Assumption of Lease (which may be part of the Assignment of Lease referenced in Section 8(h) above);

(c) Certificates of Good Standing of the Buyer issued by the Secretary of the Commonwealth of Massachusetts, dated not more than 30 days prior to Closing; and

(d) reasonable and customary affidavits, certificates and evidence of authority;

(e) an Assumption of Contracts (which may be part of the Assignment of Contracts referenced in Section 8(i) above), if applicable;

(f) A certification updating the representations and warranties given by Buyer pursuant to Section 5(b) of this Agreement, with qualification if applicable, executed by Buyer;

(g) Such other documents as may be reasonably required to effectuate the transactions contemplated by this Agreement and/or to effectuate the closing of the transaction contemplated hereunder.

10. PRORATIONS AND ADJUSTMENTS

To the extent such costs are not the responsibility of the tenant pursuant to the Lease, the following shall be prorated and adjusted between Seller and Buyer as of the day of the Closing, except as otherwise specified; the net of which, shall be paid to the party in whose favor such net apportionment arises:

(a) Water and sewer use charges (if any) shall be apportioned as of the Closing and the net amount shall be added to or deducted from the Purchase Price as the case may be.

(b) Real estate taxes for the then current tax period and other municipal charges, including overdue taxes and assessments, if any, shall be apportioned as of the Closing and the net amount thereof shall be added to or deducted from the Purchase Price, as the case may be. If the amount of such taxes is not known at the Closing, such taxes shall be apportioned on the basis of the taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement. If such proceedings are commenced, the party commencing the same shall give the other party notice thereof, thereafter diligently prosecute such proceedings and not discontinue the same without first giving the other party notice of its intention to do so and a reasonable opportunity to be substituted in such proceedings; and the other party agrees to cooperate in such proceedings without being obligated to incur any expense in connection therewith.

(c) If, on the date hereof, the Land, or any part thereof, shall be or shall have been affected by a betterment or special assessment or assessments by governmental agencies for public improvements, then for the purpose of this Agreement all installments of any such assessment due prior to the Closing Date shall be paid by Seller, and all installments not yet due and payable shall be assumed by Buyer, subject to proration between the parties in the same manner as provided for real estate taxes.

(d) Collected rents shall be apportioned as of the Closing Date. Any rents covering any period prior to the Closing Date which is collected by either party subsequent to the Closing Date shall be duly apportioned upon receipt of same by such party. To the extent that additional rents payable under the Lease are paid in arrears, Seller shall have the right, after the Closing, to seek and obtain reimbursement for any costs for taxes and insurance paid in advance by Seller, and not yet reimbursed by the tenant.

(e) On the Closing Date, Seller shall grant Buyer a credit against the Purchase Price in an amount equal to all security deposits, together with any accrued interest thereon if applicable, concerning the Lease. Seller shall not have the right to draw upon any tenant security deposits under Leases prior to or after the Closing without Buyer's consent, which shall not be unreasonably withheld.

(f) Such other items that are provided herein or are customarily prorated in transactions of this nature shall be ratably prorated.

The terms and provisions of this Section 10 shall survive the Closing for __ months.

11. CLOSING

(a) The purchase and sale contemplated herein shall close (the "Closing") at the offices of _____, Massachusetts 02110 at ten o'clock (10:00) A.M. on the thirtieth (30th) day following the expiration of the Due Diligence Period (the "Closing Date"), or at such other time and place to which Seller and Buyer mutually agree upon in writing. Buyer shall have the right at any time to accelerate the Closing Date upon ten business days' written notice to Seller or such sooner time as the parties may mutually agree in writing. If the Closing Date falls on a day which is a Saturday, Sunday or legal holiday in Massachusetts, then such date automatically will be deemed to fall on the next business day.

(b) If, at the Closing, Seller shall be unable to comply with the provisions of this Agreement, or to give title or make conveyance, or to deliver possession of the Property or satisfy each of the Conditions Precedent, all as stipulated in this Agreement, or if at the time of the delivery of the deed the Property does not conform with the provisions hereof, Seller shall use its reasonable efforts to comply with the provisions of this Agreement, and to remove any defects in title, and to make conveyance, and to deliver possession as provided herein, and to make the Property conform with the provisions hereof, as the case may be, in which event the Closing shall be extended for a period of not more than thirty (30) days upon written notice thereof from Buyer to Seller to clear such issues. For the purposes of this paragraph, the term "reasonable efforts" shall not be deemed to require Seller to expend more than \$_____.00, exclusive of monetary encumbrances with respect to which no monetary limitation shall apply, except to the extent such title defect arises after the date of Buyer's title commitment, in which case, "reasonable efforts" shall not be deemed to require Seller to expend more than \$_____.00, exclusive of monetary encumbrances with respect to which no monetary limitation shall apply. If at the expiration of the extended time Seller shall not have cured the previously existing problem or if Seller reasonably determines that such non-monetary encumbrance cannot be cured with the expenditure of \$_____ so that conveyance can be made in accordance with the terms

of this Agreement, then Buyer shall elect, by giving written notice thereof to Seller two (2) business days before the extended Closing Date, (i) to terminate this Agreement or (ii) to accept the conveyance of the Property on the extended Closing Date, in its then condition, and pay therefor the Purchase Price without deduction. Buyer's failure to give such notice shall be deemed an election not to terminate this Agreement. In the event Buyer elects to terminate this Agreement, Buyer must do so in writing and then this Agreement shall be null and void with no further obligation on the part of either party and the Deposit (less any deductions under Section 4(b)) shall be returned to Buyer.

(c) Notwithstanding the provisions of Section 11(b), Buyer may elect at either the original or extended Closing Date to accept such title as Seller can deliver to the Property in its then condition and to pay Seller the Purchase Price without reduction, in which case, Seller shall convey such title to Buyer, provided that if any portion of the Property shall have been taken by eminent domain, Seller shall pay over or assign to Buyer, at the Closing, all awards recovered or recoverable by Seller on account of such taking, less any amounts reasonably expended by Seller in obtaining such awards, and provided further that if any portion of the Property shall have been damaged by fire or other casualty insured against and not fully restored to its former condition, Seller shall pay over or assign or credit to Buyer, at the Closing, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by Seller for any restoration.

12. CLOSING COSTS

Seller shall pay any deed stamp tax due in connection with the consummation of the transactions contemplated by this Agreement; Buyer shall pay the cost of any title insurance policy. Each party shall bear the expense of its own counsel, and shall pay all other closing costs for which such party is customarily responsible in Massachusetts.

13. DEFAULT

In the event Buyer defaults in performance under this Agreement, then the Deposit shall be forthwith paid to and retained by Seller as liquidated damages and shall be Seller's sole remedy at law or in equity. The parties hereto expressly agree and acknowledge that Seller's actual damages in the event of default by Buyer would be extremely difficult or impracticable to ascertain and that the amount of liquidated damages provided herein is reasonable in light of anticipated loss caused by such a default and the difficulties of proof of loss.

In the event Seller defaults in its performance under this Agreement (including, without limitation, a default hereunder based on breach by Seller of any of its representations and warranties contained herein that is discovered prior to the Closing), then Buyer, in addition to any other remedy available at law or in equity, may either:

(a) terminate this Agreement by notice given to Seller, whereupon the entire Deposit shall be refunded to Buyer, plus Seller shall reimburse Buyer for Buyer's reasonable out-of-pocket costs incurred in connection with this Agreement, including, without limitation, costs for title, due diligence inspections and studies, and reasonable attorneys' fees, and upon such refund

and reimbursement (provided, however, that Seller shall not be responsible for Buyer's out-of-pocket costs that exceed \$_____), no party hereto shall have any rights or obligations hereunder; or

(b) bring an action against Seller to seek specific performance of Seller's obligations hereunder and recover Buyer's reasonable attorney's fees and costs associated therewith.

14. BROKER'S COMMISSION

(a) Seller represents and warrants that no brokerage commission, finder's fee or other compensation is due or payable by reason of Seller's actions in the transaction contemplated hereby other than a commission of ___% of the Purchase Price to _____ as agreed to by the Seller and _____ in a separate agreement, but only if, as and when the Deed has been recorded and the full purchase price has been paid therefor. Seller agrees to indemnify and hold Buyer harmless from and against any losses, damages, costs and expenses (including without limitation reasonable attorneys' fees) incurred by Buyer by reason of any breach or inaccuracy of the representation and warranty contained in this Section 14(a).

(b) Buyer represents and warrants that Buyer has not entered into any agreement or incurred any obligation which might result in the obligation to pay any brokerage commission, finder's fee or other compensation with respect to the transaction contemplated hereby, except as provided in the immediately preceding Section 14(a). Buyer agrees to indemnify and hold Seller harmless from and against any losses, damages, costs and expenses (including without limitation reasonable attorneys' fees) incurred by Seller by reason of any breach or inaccuracy of the representation and warranty contained in this Section 14(b).

The terms and provisions of this Section 14 shall survive the Closing.

15. CONDEMNATION AND CASUALTY

In the event that, prior to Closing, the Property, or any part thereof, is destroyed or damaged such that Buyer's estimate of the cost to repair such destruction or damage reasonably exceeds Two Hundred Thousand Dollars (\$200,000.00), or if condemnation proceedings are commenced against any portion of the Property, Buyer shall have the right, exercisable by giving notice of such decision to Seller within ten (10) days after receiving written notice of such damage, destruction or condemnation proceedings, to terminate this Agreement, in which case the Deposit and any interest accrued thereon shall be returned to Buyer and neither party shall have any further rights or obligations hereunder, other than rights and obligations that expressly survive the termination of this Agreement. If Buyer elects to accept the Property in its then condition, all proceeds of insurance or condemnation awards payable to Seller by reason of such damage, destruction, or condemnation shall be paid or assigned to Buyer, less any amounts reasonably expended by Seller for any partial restoration, plus an amount equal to any deductible under any applicable insurance policy, upon payment to Seller of the Purchase Price. In the event that the cost to repair the destruction or damage to the Property is equal to or less than Two Hundred Thousand Dollars (\$200,000.00) and Seller is unwilling or unable to repair or replace same, Buyer shall accept the Property in its then condition and proceed with the purchase as herein provided, in which case Buyer shall be entitled to

a reasonable reduction of the Purchase Price to the extent that the cost of repairing such damage or replacing the damaged property (to the extent that such repair or replacement is not complete as of Closing) exceeds the amount of any insurance proceeds plus the amount of any applicable deductible or condemnation awards paid to Buyer by Seller

16. MISCELLANEOUS

(a) Each individual and entity executing this Agreement hereby represents and warrants that he or it has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf he or it is executing this Agreement to the terms hereof.

(b) This Agreement is the entire Agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements between the parties with respect to the matters contained in this Agreement. Any waiver, amendment, modification, consent or acquiescence with respect to any provision of this Agreement or with respect to any failure to perform in accordance therewith shall be set forth in writing and duly executed by or on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

(c) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Agreement attached thereto.

(d) Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Agreement.

(e) Any communication, notice or demand of any kind whatsoever which either party may be required or may desire to give to or serve upon the other shall be in writing and delivered by personal service (including express or courier service) or by registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transfer, with confirmation of delivery or by a national overnight delivery service, addressed as follows:

Seller:

with a copy to:

Buyer:

with a copy to:

Any party may change its address for notice by written notice given to the other in the manner provided in this subsection. Any such communication, notice or demand shall be deemed to have been duly given or served on the date personally served, if by personal service, or on the date shown on the return receipt or other evidence of delivery or date of refusal, if mailed, delivered or sent by electronic facsimile. All notices pursuant to this Agreement from Buyer to Seller or from Seller to Buyer will be effective if executed by and sent by their respective attorneys.

(f) Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but, if any provision of this Agreement shall be invalid or prohibited thereunder, such invalidity or prohibition shall be construed as if such invalid or prohibited provision had not been inserted herein and shall not affect the remainder of such provision or the remaining provisions of this Agreement.

(g) The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto for any reason, including, without limitation, by virtue of the fact that it may have been drafted or prepared by counsel for one of the parties, it being recognized that both Buyer and Seller have contributed materially and substantially to the preparation of this Agreement. Section and Paragraph headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement.

(h) Buyer acknowledges that Buyer has not been influenced to enter into this transaction, nor has Buyer relied upon any warranties or representations, not set forth or incorporated in this Agreement or previously made in writing.

(i) This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and to their respective transferees, successors, and assigns.

(j) The parties mutually agree to execute and deliver to each other, at the Closing, such other and further documents as may be reasonably required by counsel for the parties and Buyer's lender to carry into effect the purposes and intents of this Agreement, provided such documents are customarily delivered in real estate transactions in Massachusetts, are reasonably

acceptable to counsel for the parties, and do not impose any material obligations upon any party hereunder except as set forth in this Agreement.

(k) Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the parties hereto partners or joint venturers, or to render either party liable for any of the debts or obligations of the other, it being the intention of the parties merely to create the relationship of Seller and Buyer with respect to the Property to be conveyed as contemplated hereby.

(l) The acceptance of a deed by Buyer or its nominee, as the case may be, shall be deemed to be full-performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

(m) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal by their duly authorized representatives as of the day and year first above written.

SELLER: _____

By: _____

Name:

Title:

BUYER: _____

By: _____

Name:

Title:

EXHIBIT A
LEGAL DESCRIPTION

Sample Residential Purchase and Sale Agreement:

PURCHASE & SALE AGREEMENT

Dated as of the _____ day of October, 2013

1. PARTIES AND MAILING ADDRESSES:

Seller: Tom Thumb and Louisa Thumb of 32 Horseshoe Drive, Milton, MA 02110, hereinafter called the SELLER, agrees to SELL and

Buyer: Peter Rabbit and Susan Rabbit of 32 Commonwealth Street, Milton, MA 02134 hereinafter called the BUYER, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

2. DESCRIPTION

All that certain parcel of land with the buildings thereon situated at 32 Horseshoe Drive Milton, Norfolk County, Massachusetts being all more particularly described in deed recorded with Norfolk County Registry of Deeds in Book 4329, Page 6 and containing 8,300 square feet of land, more or less.

3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES

Included in the sale as a part of said premises the buildings, structures, and improvements now thereon and the fixtures belonging to the SELLER and used in connection therewith, including, if any, all wall-to-wall carpeting, drapery rods, automatic garage door openers, venetian blinds, window shades, screens, screen doors, storm windows and doors, awnings, shutters, furnaces, heaters, heating equipment, stoves, ranges, oil and gas burners and fixtures appurtenant thereto, hot water heaters, plumbing and bathroom fixtures, garbage disposals, electric and other lighting fixtures, mantels, outside television antennas, fences, gates, trees, shrubs, plants, and, refrigerator, air conditioning equipment, ventilators, dishwasher, washing machine and dryer.

4. TITLE DEED

Said premises are to be conveyed by good and sufficient quitclaim deeds running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven (7) days before the deed is to be delivered as herein provided, and said deed shall convey good and clear record and marketable title thereto, free from encumbrances, except

- (a) Provisions of existing building and zoning laws;
- (b) Existing rights and obligations in party walls which are not the subject of written

- agreement;
- (c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
- (d) Any liens for municipal betterments assessed after the date of this agreement; and
- (e) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the current use of said premises as a single family residence.

5. PLANS

If said deeds refer to a plan necessary to be recorded therewith the SELLER shall deliver such plan with the deed in form adequate for recording or registration.

6. REGISTERED TITLE

Not Applicable

7. PURCHASE PRICE

The agreed purchase price for said premises is Six Hundred Forty-five Thousand and 00/100 (\$645,000.00) Dollars

\$ 1,000.00	have been paid as a binder with the Offer;
\$ 31,250.00	have been paid as a deposit this day;
<u>\$ 612,750.00</u>	are to be paid at the time of delivery of the deed by wire transfer, or by certified or cashier's check or attorney's conveyancing account check
\$ 645,000.00	TOTAL

8. TIME FOR PERFORMANCE; DELIVERY OF DEED

Such deed is to be delivered at 12:00 P.M. on the 18th day of November, 2013 at the Norfolk County Registry of Deeds, or at the office of Buyer's lender's counsel, provided said office is located within Norfolk County, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement.

9. POSSESSION AND CONDITION OF PREMISES

Full possession of said premises free of all tenants and occupants is to be delivered at the time of the delivery of the deed, said premises to be then (a) in the same condition as they now are, reasonable use and wear thereof excepted, and (b) not in violation of building, zoning, health and environmental laws, and (c) in compliance with provision of any instrument referred to in clause 4 hereof. Dwelling shall be "broom clean", free from trash, debris and personal property not included in the sale. The BUYER shall be entitled personally to inspect said premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.

10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM

If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of the delivery of the deed the premises do not conform with the provisions hereof, the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the time for performance hereof shall be extended for a period of not more than thirty (30) days as specified in a notice given to BUYER provided such extension does not exceed the expiration of BUYER's mortgage loan commitment. SELLER's reasonable efforts shall not exceed the sum of \$5,000 including attorneys' fees but exclusive of liens and encumbrances.

11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, etc.

If at the expiration of the extended time the SELLER shall have failed to so remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, or if at any time during the period of this agreement or any extension thereof, the holder of a mortgage on said premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

12. BUYER'S ELECTION TO ACCEPT TITLE

The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said premises in their then condition and to pay therefor the purchase price without deduction, in which case the SELLER shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the said premises shall have been damaged by fire or casualty insured against, then the SELLER shall, unless the SELLER has previously restored the premises to their former condition, either:

- (a) pay over or assign to the BUYER on delivery of the deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by the SELLER for any partial restoration; or
- (b) if a holder of a mortgage on said premises shall not permit the insurance proceeds or a part thereof to be used to restore the said premises to their former condition or to be so paid over or assigned, give to the BUYER a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage less any amounts reasonably expended by the SELLER for any partial restoration.

13. ACCEPTANCE OF DEED

The acceptance and recording of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

14. USE OF MONEY TO CLEAR TITLE

To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed or, in the case of institutional mortgages, arrangements for subsequent recording are made in accordance with customary conveyancing practice.

15. INSURANCE

Until the delivery of the deeds, the SELLER shall maintain insurance on said premises as follows:

<i>Type of Insurance</i>	<i>Amount of Coverage</i>
(a) Fire and Extended Coverage	\$ as presently insured

Risk of Loss to remain with Seller until deed is recorded.

16. ADJUSTMENTS

Water and sewer use charges, real estate taxes for the current fiscal year shall be apportioned and fuel value adjusted, as of the day of performance of this agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the BUYER at the time of delivery of the deed.

17. ADJUSTMENT OF UNASSESSED AND ABATED TAXES

If the amount of said taxes is not known at the time of the delivery of the deeds, they shall be apportioned on the basis of the taxes assessed for the preceding fiscal year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement unless herein otherwise agreed.

18. BROKER'S FEE

A Broker's fee for professional services of five percent (5%) of the purchase price is due from the SELLER to Century 21 and Hammond Residential, the Brokers herein but only if, as and when the deed is recorded and proceeds paid to SELLER and not otherwise.

19. BROKER(S) WARRANTY

The Broker(s) named herein, Century 21 and Hammond Residential warrant that the Broker(s) is/are duly licensed as such by the Commonwealth of Massachusetts.

20. DEPOSIT

All deposits made hereunder shall be held in escrow by Century 21, as escrow agent subject to the terms of this agreement and shall be duly accounted for at the time for performance of this agreement. In the event of any disagreement between the parties, the escrow agent shall retain all deposits made under this agreement pending instructions mutually given by the SELLER and the BUYER or an order of court of competent jurisdiction.

21. BUYER'S DEFAULT; DAMAGES

If the BUYER shall fail to fulfill the BUYER's agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages and this shall be SELLER's sole remedy at law or in equity.

22. RELEASE BY HUSBAND OR WIFE

Not applicable

23. BROKER AS PARTY

The Broker(s) named herein join in this agreement and become a party hereto, insofar as any provisions of this agreement expressly apply to the Broker(s), and to any amendments or modifications of such provisions to which the Broker(s) agree in writing.

24. LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, etc.

If the SELLER or BUYER executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

25. WARRANTIES AND REPRESENTATIONS

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representation not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representation, if any made by SELLER or the Broker(s): **NONE**

26. MORTGAGE CONTINGENCY CLAUSE

In order to help finance the acquisition of said premises, the buyer shall apply for a conventional bank or other institutional mortgage loan of no more than \$510,000 at prevailing rates, terms and conditions. If, despite the BUYER's diligent efforts, a commitment for such loan cannot be obtained upon or before 5:00 P.M. on November 5, 2010, the BUYER may terminate this agreement by written notice to the SELLER or Seller's attorney prior to the expiration of such time, whereupon any payments made under this agreement shall be forth with refunded and all other obligations of the parties hereto shall cease. In this agreement shall be void without recourse to the parties hereto. In no event will the BUYER be deemed to have used diligent efforts to obtain such commitment unless the BUYER submits a complete mortgage application and forming to the foregoing provisions on or before 2 business days after the execution of this agreement.

27. CONSTRUCTION OF AGREEMENT

This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be cancelled, modified or amended only by a written instrument executed by both the SELLER and the BUYER. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or be used in determining the intent of the parties to it.

28. LEAD PAINT LAW

The parties acknowledge that, under Massachusetts law, whenever a child or children under six years of age resides in any residential premises in which any paint, plaster or other accessible material contains dangerous levels of lead, the owner of said premises must remove or cover said paint, plaster or other materials so as to make it inaccessible to children under six years of age.

29. SMOKE AND CARBON MONOXIDE DETECTORS

The SELLER shall, at the time of the delivery of the deed, deliver a certificate from the fire

department of the town of picking him stating that said premises have been equipped with approved smoke and carbon monoxide detectors in conformity with applicable law.

30. **ADDITIONAL PROVISIONS**

See Rider A and B Attached

BUYER:

SELLER:

**RIDER “A” TO PURCHASE AND SALE AGREEMENT
TOM THUMB AND LOUISA THUMB (“SELLER”)
AND
PETER RABBIT AND SUSAN RABBIT (“BUYER”)**

31. TITLE

Notwithstanding anything herein contained, the Premises shall not be considered to be in compliance with the provisions of this Agreement with respect to title unless:

- (a) the Premises abuts a public way, duly laid out or accepted as such by the town or city in which the Premises are located;
- (b) no buildings, structures, improvements, or property of any kind encroaches upon the Premises from other premises; and
- (c) title to the Premises is insurable, for the benefit of the BUYER, by a title insurance company, in a fee owner’s policy of title insurance at normal premium rates, in the American Land Title Association form currently in use, subject only to those printed exceptions to title normally included in the “jacket” to such form or policy and to those exceptions referenced in Paragraph 4 of this Agreement.

32. CLOSING CONDITIONS

The SELLER shall provide or execute any documents reasonably required by the BUYER’s mortgagee or mortgagee’s attorney, or by BUYER’s attorney, including without limitation:

- (i) an affidavit and indemnity to the BUYER and to the BUYER’s mortgagee and/or title insurance company (if requested) that there are no parties in possession at the Premises (other than as stated herein), and that no work has been done on the Premises which would entitle anyone to claim a mechanic’s lien or to file a notice of contract relating to the Premises.
- (ii) an affidavit furnishing the information required for filing of IRS Form W-8 or W-9 as applicable and 1099’s with the Internal Revenue Service.
- (iii) a non-foreign seller affidavit and
- (iv) such other documents and certificates as the BUYER’s attorney or mortgagee’s attorney shall reasonably require or which are otherwise usual and customary in similar transactions.

33. INDEMNIFICATION

The BUYER and SELLER represent and warrant to each other that neither party has

contacted any real estate broker in connection with this transaction and neither was directed to the other as a result of any services or facilities of any real estate broker except for the Brokers named herein. The BUYER and SELLER agree to indemnify the other against and to hold each other harmless from any claim, loss, damage, cost or liability for any brokerage commission or fee which may be asserted in connection with this transaction. The provisions of this paragraph shall survive delivery of the deed or earlier termination of this Agreement.

34. NOTICES

All notices required or to be given hereunder shall be deemed to have been duly given, if in writing and either hand delivered, mailed by registered mail, return receipt requested, all charges prepaid, or sent via Federal Express or other overnight delivery service, addressed to BUYER or SELLER at their respective addresses designated below,

Seller's Attorney:

Buyer's Attorney:

35. ACCESS

From and after the date of this Agreement, at SELLER's convenience and upon reasonable notice, SELLER agrees and permits BUYER and their designees reasonable access at reasonable times to the Premises for the purpose of making measurements and the like, all with 24 hour notice and in the presence of Seller's authorized agent(s).

36. COUNTERPARTS

For the convenience of the parties, this Agreement may be executed in multiple counterparts by one or more parties hereto and all of such original executed counterparts when taken together shall be, and shall be deemed to be, an original instrument. Facsimile or other electronically transmitted signatures shall be fully binding.

37. CONVEYANCING STANDARDS

Any title matter or conveying practice which is the subject of a title standard or practice of the Real Estate Bar Association at the time of delivery of the deed shall be governed by said title standard or practice to the extent applicable.

38. EXTENSIONS OF PERFORMANCE

In order to facilitate the execution of such documents extending the time for the performance of any event that may occur under this Agreement, each of the undersigned hereby authorizes his or her respective attorney to assent and execute on his or her behalf any agreements extending the time for the performance of any event or of any notice that may be given under this Agreement.

39. HAZARDOUS MATERIALS

Seller represents, to the best of their knowledge and belief, that there are no underground oil tanks or hazardous materials on the premises.

40. REPAIRS

Seller shall undertake the following repairs in a good and workmanlike manner, prior to the closing, at Seller's sole cost and expense:

- a. plumbing in downstairs bathroom to be repaired
- b. old heat exchange tank in basement to be removed
- c. Seller shall provide Buyer with a \$500 credit at closing in lieu of repair or replacement of dishwasher

BUYER:

SELLER:

RIDER B
PURCHASE AND SALE AGREEMENT

The following paragraphs of the Standard Form Purchase and Sale Agreement are hereby amended as follows:

4. DEED, TITLE.

and provided such easements, restrictions and reservations of record do not prohibit the construction of improvements on any unimproved portion of the Premises.

16. ADJUSTMENTS.

Unless paid by SELLER by separate check, there shall be deducted from the balance due SELLER at the Closing the following:

- (a) Massachusetts and any county deed excises;
- (b) Balance of brokerage fees due from SELLER;
- (c) Cost of recording discharges and releases of monetary encumbrances and any title curative documents;
- (d) Amounts required to discharge outstanding mortgages as of the next business day after the later of the Closing or the deed to BUYER is recorded; and
- (e) Lender's or BUYER's attorney's fee for procuring discharges of outstanding mortgages.

21. BUYER'S DEFAULT DAMAGES. SELLER and BUYER hereby agree that the deposit hereunder, being \$32,250.00, is a reasonable forecast of SELLER's losses that would result if BUYER were to breach this Agreement, which losses could result from SELLER'S inability to resale the Premises for the same agreed purchase price due to any number of presently undeterminable factors.

26. MORTGAGE CLAUSE CONTINGENCY. For the purpose of Paragraph 26, the term "commitment" shall mean a financing commitment not conditioned upon any item outside BUYER's reasonable control. In no event shall a commitment subject to an appraisal be deemed a "commitment."

In addition to the Standard Form Purchase and Sale Agreement, the following additional provisions are incorporated in by reference:

41. CONDITIONS. It shall also be a condition of BUYER's obligation to purchase the Premises that at the Closing:

(a) all appliances and systems in the Premises are in in the same condition as at the time of Buyer's inspection;

(e) no portion of the Premises is subject to (i) General Laws, Chapter 131, Sections 40 and 40A, relative to the filling, dredging or alteration of wetlands, (ii) zoning provisions, ordinances or regulations of the municipality relative to wetlands, flood plains, watershed districts or similar classifications, (iii) zoning provisions, ordinances or regulations of the municipality relative to conservation, land preservation or similar classifications, and (iv) zoning provisions, ordinances or regulations of the municipality relative to historic district restrictions or similar restriction;

(f) the Premises comply with applicable zoning, building and subdivision laws and regulations without variance, special permit or nonconforming use exception; and

(g) BUYER can obtain an owner's policy of insurance insuring title to said Premises in BUYER, free from encumbrances except as set forth in Clause 4 of this Agreement and for standard exceptions and other exceptions, including but not limited to takings, assessments and orders, as are routinely taken in ALTA Owner's policies, issued by a title insurance company qualified to do business in Massachusetts.

It is agreed that in the event of a title matter for which a title insurance company is willing to issue a so-called "clean" policy or provide "affirmative coverage" over a known defect or problem, BUYER may elect to accept same but shall not be required to do so, and shall have the right, at the option of their counsel, to deem title to the premises unacceptable or unmarketable and to terminate this Agreement.

42. PREMISES COMPLIANCE. Notwithstanding anything herein contained, the Premises shall not be considered to be in compliance with the provisions of this Agreement with respect to title unless:

(a) all buildings, structures and improvements, including but not limited to, any driveways, garages and cesspools or leaching fields, and all means of access to the Premises, shall be located completely within the boundary lines of the Premises and shall not encroach upon or under any property of any other person or entities.

43. MAINTENANCE OF PREMISES. Between the date hereof and the Closing SELLER shall maintain and service the Premises and its appurtenances at the same or greater level of effort and expense as SELLER has maintained or serviced the Premises for SELLER's own account prior to this Agreement, maintaining and landscaping the grounds, the lawn and the sprinkler system, if any

44. PENDING LITIGATION OR OTHER ACTIONS AFFECTING PREMISES. SELLER represents that SELLER is not aware of any unresolved litigation or pending or ongoing regulatory hearings or actions which could affect the Premises, and SELLER agrees to keep BUYER informed, by notice given pursuant to this Agreement, of any such litigation, hearings or actions, whether scheduled, anticipated, or in progress.

45. STATUS OF "OFFER TO PURCHASE REAL ESTATE." Upon the execution and delivery of this Agreement by SELLER and BUYER, all previous agreements between BUYER and SELLER in connection with the Premises, including the "Offer to Purchase Real Estate:" executed by BUYER and dated October 5, 2010, shall be void and without recourse to the parties thereto and hereto, it being the intention of the parties that the terms and conditions of this Agreement shall fully and completely supersede all of the terms and conditions of the said "Offer to Purchase Real Estate."

46. ADDITIONAL CLOSING CONDITIONS. It shall be a condition of BUYER's obligations to close, and of which conditions BUYER shall be free to waive in its sole discretion, that on the Closing:

(a.) SELLER shall not be in default in the performance of any covenant or agreement to be performed by SELLER under this Agreement;

(b.) All representations and warranties made by SELLER contained in Paragraph 46 of this Agreement shall continue to be true and correct in all material respects;

(c.) The Premises shall be free and clear of any tenants or occupants.

It shall be a condition of BUYER's obligation to close under this Agreement that all warranties and representations made by SELLER hereunder shall be true (subject to exceptions thereto approved by BUYER in writing such approval to be in BUYER's sole discretion) as of the time of closing.

47. **SATURDAY, SUNDAY, OR HOLIDAYS/EXTENSIONS.** If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed or by which the Closing must be held expires on a Saturday, Sunday, federal holiday or legal bank holiday in the state where the Premises are located, then such time period shall be automatically extended to the close of business on the next business day.

48. **Outstanding Mortgage Details.** The mortgage(s) currently encumbering the premises are listed herein. The SELLER authorizes counsel for the BUYER's lender (or counsel for the BUYER if a cash transaction) to obtain payoff information respecting such mortgage(s) (if none, so state).

Name of Lending Institution: _____
Loan/Account Number _____
Telephone Number _____

49. **ASSIGNMENT OF WARRANTIES:** SELLER agrees to assign to BUYER at the closing all warranties, guarantees or the like, if any, concerning the premises and its construction and the appliances and mechanical systems contained therein from all contractors, suppliers or manufacturers furnishing the same to the extent the same are assignable and at no cost to sellers.

50. **SELLER'S REPRESENTATIONS:** The SELLER represents, and by virtue of and at the time of the delivery of the Deed shall be deemed to have repeated the following representations:

- a. To the best of the SELLER's knowledge and belief the building are not located within a federally designated flood zone.
- b. SELLER warrants and represents that to the best of their knowledge they are the record owners of the premises.
- c. SELLER has complete and unencumbered ownership of all fixtures, fittings and equipment located in the Premises;
- d. There is no pending bankruptcy filed by the SELLER;
- e. SELLER represents that SELLER has no knowledge of any municipal betterments affecting the Premises approved, pending, proposed or contemplated by the Town of Needham which is likely to result in an assessment against the Premises;
- f. That at the time of the Closing, there will be no contracts, oral or in writing, involving the Premises which will be binding upon BUYER or affect the Premises in any manner;

51. Subject to BUYER's lender obtaining an appraisal equal to or greater than the purchase price stated in Paragraph 7 of this Agreement.

52. CONFLICT: In the event of a conflict between the provisions of this Rider and those in the printed form Purchase and Sale Agreement, this Rider shall govern.

*****PARAGRAPH 52 IS THE LAST PARAGRAPH OF THIS RIDER*****

SELLER

SELLER

BUYER

BUYER

Dated: October _____, 2010.

Sample Closing Information Sheet:

CLOSING INFORMATION SHEET

SELLER:

ADDRESS:

SELLER'S
ATTORNEY:

BUYER:

BUYER'S
ATTORNEY:

CLOSING
ATTORNEY ?

LENDER

DATES: P&S by April 13, extended to May 3
Financing May 30
Closing June 14

SALE PRICE: \$178,000
Deposit - \$1000 with Offer, \$4000 with P&S

BROKERS: William Raveis Realty

Sample Closing Checklist:

CLOSING CHECKLIST

TOM THUMB AND LOUISE THUMB (SELLER)

PETER RABBIT AND SUSAN RABBIT (BUYER)

	Document	Date	Responsible Party	Comments
1	Offer to Purchase		Broker	
2	Purchase and Sale Agreement		Seller	
3	Engagement Letter with Client		Atty	
4	Deed from Seller		Seller's Atty.	
5	Commitment Letter from Lender		Lender	Reviewed by buyer's atty
6	Mortgage Payoff Letters		Seller	To be ordered by seller and provided to lender's attorney
7	Municipal lien certificate		Lender's atty	
8	Title Search		Lender's atty	
9	Plot Plan		Lender's atty	
10	1099S		Seller's atty	
11	FIRPTA		Seller's atty	
12	Limited Power of Attorney to Represent Seller at Closing (REBA Form)		Seller's atty	
13	Title Insurance Affidavit		Lender's atty	
14	Smoke Detector Certificate		Broker	
15	Final Water Reading		Broker	
16	Oil Tank Reading and evidence of price per gallon		Broker/Seller	
17	Wire Instructions in writing		Seller	
18	Keys, garage door openers, manuals, etc. etc.		Seller	