

**Sample Buyer Biased Purchase and Sale Agreement**

**REAL ESTATE PURCHASE AND SALE  
AGREEMENT**

**by and between**

**as "Seller"**

**and**

**as "Buyer"**

**Dated as of**

**Counsel for Buyer:**

**Counsel for Seller:**



# **REAL ESTATE PURCHASE AND SALE AGREEMENT**

THIS AGREEMENT ("Agreement"), made and delivered as of \_\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_, with its principal place of business at \_\_\_\_\_, (the "Seller") and, \_\_\_\_\_ (the "Buyer").

## **SECTION 1. Select Definitions**

As used in this Agreement, the following select terms shall have the meanings set forth below. Other terms are defined within the text of this Agreement.

1.1 "**Agreement**" means this Real Estate Purchase and Sale Agreement between Buyer and Seller.

1.2 "**Closing**" means the date, time and place fixed by this Agreement in for transfer of title to the Premises and payment of the Purchase Price.

1.3 "**Days**" or "**Day**" means calendar days and includes Saturday, Sunday and any Holiday. For purposes of counting days in this Agreement, the terminal days shall be excluded. For example, if this Agreement establishes a date which is five (5) days following a particular date (i.e. January 1), the fifth (5th) day following January 1 shall be January 7 since the first and last (or terminal days) are not counted. Where performance is required by a particular date, performance shall be deemed to have occurred if completed by 11:59 p.m. on such date unless otherwise specified in this Agreement.

1.4 "**Deed**" means the deed referred to in Section 8.

1.5 "**Deposit**" means the Initial Deposit and the Second Deposit together with all interest earned thereon. Except as otherwise provided herein to the contrary, the Deposit shall be applied as a credit against the Purchase Price at time of Closing.

1.6 "**Environmental Conditions**" means circumstances with respect to soil, surface waters, groundwaters, stream sediment, air and similar environmental media, both on-site and off-site of the Premises owned and/or operated by Seller, that could require remedial action and/or that may result in claims and/or demands by and/or liabilities to third parties, including, but not limited to governmental entities.

1.7 "**Environmental Compliance Liability**" means any or all environmental permits, approvals, consents, stipulations, licenses, registrations, certificates and authorizations which are required by law, ordinance and regulation and any and all environmental regulatory compliance requirements applicable to the Premises which may result in claims and/or demands by and/or liabilities to third parties including, but not limited to, governmental entities.

1.8 **"Environmental Laws"** means any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, Hazardous Materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental, health, safety, building, land use, and local government concerns as may now or at any time hereafter be in effect. Such laws include, but are not limited to, the Resource Conservation and Recovery Act ("RCRA"), the Superfund Amendments and Reauthorization Act, the Occupational Safety and Health Administration and Regulations, Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Federal Insecticide Fungicide and Rodenticide Act, the Clean Water Act, the Safe Drinking Water Act, and the Title 22a of the Connecticut General Statutes as any of the same may be amended from time to time.

1.9 **"Hazardous Material"** means any petroleum, petroleum products, fuel oil, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

1.10 **"Leases"** means the written or oral leases of portions or all of the Premises as described in Section 5.35 and set forth on the Rent Roll.

1.11 **"Notice"** means any summons, citation, directive, order, claim, litigation, pleading, investigation, proceeding, judgment, letter or any other written or oral communication from the United States Environmental Protection Agency ("USEPA"), Connecticut Department of Environment Protection, or any other federal, state or local agency or authority, or any other entity or any individual, concerning any intentional or unintentional act or emission which has resulted in or which may result in the Release of any Hazardous Material into the environment including, the surface water, groundwater, soil, air or other environmental media, or other violation or alleged violation of environmental laws and shall expressly include the imposition of any lien pursuant to any federal, state or local environmental laws, ordinances or regulations.

1.12 **"Premises"** means the real property consisting of all those certain pieces or parcels of land ("Land"), together with all buildings and improvements located thereon and all appurtenances thereto, commonly known as \_\_\_\_\_, all as more particularly described on the attached Exhibit A. The term Premises shall include, without limitation, all Land and real estate, all rights of Seller in and to all roads, alleys, easements, streets and ways adjacent to the Land; all strips and gores and rights of ingress and egress thereto; all improvements, structures and fixtures now or hereafter placed or

constructed or installed upon the Land; all equipment, furnishings, machinery, materials, inventories, supplies and other tangible personal property, placed or installed on or about the Land and owned by Seller or used as part of or in connection therewith; all the right title and interest of the landlord under the Leases (as hereinafter defined), and all guarantees therefor and all security deposits therefor, together with all the right title and interest of the landlord under any Leases, subleases and other rental agreements, written or oral, now or hereafter in affect with respect to the Land and all security deposits, if any held in connection therewith, and all guaranties therefor; any and all service or other contracts and agreements relating to the subject improvements (to the extent requested by Buyer) all certificates of occupancy, warranties, guarantees, permits, licenses and bonds relating to the subject premises or the operation, ownership or management thereof; any and all site plans, surveys, soil and subterranean studies, architectural drawings, plans and specifications, engineering plans and studies, landscape plans, environmental reports and other plans or studies of any kind in Seller's possession or available to Seller that relate to the subject premises and all right, title and interest of Seller in and to any tradenames associated with the subject premises. All machinery and equipment used in connection with the operation of the Premises shall be included with the sale of the Premises.

**1.13 "Purchase Price"** means the total sum due Seller as defined in Section 4 of this Agreement, subject to adjustment as provided in this Agreement.

**1.14 "Release"** means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, ejecting, escaping, leaching, disposing, seeping, infiltrating, draining or dumping. This term shall be interpreted to include both the present and past tense, as appropriate.

**1.15 "Rent Roll"** means the listing of Tenants and other data required pursuant to Section 5.35 of this Agreement.

**1.16 "Site Remediation Measures"** means any efforts of federal, state or local government, or Seller, or Buyer, their contractors, subcontractors, or agents, which are made, designed, initiated, or maintained to ensure that Environmental Conditions are consistent with Environmental Laws or to mitigate Existing Environmental Compliance Liability, and may include, without limitation, investigation, site monitoring, containment, clean up, transport, removal, disposal, restoration and other remedial efforts of any kind.

**1.17 "Tenants"** means the present occupants and Leases of the Premises as described in Section 5.35 and set forth on the Rent Roll.

## **SECTION 2. Agreement of Buyer and Seller.**

**2.1 Agreement.** The Seller agrees to sell, and the Buyer agrees to purchase, the Premises in accordance with the terms and conditions of this Agreement.

### **SECTION 3. Date and Place of Closing.**

**3.1 Date, Time and Location.** Transfer of title to the Premises and payment of the Purchase

Price (the "Closing") shall occur on that date which is forty five (45) Days following the date hereof at 10:00 am \_\_\_\_\_ local time), at the offices of Buyer's counsel \_\_\_\_\_ located in \_\_\_\_\_ or at such other location as Buyer's mortgage lender, if any, shall require. Notwithstanding the preceeding, the Buyer shall have the right to postpone the Closing one or more times for up to a maximum postponement period of thirty (30) Days upon (i) notice to Seller of Buyer's election to postpone, together with a one time additional Deposit of Fifty Thousand (\$50,000) Dollars to be held by the Escrow Agent in like manner to that of the Initial Deposit of Fifty Thousand (\$50,000) Dollars and (ii) a waiver by Buyer of the Evaluation Contingency as though the time to terminate pursuant to the terms thereof had passed without Buyer terminating this Agreement.

### **SECTION 4. Purchase Price and Manner of Payment.**

**4.1 Purchase Price.** Buyer shall pay to Seller as full consideration for the Premises the total sum of Eight Million Two Hundred Thousand (\$8,200,000) Dollars ("Purchase Price"), Seven Million Seven Hundred Thousand (\$7,700,000) Dollars of which is intended to pay off the existing loans from \_\_\_\_\_ to Seller.

**4.2 Manner of Payment.** Subject to such adjustments as are provided for under this Agreement, Buyer shall pay the Purchase Price to Seller as follows:

**4.2.1 Initial Deposit.** Buyer has paid to Escrow Agent concurrent with Buyer's execution and delivery of this Agreement, an initial deposit of Fifty Thousand (\$50,000) Dollars and Seller and Escrow Agent acknowledge receipt of the Initial Deposit.

**4.2.2 Second Deposit.** Buyer shall pay to Escrow Agent only if Buyer shall elect to postpone the Closing as permitted hereinabove, a second deposit of Fifty Thousand (\$50,000) Dollars.

**4.2.3 Balance Due.** The sum of Eight Million One Hundred Fifty Thousand (\$8,150,000) Dollars (or Eight Million One Hundred Thousand Dollars if Buyer shall have made the Second Deposit), constituting the balance of the Purchase Price ("Balance Due"), shall be paid to Seller at time of Closing by direct deposit of immediately available U.S. Dollars in account or accounts of Seller, or in account of Seller's attorney, or in account of a third party, as directed by Seller in writing prior to the time of Closing.

#### **4.3     Escrow.**

**4.3.1   Designation of Escrow Agent.** Buyer and Seller agree that \_\_\_\_\_ shall be the escrow agent under this Agreement ("Escrow Agent").

**4.3.2   Terms and Conditions of Escrow.** All Deposits paid pursuant to this Agreement shall be held and disbursed pursuant to the provisions of the Escrow Agreement attached hereto as Exhibit B. All interest earned thereon shall be added to and follow the Deposit. If the Deposit shall be credited against the Purchase Price, the interest earned thereon shall likewise be a credit against the Purchase Price.

#### **SECTION 5.   Representations and Warranties of Seller.**

To induce Buyer to enter into this Agreement, Seller represents and warrants to and covenants with Buyer that:

##### **With Respect to Seller and the Transaction.**

**5.1     Incorporation.** Seller's general partner has been duly incorporated, duly organized and is validly existing as a corporation in good standing under the laws of the State of Tennessee.

**5.2     Formation.** Seller has been formed and exists as a limited partnership under the laws of the State of Tennessee.

**5.3     Partners.** The general partner of Seller is \_\_\_\_\_.

**5.4     Power and Authority.** Seller and its general partner have full power and authority to execute and deliver this Agreement and perform all of their obligations under this Agreement.

**5.5     Due Authorization.** This Agreement has been duly authorized, executed and delivered by Seller and its general partner and constitutes a legal, valid and binding agreement of Seller, enforceable against Seller in accordance with its terms.

**5.6     Regulatory Consent.** All regulatory consents, authorizations, approvals and filings required of Seller by any federal, state or local law, rule or regulation for the execution and delivery of this Agreement and the performance of Seller's obligations herein have been obtained or made except for those expressly set forth herein as being required to be obtained or performed subsequent to the execution and delivery of this Agreement.

**5.7 Regulatory Compliance.** The execution and delivery of this Agreement by Seller and the performance by Seller of its obligations herein and contemplated hereby do not violate any present Federal, State or local law, rule or regulation, the provisions of Seller's partnership agreement, charter or bylaws (as applicable) or conflict with or result in a breach of the provisions of, or constitute a default under any indenture, franchise, permit, license, note, agreement or other instrument to which Seller is a party or by which Seller may be bound or result in the creation or imposition of any lien, charge or encumbrance upon the Premises to be conveyed pursuant to this Agreement.

With Respect to Title.

**5.8 Record Title.** Seller is the sole owner of the Premises.

**5.9 Condition of Title.** Except for the matters set forth on Exhibit C, the "Permitted Title Exceptions", Seller has good and marketable, indefeasible, absolute fee simple title to the Premises free and clear of all defects, security interests, liens, encumbrances, easements, covenants, restrictions, reservations, conditions, encroachments, and any other matters or defects whatsoever. Seller agrees to deliver fully-executed, valid, binding and enforceable releases of lien for those items identified on Exhibit C as "To Be Released".

**5.10 Matters of Survey.** Except as disclosed on Schedule 5 hereto, to the best of Seller's knowledge and belief, no state of facts exist which would be revealed by a careful inspection or survey of the Premises and which would affect the condition of title as described above.

**5.11 Separate Parcels.** The parcels of land that constitute the Premises are each separately assessed and identified parcels for purposes of real estate taxation and land use laws (including, without limitation, subdivision and zoning laws) and can be conveyed by Seller as a unit by one deed. No subdivision or other land use approval is required to convey the Premises as contemplated by this Agreement.

**5.12 Public Access.** The Premises has unlimited contiguous access to and from publicly dedicated streets without crossing lands owned or controlled by others, and, Seller has no responsibility for maintenance of such streets. Seller has no knowledge of any pending changes to such streets, including, without limitation, modification to size, location, grading and paving, expansion or extension.

With Respect to the Condition of the Premises.

**5.13 Condition of Buildings and Improvements.** Except as disclosed on Schedule 5 hereto, to the best of Seller's knowledge and belief, the buildings and improvements upon the Premises are structurally sound and in good condition. No water leakage exists in the basement or through the roof or elsewhere. All known defects have been disclosed to Buyer by Seller in writing on Schedule 5 attached hereto.



**5.14 Systems.** Except as disclosed on Schedule 5 hereto, to the best of Seller's knowledge and belief, the systems and appliances serving the Premises, including, and without limitation, mechanical, HVAC, electrical, plumbing and elevator are in good operating condition and all known defects have been disclosed to Buyer in writing in Schedule 5.

**5.15 Public Utilities.** Adequate supplies of all public utilities, including without limitation water, sewer, gas, electric, telephone and drainage facilities and other utilities required by law or by the normal use and operation of the Premises are installed to and connected with the Premises pursuant to valid permits, and are adequate to serve the Premises and to permit full compliance with all requirements of law and normal usage of the Premises by the occupants thereof and their licensees and invitees. No such utilities cross the property of adjoining landowners, and no utilities serving adjoining land cross the Premises. Any deposits associated with any utilities are disclosed on Exhibit D attached hereto.

**5.16 Condition of Public Water.** No problems have been experienced by Seller nor is Seller aware of any problems with the water delivered to the Premises.

**5.17 Condition of Public Sewer.** No problems have been experienced by Seller nor is Seller aware of any problems with the disposal of sewage from the Premises.

**5.18 Insect Infestation.** Seller has not experienced, nor is Seller aware of, any insect infestation of or insect damage to the Premises.

**5.19 Illegal Uses.** Except as disclosed on Schedule 5 hereto, to the best of Seller's knowledge and belief, the Premises have not been used in connection with the sale of illegal drugs or narcotics.

**Legal Issues Affecting the Premises.**

**5.20 Taxes.** Except as disclosed on Schedule 5, there are no unpaid taxes, interest or penalties which are or could become a lien on the Premises, and there is no basis for a deficiency assessment with respect to federal income tax returns or other tax returns filed by Seller which could adversely affect the Premises. All real estate taxes will be paid current by Seller as of the time of Closing. Seller will pay or cause to be paid in full when due all federal, state, local and foreign income tax or other taxes of Seller which may in any way affect the Premises. There are no pending or threatened liens or assessments affecting the Premises except for assessments or liens for real property taxes not yet due and payable which shall be adjusted at the Closing pursuant to this Agreement.

**5.21 Tax Bills.** Attached as Exhibit E are Photostatic copies of all of the current real estate and personal property tax bills with respect to the Premises. Such bills cover the whole of the Premises and personal property do not cover or apply to any other property.

**5.22 Contracts Affecting Premises.** The Premises is not subject to any purchase contract, option, lease, occupancy arrangement, management agreement, construction contract, or other contract or arrangement except as set forth on the attached Exhibit F (Contracts) and Exhibit J (Rent Roll). There has been no claim of default under such by any party thereto other than defaults that have been cured. All sums due and payable to the date hereof under said contracts (exclusive of Leases) have been paid in full.

**5.23 Permits.** The attached Exhibit G is a correct and complete list of all permits, approvals, licenses, certificates or other instruments which are needed or required in connection with the ownership and occupancy and the present use and operation of the Premises and have been issued to and fully paid for by Seller and are in full force and effect. Except as disclosed on Schedule 5 hereto, to the best of Seller's knowledge and belief, there are no facts presently in existence, or which would, with the passage of time, constitute a violation of the terms of such instruments or of any applications or agreements made in connection therewith.

**5.24 Compliance Issues.** Except as disclosed on Schedule 5 hereto, to the best of Seller's knowledge and belief, the licenses, qualifications, permits, franchises, zoning variances and other governmental approvals and authorizations, if any, obtained by Seller, each of which is described on Exhibit G attached to this Agreement, constitute all such approvals and authorizations necessary for the use of the Premises as presently conducted; all are in full force and effect; no violations thereof exist or have been reported; no proceeding is pending or, to the best of Seller's knowledge, threatened, nor do any state of facts exist which could, with the passage of time, result in the revocation or a limitation thereof; and all such licenses, qualifications, permits, franchises, zoning variances and other governmental approvals and authorizations may and will be effectively transferred or assigned to Buyer on or at the Closing without affecting operation or the Premises after the Closing.

**5.25 Certificate of Occupancy.** The Photostat copies of the Certificates of occupancy attached hereto as Exhibit H are all of the Certificates of Occupancy needed for the Premises as of the date hereof and constitute true and complete copies of such Certificates of Occupancy. No application is pending to amend such Certificates of Occupancy, and there are no pending proceedings, nor has Seller received notice of any threatened proceeding, to cancel or revoke such Certificates of Occupancy. Except as disclosed on Schedule 5 hereto, to the best of Seller's knowledge and belief, no state of facts exist which presently, or would with the passage of time, constitute a violation of any conditions set forth on such Certificates of Occupancy.

**5.26 Zoning.** The present zoning classification of the Premises is \_\_\_\_\_. Such zoning classification and all other applicable land use laws permit the use of the Premises for the purposes for which it is presently used.

**5.27 Flood and Inland Wetland Zones.** The Premises are not located in a flood or inland wetland zone.

**5.28 Legal Compliance.** Except as disclosed on Schedule 5 hereto, to the best of Seller's knowledge and belief, the Premises and the present and past uses thereof and all present and past operations therein are and were in full compliance with all building and fire codes, environmental, zoning and land use laws, the Americans with Disabilities Act, and all other local, state and federal laws, rules and regulations applicable to the Premises or the uses thereof. Seller has no knowledge of any condemnation, environmental, zoning, land use, or other proceedings, either instituted or planned to be instituted, which would affect the use and operation of the Premises as they are presently used or the value of the Premises, nor has Seller received any notice of any special assessment proceedings affecting the Premises. Seller has no notice of any governmental body, or other party claiming or requiring, or calling attention to the need for, any work, repairs, construction, alterations or installation on or in connection with the Premises, which has not been complied with.

**5.29 Insurance.** Seller has not received any notice or request from any insurance company issuing policies with respect to the Premises, or from any applicable Board of Fire Underwriters (or any organization exercising functions similar thereto) requiring or recommending the performance of any work or alteration with respect to the Premises, or any part thereof, which has not been performed by Seller, as a condition to the continuation or reissuance of such issuance at the current rates or canceling or threatening to cancel any of said policies.

**5.30 Litigation.** There is no (i) action, dispute, claim, litigation, proceeding, labor dispute, arbitration, investigation or other proceeding at law or in equity pending or, to the best of Seller's knowledge, threatened against Seller with respect to the Premises or otherwise relating to the transactions contemplated by this Agreement, and Seller neither knows nor has reasonable grounds to know of any basis for any such action relative to the Premises or the Personal Property; and (ii) there are no decrees, injunctions or orders of any court or governmental department or agency outstanding against Seller with respect to the Premises or the Personal Property.

**With Respect to Environmental Matters.**

**5.31 Permits.** Seller has obtained all necessary permits, consents, licenses, certificates, approvals, registrations, and authorizations ("Permits") which are required by law, ordinance and regulation from all governmental entities having jurisdiction over the Seller's properties, including, but not limited to, all discretionary permits, consents and approvals required in connection with environmental matters. Each of the Permits is in full force and effect, renewal has been applied more than 180 days in advance of all expiration dates, and Seller is in compliance with all obligations, restrictions or requirements thereof. A listing of all such Permits and the relevant expiration dates are provided in Exhibit G. The existing Permits do not call for the expenditures of funds and Seller shall be responsible for any such expenditures if they exist.

**5.32 New Permits.** Seller has applied for, or is in the process of applying for, all Permits specified in Exhibit G identified as "Applied For". Seller shall be responsible for the costs and expenses, including but not limited to, administrative, consulting, engineering and legal fees, associated with processing these Permits. Seller shall also be responsible for the expenditures required to purchase and install any equipment, machinery or other environmental controls required to meet the requirements of such Permits.

**5.33 Compliance.** Except as disclosed on Schedule 5 hereto, to the best of Seller's knowledge and belief, Seller has been and is in compliance with and has no liability or obligation arising under applicable federal, state and local laws pertaining to air and water quality, solid waste, hazardous materials, worker and community right-to-know, Hazardous Material communication, toxic substance control, radioactive material management and disposal and any other Environmental Laws, and the Seller has not received any Notice from any applicable governmental agency seeking any information or alleging any violation of such Environmental Laws.

**5.34 Hazardous Materials/Underground Tanks.** Seller has not caused or permitted any uses of the Premises to be to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process any Hazardous Materials or solid waste, except in compliance with all applicable federal, state and local laws or regulations and has not caused or permitted and has no knowledge of the release of any such Hazardous Materials on-site or off site of the Premises or other Seller's property except as herein disclosed. All plants, buildings or structures owned, leased or used by the Seller and all principal items and machinery and equipment comply with all applicable federal, state and local environmental laws, ordinances, rules and regulations and permits, approvals and consents issued thereunder. With the exception of what is herein disclosed, the Premises do not contain any asbestos or other Hazardous Materials and no such materials are located on, in or under the Premises. The exact location and contents of any underground storage tanks are described on Exhibit I hereof. Any and all underground and above-ground tanks at the Premises are in compliance with any and all regulatory requirements and such requirements do not mandate the removal or retrofitting of such tanks for a period of five years after the Closing date. The removal of any tank has been carried out in compliance with all applicable laws, ordinances and regulations. Except as disclosed on Schedule 5 hereto, to the best of Seller's knowledge and belief, no condition, circumstance, or set of facts constitutes a significant hazard to health, safety, property or the environment for which Seller is or may be liable.

With Respect to Leases.

**5.35 Rent Roll.** Exhibit J attached hereto is a complete, true and accurate rent roll for the Premises as of \_\_\_\_\_, \_\_\_\_ (the "Rent Roll"). The Rent Roll completely and accurately lists: (i) all of the entities or individuals who occupy the Premises (the "Tenants") pursuant to written or oral leases (the "Leases"); (ii) the dates of the Leases; (iii) the monthly rent due under the Leases; (iv) any rent delinquencies under the Leases,

and (vi) the amounts of any security deposits being held by the landlord under the Leases. Attached to the Rent Roll is a breakdown of all anticipated tenant improvement costs for Leases which have been executed and for which the landlord thereunder is bound to incur costs for tenant improvements. Also attached to the Rent Roll is a listing of any prospective tenants that Seller is currently negotiating with, and the base business terms that Seller has presented to such prospective tenants. The term "Rent Roll" includes the attachments thereto.

**5.36 Accuracy of Rent Roll.** All of the information set forth on the Rent Roll is true, accurate, and complete, and Seller is unaware of any pending changes thereto.

**5.37 Security Deposits.** Seller is holding all security deposits of the Tenants in full compliance with \_\_\_\_\_ law and such deposits have been deposited at \_\_\_\_\_ under the account title \_\_\_\_\_.

**5.38 Full Force and Effect.** All of the Leases are in full force and effect, and no defaults exist under the Leases, and except as disclosed on Schedule 5 hereto, to the best of Seller's knowledge and belief, no state of facts exist which, with the passage of time, would constitute an event of default under the Leases. The Tenants have no existing defenses or offsets against the enforcement of the Leases by the Landlord.

**5.39 Rights of Possession.** The Tenants listed on the Rent Roll are the only tenants, individuals or entities with rights to possession or occupancy of the Premises, and the Leases are the only and entire written agreements between Seller, its agents or any predecessor in title to the Premises and such Tenants with respect to the Premises or any rights thereto or therein.

**5.40 Modification.** The leases have not been modified, changed, altered, assigned, supplemented or amended in any respect, except as specifically identified on the Rent Roll.

**5.41 Free Rent.** Except as disclosed on Schedule 5, the Tenants are not entitled to, and the Tenants have made no agreement(s) with the Seller or its agents or employees concerning, free rent, partial rent, rebate of rent payments, credit or offset or deduction in rent, or any other type of rental concession, including, without limitation, lease support payments or lease buy outs.

**5.42 Occupancy.** The Tenants have accepted and now occupy that portion of the Premises described in their Leases, and are and have been open for business since the commencement of their Lease term.

**5.43 No Bankruptcy.** Except as disclosed on Schedule 5 hereto, to the best of Seller's knowledge and belief, no actions, whether voluntary or otherwise, are pending against the Tenants or any general partner of any Tenant under the bankruptcy laws or other insolvency laws or provisions of the United States or any state thereof.

**5.44 No Sub-Tenants.** Except as disclosed on Schedule 5 hereto, to the best of Seller's knowledge and belief, the Tenants have not sublet the Premises to any sublessees and have not assigned any of their rights under the Leases. Except as disclosed on Schedule 5 hereto, to the best of Seller's knowledge and belief, no one except the Tenants occupy the Premises.

**5.45 Use.** Except as disclosed on Schedule 5 hereto, to the best of Seller's knowledge and belief, the use, maintenance or operation of the Premises by Tenants complies with, and will at all times comply with, all applicable federal, state, county or local statutes, laws, rules and regulations including, and without limitation, those relating to environmental, health or safety matters.

**5.46 No Commissions.** No rental, lease, or other commissions are now or hereafter payable to any party with respect to any of the Leases or any prospective leases except as expressly disclosed on Schedule 5. Any commissions due with respect to the sale contemplated herein are disclosed on Schedule 5, and shall be paid by Seller at time of Closing.

**5.47 No Assignment.** Seller has not assigned the rental income or other payments due Seller under the Lease to any person or entity, with the exception of mortgagees disclosed on Exhibit C, whose interest in the Leases will be released at Closing.

**Completeness; Continuing Truthfulness.**

**5.48 Completeness of Representation.** No representation, warranty or statement by Seller contained in this Agreement, or contained in any exhibit, certificate, schedule or other document furnished by Seller to Buyer pursuant hereto or in connection with the transactions contemplated hereby, contains any untrue statement of a material fact or omits to state a material fact necessary to make it, in light of the circumstances which it was made, not misleading, or omits disclosing a material fact.

**5.49 Continuing Truthfulness of Representations.** The representations and warranties of Seller contained herein are true, accurate and complete as of the date hereof and shall remain true, accurate and complete through and including the date of Closing except that if the actions of third parties not within the control of Seller shall, from and after the date hereof, cause such representations and warranties to become inaccurate, Seller shall immediately notify Buyer thereof and Seller shall take reasonable action to resolve such issues prior to Closing, and should Seller be unable to do so prior to Closing, Buyer may, at its option, (i) terminate this Agreement and receive a refund with the Deposit or (ii) cure such problem and the cost thereof shall be a credit against the Purchase Price or (iii) proceed to closing as contemplated herein. The continued truth and accuracy of all representations and warranties and the Premises remaining in their present condition shall, at Buyer's election, be a material precondition to Buyer's obligation to perform under this Agreement.

**SECTION 6 Employees.** There are no persons employed or engaged by Seller in connection with the management, operation or maintenance of all or any portion of the Premises except as set forth on Exhibit K, which exhibits states the name, social security number, job description, salary, benefits (of all kinds, direct and indirect) and length of service of each employee relative to the Premises or its management or operation. There is no union or collective bargaining agreement in effect relating to any employee, and Seller knows of no attempts where efforts to organize any of the employees. Seller has carried all necessary worker's compensation insurance with respect to all employee's up to the Closing date, has filed all tax returns and other required filings and has withheld and paid all amounts required to pay by law to be held in respect thereof. Seller shall terminate all employees prior to the Closing of it and shall assist Buyer in meeting with all such employees in connection with re-employment by the Buyer. Buyer shall have no obligation to rehire any employees.

**SECTION 7 Representations and Warranties of Buyer.**

To induce Seller to enter into this Agreement, Buyer represents and warrants to Seller that:

**With Respect to Buyer and the Transaction.**

**7.1 Incorporation.** Buyer has been duly organized and validly exists as a limited liability company in good standing under the laws of the State of Connecticut

**7.2 Power and Authority.** Buyer has full power and authority to execute and deliver this Agreement and all other documents contemplated by this Agreement, to perform all of its obligations under this Agreement, and to take such other actions as may be required to consummate the transaction contemplated by this Agreement.

**7.3 Due Authorization.** This Agreement has been duly authorized, executed and delivered by Buyer and constitutes a legal, valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms.

**7.4 Regulatory Consent.** All regulatory consents, authorizations, approvals and filings required of Buyer by any federal, state or local law, rule or regulation for the execution and delivery of this Agreement and the performance by Buyer of its obligations herein have been obtained or made except for those expressly set forth herein as being required to be obtained or performed subsequent to the execution and delivery of this Agreement.

**7.5 Regulatory Compliance.** The execution and delivery of this Agreement by Buyer and the performance by Buyer of its obligations herein and contemplated hereby do not violate any present Federal, State or local law, rule or regulation, the provisions of Buyer's partnership agreement, charter or bylaws (as applicable) or conflict with or result in a breach of the provisions of, or constitute a default under, any indenture,

franchise, permit, license, note, agreement or other instrument to which Buyer is a party or by which Buyer may be bound.

**7.6 Litigation.** There is no (i) action, dispute, claim, litigation, proceeding, labor dispute, arbitration, investigation or other proceeding at law or in equity pending or, to the best of Buyer's knowledge, threatened against Buyer with respect to the transactions contemplated by this Agreement, and Buyer neither knows nor has reasonable grounds to know of any basis for any such action; and (ii) there are no decrees, injunctions or orders of any court or governmental department or agency outstanding against Buyer with respect to the transaction contemplated hereby.

Completeness of Representations.

**7.7 Completeness of Representations.** No representation, warranty or statement by Buyer contained in this Agreement, or contained in any exhibit, certificate, schedule or other document furnished by Buyer to Seller pursuant hereto or in connection with the transactions contemplated hereby, contains any untrue statement of a material fact or omits to state a material fact necessary to make it, in light of the circumstances in which it was made, not misleading.

**SECTION 8. Sellers Covenants.**

Seller hereby covenants and agrees to and with Buyer that:

**8.1 Maintain Existence.** Seller shall, between the date hereof and time of Closing, preserve and maintain its existence as a limited partnership consistent with the representations and warranties set forth above.

**8.2 Maintain Premises.** Seller shall maintain the Premises in the same condition it is on the date hereof throughout the term of this Agreement except for such modifications as may be approved by Buyer in a signed writing.

**8.3 Continued Accuracy of Representations.** Seller shall take no action nor permit any action or omission which may alter the continued complete accuracy of Seller's representations and warranties as contained herein. Seller shall take all actions, at its sole cost and expense, to maintain the continued truth and accuracy of Seller's representations and warranties contained herein.

**8.4 No Violations.** Seller and the Premises are not and shall not be at time of Closing in violation of, or in default with respect to, (1) any order, writ, injunction, judgment or decree of any court or federal, state, or local government instrumentality issued or pending against Seller or the Premises, (2) of any restrictive covenant or encumbrance recorded upon the land records and applicable to the Premises, or (3) any federal, state or local law, rule or regulation, or (4) any Leases.



**8.5 No Further Encumbrance.** Seller shall not further encumber, or give, grant or convey any easements, leases, licenses or other interests in and to, the Premises or Seller's rights and obligations therein or under this Agreement. Seller shall not enter into any new agreements or leases with respect to the Premises, shall not alter or modify any existing contracts or Leases and shall comply with all of its obligations under all such contracts and Leases.

**8.6 Suffer No Land Use Changes.** Seller shall not initiate or affect any zoning, subdivision or other land use changes to the Premises.

**8.7 Closing Obligations.** At Closing, Seller shall deliver the following to Buyer:

**8.7.1 Warranty Deed.** A fully executed Connecticut Statutory form of Warranty Deed conveying good and marketable fee simple title to the Premises subject only to the Permitted Title Exceptions, exclusive of those Permitted Title Exceptions identified on Exhibit C as "To be Released". Seller shall deliver, at Closing, all releases and evidence of authority necessary to deliver title as required herein.

**8.7.2 Warranty Bill of Sale.** A fully executed warranty bill of sale conveying all and exclusive right, title and interest in and to the personal property free and clear of all encumbrances, liens and interests whatsoever.

**8.7.3 Service Contracts.** The effective assignment of all service contracts which Buyer elects by notice to Seller to assume and the effective assignment, transfer and conveyance of all other assets to be transferred as contemplated herein.

**8.7.4 Title Certificates.** Certifications signed by Seller affirming the absence of (a) mechanics' and materialmen's liens on the Premises and that no work has been performed or materials supplied within the Ninety (90) day period preceding the Closing (or unconditional and properly executed lien waivers of the same in lieu thereof, where applicable), and (b) rights of tenants or other parties in possession of the Premises (other than the Tenants pursuant to the Leases), each in a form acceptable to Buyer's title insurance company, and such other documents executed in such form as Buyer's title insurance company and Buyers Lender shall reasonably require.

**8.7.5 Foreign Investment for Real Property Tax Act.** Affidavits signed by Seller in the form required by law in order to avoid withholding of a portion of the Purchase Price (or Buyer shall withhold a portion of the Purchase Price in accordance with law) in compliance with the Foreign Investment In Real Property Tax Act.

**8.7.6 1099 Informational Filing.** Affidavits signed by Seller in compliance with the informational reporting requirements of Internal Revenue Code § 6045 and the regulations promulgated thereunder. Seller's Buyer's Buyer's Lender's counsel shall be designated by the parties as the party responsible for reporting this

transaction as required by the provisions of Internal Revenue Code Section 6045 and the regulations promulgated thereunder.

**8.7.7 Exclusive Possession.** Actual and exclusive possession and occupancy of the Premises, free of all leases, tenancies and other parties in possession and rights of others resulting from or relating to present or former rights to tenancies or possession except for the Tenants under the Leases, and in broom-clean, good and operating condition, free of all trash and any other personal property except as expressly permitted herein.

**8.7.8 Opinion of Counsel.** If required by the Title Insurance Company, the legal opinion of \_\_\_\_\_, an attorney authorized and admitted to practice law in the State of Connecticut, affirming that the representations and warranties of Seller set forth in Sections 5.1, 5.2, 5.4 and 5.5 hereof were at the time of execution of this Agreement and throughout the term hereof, and are as of the time of Closing, true, complete, accurate and correct.

**8.7.9 Brokers Commission.** A receipt signed by the real estate brokers and agents involved in the transaction indicating that they have been paid in full.

**8.7.10 Assignment of Lease.** A warranty assignment of Leases and security deposits executed by Seller effectively assigning all of the Leases, security deposits and rental income to Buyer as of the date of the Closing (the "Assignment of Leases").

**8.7.11 Tenant Estoppel Certificates.** Tenant Estoppel Certificates, in the form attached hereto as Exhibit L, executed by each Tenant listed on the Rent Roll (the "Tenant Estoppel Certificates"). Copies of all such certificates, fully-executed by the Tenants, shall be delivered to Buyer prior to the Evaluation Contingency Date with originals delivered at Closing. Buyer shall also have the right to require all Tenants to execute and deliver subordination agreements, and the satisfactory execution and delivery of all such instruments shall be a condition to Buyer's obligation to close (waivable by Buyer).

**8.7.12 Title and Lender Documents.** Such other documents as Buyer's lender, if any, or title insurance company shall reasonably require..

**8.7.13 General Assignment.** A blanket conveyance, bill of sale and assignment conveying and assigning to Buyer all other assets contemplated under this Agreement to be transferred to Buyer, in form and substance satisfactory to Buyer.

**8.7.14 Certificate.** A certificate executed by or on behalf of the Seller and dated as of the closing date, indicating that there are no unpaid debts in regard to the Premises and wherein Seller shall agree to indemnify and hold the Buyer harmless from and against any costs, loss, liability or expense arising under such unpaid debts.

**8.7.15 Evidence of Authority.** Evidence acceptable to Buyer's Title Insurance Company authorizing the consummation by Seller of the Purchase and Sale transaction contemplated hereby and execution and delivery of the closing documents on behalf of the Seller, and properly evidencing the legal existence of Seller.

**8.7.16 Keys and Tenant Information.** All keys to all locks on the Premises in the possession of Seller and all documents in the possession of the Seller pertaining to the Tenants including but not limited to the original Leases, applications, correspondence and credit reports and any and all combinations to any safes and access to all security systems.

**8.7.17 Rent Roll.** An updated Rent Roll dated as of closing.

**8.7.18 Other Documents.** Such other instruments and documents as necessary or appropriate in order to complete the Closing of the transactions.

## **SECTION 9. Deed, Permitted Title Exceptions and Defects.**

**9.1 Condition of Title.** Seller shall convey good and marketable fee simple absolute record title to the Premises and all personal property subject only to the Permitted Title Exceptions set forth in Exhibit C attached hereto and made a part hereof. Within ten (10) days of the date hereof, Seller shall, at Seller's expense, provide Buyer with a title commitment to issue an Owner's Title Insurance Policy to Buyer with respect to the Premises issued by Connecticut Attorneys Title Insurance Company ("CATIC"), together with copies of all encumbrances identified thereon, as well as a survey of the Premises satisfactory to CATIC and the Buyer.

**9.2 Title Objection.** If a title examination by Buyer discloses that title to the Premises does not conform to the provisions of the first sentence of the preceding paragraph ("Title Objection"), Seller shall use its best efforts with all good faith and due diligence to remove, remedy or comply with such Title Objection, and Seller shall be entitled to an adjournment of the Closing for a period not to exceed thirty (30) Days, or until the expiration date of any written commitment of Buyer's mortgage lender, whichever occurs first, and the Closing date shall be adjourned to a date specified by Seller not beyond such period. If Seller shall not succeed in removing, remedying or complying with such Title Objection as of Closing, or the adjourned Closing, as applicable, Buyer shall have, as Buyer's sole and exclusive remedy, the right and obligation to choose one of the following remedies (none of which shall be exclusive, but may be pursued separately, collectively or consecutively):

**9.2.1 Close Transaction.** Closing the transaction on the terms herein provided and accepting, in full satisfaction of the Seller's obligation with respect to conveying title hereunder, such title to the Premises as the Seller can convey subject to such Title Objection.

**9.2.2 Terminate Agreement.** Terminating this Agreement.

**9.2.3 Declare Seller in Default.** Declaring Seller to be in default of its obligations hereunder, in which case Buyer shall have full right and power to pursue any and all remedies at law or in equity including, and without limitation, the right to receive actual (including, and without limitation, all costs and expenses incurred in connection with this Agreement and transactions contemplated herein) and consequential damages and Buyer's deposit paid hereunder shall be immediately refunded to Buyer together with interest earned thereon.

**9.2.4 Cure Title Objection and Close.** Proceeding to Closing in accordance with the terms of this Agreement, except that if any such Title Objection can be removed, remedied or complied with by payment of a liquidated sum of money, Buyer shall have full right and power to reduce the Purchase Price by such liquidated sum, and upon such reduction in the Purchase Price, Buyer shall accept title subject to such Title Objection or cause such Title Objection to be removed by payment of the liquidated sum or otherwise prior to or simultaneously with the transfer of title.

**9.2.5 Release of Mortgage.** In the event that Seller is unable to deliver a fully executed mortgage release from \_\_\_\_\_ to Buyer at Closing, Buyer shall have the right without limitation to any other rights Buyer may have for a default hereunder, to reduce the Purchase Price by Seven Million Eight Hundred Thousand (\$7,800,000) Dollars and proceed to close in accordance with the term hereof subject to the lien of said mortgage.

**SECTION 10 Destruction and Condemnation.**

**10.1 Destruction and Condemnation.** In the event that any of the buildings or improvements on the Premises are destroyed or damaged, by reason of fire, storm, accident or other casualty and are not restored to their present condition (ordinary wear and tear excepted) prior to the time of Closing, or should all or a part of the Premises be taken by eminent domain, this Agreement may be terminated at the election of the Buyer upon written notice to the Seller at any time prior to the Closing, in which case the Seller shall refund the Deposits made hereunder, whereupon this Agreement shall be deemed terminated and the lien of the Buyer against the Premises shall wholly cease.

Should such election or notice not be made and given, then this Agreement shall remain in full force and effect and Buyer shall receive a credit against the Purchase Price equal to all monies paid or payable by reason of such damage or loss under all insurance policies insuring the Premises and personal property against said loss, or all monies paid or payable for the Premises and the Seller shall further assign and transfer to the Buyer or Buyer's nominee all right, title and interest in and to any additional money that may be payable by reason of such eminent domain proceedings. In addition, Buyer shall receive a credit against the Purchase Price for any deductible under Seller's insurance policy.

**10.2 Insurance.** Seller has no existing insurance policies affecting or relating to the Premises, except as listed and described on Exhibit M hereof. Such insurance covering the Premises and personal property and any liabilities relating thereto is in an amount adequate to repair or restore the Premises and personal property to its present condition if damaged or to cover any potential liability relating to the Premises and personal property or Sellers and Buyers use thereof, and such insurance coverage shall be maintained by Seller through the Closing.

## **SECTION 11. Adjustments.**

**11.1 General Matters.** Adjustment for taxes, assumed mortgage interest, interest on sewer development or other assessments, rents, water charges, fuel oil and the like shall be made as of the time of Closing in accordance with the custom of the Bar Association for the county where the Premises are situated provided that "adjustment" as used herein with respect to real property taxes shall mean that Seller shall be responsible for that proportion of the total tax levied for the municipal fiscal year in which the Closing occurs which the number of days from and including the first day of such fiscal year to and including the day of transfer bears to the total number of days in the fiscal year. Seller shall be responsible for payment in full, without adjustment, of the principal and interest of any other municipal, governmental or public agency assessment levied against the Premises which may be due and payable prior to Closing and shall produce satisfactory evidence of such payment at the Closing.

**11.2 Recording and Miscellaneous Costs.** Buyer shall pay the cost of recording the Deed. Seller shall pay the cost of the title examination and issuance of the title insurance commitment and the preparation of the survey required by Buyer or its lender. Seller shall also pay for the cost of a Phase I environmental assessment prepared by a company selected by the Buyer.

**11.3 Post Closing Adjustments.** All adjustments required after the Closing will be deemed obligations surviving the Closing.

**11.4 Monthly Rents.** Rents which have been collected for the month of the Closing will be prorated at the Closing, effective as of the date of Closing. With regard to rents which are delinquent as of the date of Closing, (i) no proration will be made at Closing, (ii) Buyer will make a good faith effort after the Closing to collect rents in the usual course of Buyer's operation of the Premises, and (iii) will apply all rents collected first to then current rental obligations and then, to the extent of any excess collected, will reimburse Seller for Seller's pro rata portion of such delinquent rents. It is agreed, however, that Buyer will not be obligated to institute any lawsuit or other collection procedures to collect delinquent rents. Seller shall not pursue any Tenant to enforce collection of delinquent rents.

**11.5 Post-Closing Payments.** Seller and Buyer acknowledge that certain Tenants on the Premises may owe payments after the Closing, attributable to percentage rentals, expense escalation reimbursements and common area maintenance

reimbursements. The parties further agree to prorate any such payments, effective as of the date of Closing, as they are received by Buyer after the Closing.

**11.6 Security Deposits.** After the Closing, Buyer will assume full responsibility for all security deposits and advance rental deposits of current Tenants of the Premises as disclosed on the Rent Roll to the extent such items are itemized by Seller and transferred in cash or adjusted for at Closing.

## **SECTION 12. Access to Premises and Records.**

**12.1 Surveys, Explorations, Tests and Governmental Approvals.** Buyer may, at any time and from time to time, between the date hereof and Closing upon notice to Seller (which notice may be oral and given by Buyer or any of its employees, agents or contractors), enter the Premises for the purpose of making surveys, conducting surface and subsurface explorations and investigations, tests and borings and any other tests and/or studies as Buyer shall determine to be desirable, and preparing plans, surveys, plats and other documents, including, and without limitation, (a) obtaining a new survey or recertification of an existing survey, (b) obtaining an environmental engineering study assessing conditions existing at or with respect to the Premises, (c) performing an environmental audit, and (d) performing various engineering studies on the buildings, improvements, infrastructure and equipment and systems therein all at Buyer's sole cost and expense. Seller shall cooperate with Buyer in connection with Buyer's examinations. Notwithstanding the preceeding, the Seller shall pay for the cost of the title search, title insurance commitment, survey and Phase I environmental site assessment; said payment to be made as and when the costs are incurred and regardless of whether or not the Buyer shall consummate the transaction contemplated herein.

**12.2 Failure to Close.** In the event Buyer fails to close the transaction contemplated by this Agreement for any reason other than Seller's default under this Agreement. Buyer shall repair or replace all damage to the Premises caused by Buyer or Buyer's agents in exercising Buyer's rights under this Section 12. Seller shall furnish to Buyer promptly after the date hereof any surveys, maps and other studies and reports pertaining to the Premises which are in the possession of Seller.

**12.3 Indemnity.** Buyer shall indemnify, protect, save and hold forever harmless Seller from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses, including without limitation, court costs and reasonable attorneys' fees and expenses, which Seller may incur, suffer or sustain, as for which Seller may become obligated or liable by reason of:

**12.3.1** Any injury to or death of persons or loss of or damage to property in connection with, or as a result of, any entry or entries upon, or use of, the Premises by Buyer its employees, agents or independent contractors pursuant to this Section 12; and

12.3.2 The performance of any labor or services for the account or benefit of Buyer in respect of the Premises.

12.4 **Reduction and Review of Records and Documents.** Seller shall deliver to Buyer, on or before five (5) Days following the date of this Agreement together with an affidavit certifying that the materials delivered are true, accurate, complete and not misleading:

12.4.1 **Surveys.** Prints of all plats and surveys of the Premises, or portions thereof, in Seller's possession. Seller shall have 10 days to deliver the new survey contemplated hereinabove, but shall deliver any old surveys and plats within the 5 day period.

12.4.2 **Engineering Reports.** Copies of any engineering studies, soil reports, traffic impact studies, building inspection reports, and wetlands and environmental assessments in Seller's possession and relating to the Premises and the buildings and improvements located on the Premises. Seller shall have 10 days to deliver the new Phase I site assessment contemplated hereinabove, but shall deliver any old reports within the 5 day period.

12.4.3 **Permits, Licenses and Approvals.** Copies of all building permits, certificates of occupancy, zoning permits, licenses, and governmental approvals in Seller's possession relating to the Premises, the personal property, the buildings and improvements located on the Premises, and the operation of the Premises.

12.4.4 **Notices of Violation.** Copies of all letters, notices of violation, and other notices for all governmental agencies in Seller's possession and relating to the Premises, the personal property and the buildings and improvements located on the Premises.

12.4.5 **Warranties, Guaranties.** Copies of all warranties and guarantees in Seller's possession relating to the improvements located on the Premises and the personal property.

12.4.6 **Leases; etc.** True, correct and complete copies of all the Leases, together with all amendments, modifications and guarantees thereof (and access to the Tenant files to review all correspondence etc. with respect thereto), and all bonds, guarantees and warrantee's in connection with the construction and operation of the Tenant improvements. Seller shall also provide Buyer with copies of all correspondence, draft leases, proposals and any other materials that have been sent to or received from any prospective tenants currently in negotiation with Seller.

12.4.7. **Inventory.** The most current inventory, if any, of all personal property.

**12.4.8 Tax Bills.** Copies of all tax bills and receipts related to the premises for the years, \_\_\_\_\_.

**12.4.9 Studies.** Any and all reports, studies, audits and analysis of the premises in Seller's possession, including without limitation reports, studies and analysis regarding the financial, physical, structural or environmental condition of the property. As noted above, the Seller shall have 10 days to complete the new Phase I site assessment.

**12.4.10 Historical Rent Rolls.** Any and all rent rolls and operating statements for the property certified as true and correct by Seller, for the years \_\_\_\_\_.

**12.4.11 Utility Bills.** Copies of all utilities bills for the properties for the years \_\_\_\_\_.

**12.4.12 Insurance.** Copies of Seller's existing fire and extended coverage insurance policies relative to the Premises, together with a complete claims history for each of the years, \_\_\_\_\_.

**12.4.13 Management Agreement.** True, accurate and complete copies of all management agreements and or leasing agreements or commission agreements, if any in relating to the Premises or Leases.

**12.4.14 Percentage Rent Data.** Copies of all information or reports relative to gross sales of any commercial tenants at the premises if any, for the years \_\_\_\_\_ to the extent their leases contain percentage rent clauses.

**12.4.15 Other Materials.** Any other documents or materials in Seller's possession relative to the Premises, including without limitation, any and all correspondence and communications with tenants. Seller shall also make its building management office available to Buyer and Buyer's due diligence team to generally go through and review any and all materials relative to the Premises.

**SECTION 13. Intentionally left blank.**

**SECTION 14. Evaluation Contingency.**

This Agreement is contingent upon the Buyer completing a review of the Premises and any and all matters in connection therewith as Buyer shall in its discretion deem desirable, said review to be completed by that date which is thirty (30) Days following the date hereof ("Evaluation Contingency Date") and Buyer, in its sole discretion, being satisfied with the Premises and all such matters. If Buyer shall, for any reason in Buyer's sole discretion, be dissatisfied with any aspect of the Premises or any such matters reviewed by Buyer or with respect to any matters which may come to Buyer's attention, then Buyer may terminate its obligations under this Agreement while



reserving all of Buyer's rights for breach of Seller's representations, warranties and obligations hereunder, by giving a notice of termination to Seller not later than the Evaluation Contingency Date. If Buyer shall not terminate this Agreement by the Evaluation Contingency Date, this Evaluation Contingency shall be null and void. In the event of such termination, all Deposits made hereunder by Buyer shall be refunded to the Buyer and the parties shall have no further liability under this Agreement subject, however, to Buyer's rights for a breach by Seller of its representations and warranties hereunder.

**SECTION 15. Intentionally Left Blank.**

**SECTION 16. Assignment.**

This Agreement may be freely assigned by Buyer following notice to Seller, and upon such assignment and notice thereof to Seller, \_\_\_\_\_ shall be released of all liabilities and obligations hereunder.

**SECTION 17. Conditions to Closing.**

The following will be conditions precedent to Buyer's obligations hereunder and may be waived by Buyer at Buyer's election:

17.1 All representations and warranties of Seller shall be true and correct as of the date hereof and as of the Closing date without any limitation as to the best of knowledge or as to the receipt of written notice, and Seller shall not be in default hereunder.

17.2 The condition of the Premises shall not have changed from its condition as of the date hereof..

17.3 All obligations of the Seller hereunder shall be fully complied with.

17.4 The Buyer shall be satisfied with all of its due diligence with respect to the Premises.

17.5 The Seller shall be able to convey good and marketable title as contemplated herein.

## **SECTION 18. Miscellaneous.**

**18.1 Entire Agreement.** This Agreement (including any Exhibits and Schedules attached hereto) contains the entire agreement by and between the parties concerning this transaction, and supersedes any and all previous agreements, written or oral, between said parties and concerning this transaction.

**18.2 Survival.** It is explicitly agreed between the parties that none of the representations, warranties and indemnifications contained herein shall merge in the Deed, but all shall survive the execution and performance of this Agreement and delivery of the Deed even though not inserted or otherwise concluded in such Deed.

**18.3 Modification.** There may be no modification of this Agreement except in writing, and signed by the parties hereto.

**18.4 Inurement.** The rights and obligations contained herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

**18.5 Severability.** It is understood and agreed by the parties that if any part, term or provision of this Agreement is held by any court to be invalid, illegal or in conflict with any applicable law, the validity of the remaining portions or provisions of this Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid, illegal, or in conflict with the applicable law.

**18.6 Waiver.** No waiver of any breach of any agreement or provision contained in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provision contained in this Agreement. No extensions of time for performance of any obligations or acts shall be deemed an extension of time for performance of any other obligations or acts.

**18.7 Connecticut Law Governs.** This Agreement shall be governed by, interpreted under, and construed and enforced exclusively in accordance with the provisions hereof and the laws of the State of Connecticut applicable to agreements made and to be performed wholly within the State of Connecticut.

**18.8 Terminology.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, and to the singular or plural, as the identity of the parties may require.

**18.9 Captions.** The captions to Sections of this Agreement are for convenience of reference only, and shall not be deemed to affect the interpretation, meaning or construction of any of the provisions of this Agreement.

**18.10 Multiple Originals.** This Agreement shall be executed in four duplicate counterparts, each of which when executed and delivered shall be deemed an original.

**18.11 Drafting Roles.** The parties agree that each has played a material role in the negotiation and drafting of this Agreement, and that the document shall not be construed against any party merely because of that party's role in the drafting thereof.

**18.12 Ejusdem Generis.** The rule of ejusdem generis shall not be applied to limit the generality of a term when followed by specific examples.

**18.13 Notice.** Any notice required hereunder shall be effective upon receipt or rejection if sent certified mail, return receipt requested, or via an overnight courier service, if addressed to either Buyer or Seller at the following addresses:

If to Buyer:

with a copy to:

with copy to:

if to Seller, to:

with a copy to:

The addresses and person to whom notice is to be given may be changed by a notice from the applicable party complying with the terms hereof.

**18.14 Attorney's Fees.** In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

**18.15 No Partnership.** Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the parties or their successors in interest.

**18.16 Liquidated Damages.** Because (i) anticipated damages hereunder are uncertain in amount and difficult to prove, (ii) the parties hereto wish to liquidate said damages in advance, and (iii) monies paid pursuant to this Agreement are not greatly disproportionate to the damage reasonably anticipated in the event of default, it is further agreed that if the Buyer is unable to perform in accordance with the provisions hereof, the Buyer shall forfeit all claims to the Property, and all monies paid pursuant to this Agreement, together with all interest earned thereon, shall be liquidated damages and shall become the sole property of the Seller and in such event this agreement shall terminate and become null and void and all parties hereto shall be released from any liability hereunder. This Section 18.16 shall not be deemed to limit Buyer's indemnifications herein which are deemed separate and distinct covenants. If Seller shall be in default hereof, Buyer shall have all rights and remedies available at law and equity.

IN WITNESS WHEREOF, the Buyer and Seller have duly executed this Real Estate Agreement on the date first above mentioned.

Signed, sealed and delivered  
in the presence of:

SELLER:

BUYER:

By:

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