



STANDARD COMMERCIAL PURCHASE AND SALE AGREEMENT (With Contingencies)

The parties make this Agreement this _____ day of _____, _____. This Agreement supersedes and replaces all obligations made in any prior Letter of Intent, Contract To Purchase or agreement for sale entered into by the parties.

1. Parties. _____ Ronald Oliveira _____

the "SELLER," agrees to sell and _____ [insert name], New Bedford Harbor Development Commission d/b/a the New Bedford Port Authority 52 Fisherman's Wharf, New Bedford, MA 02740

the "BUYER," agrees to buy, the premises described in paragraph 2 on the terms set forth below. BUYER may require the conveyance to be made to another person or entity ("Nominee") upon notification in writing to SELLER at least five business days prior to the date for performance set forth in paragraph 5. Designation of a Nominee shall not discharge the BUYER from any obligation under this Agreement and BUYER hereby agrees to guarantee performance by the Nominee.

2. Description Of Premises. The premises (the "Premises") consist of: (a) the land with any and all buildings thereon known as _____ 123 MacArthur Drive, New Bedford, MA 02740

as more specifically described in a deed recorded in the _____ Bristol _____ Registry of Deeds at Book 12645, Page 132, [Certificate No. _____], a copy of which _____ is _____ is not [check one] attached; and

(b) all structures, and improvements on the land and the fixtures, including, but not limited to: Build out as per attached specifications but excluding n/a

[insert references to fixtures, appliances and other items, where appropriate] All goods, materials, equipment and other personal property at the Premises that is intended for use in the maintenance and operation of the Premises and that has not been exhausted or consumed will be delivered to BUYER at the time of delivery of the deed without additional charge.

3. Purchase Price. The purchase price for the Premises is \$ _____ 800,000.00 _____ dollars of which \$ _____ were paid as a deposit with Contract To Purchase; and \$ _____ are paid with this Agreement; \$ _____ 50,000.00 are to be paid _____; and \$ _____ 750,000.00 are to be paid at the time for performance by bank's, cashier's, treasurer's or certified check or by wire transfer. \$ _____ 800,000.00 Total

4. Escrow. All funds deposited or paid by the BUYER shall be held in a non-interest bearing escrow account, by _____ RE/MAX Vantage _____, as escrow agent, subject to the terms of this Agreement and shall be paid or otherwise duly accounted for at the time for performance. If a dispute arises between the BUYER and SELLER concerning to whom escrowed funds should be paid, the escrow agent may retain all escrowed funds pending written instructions mutually given by the BUYER and the SELLER. The escrow agent shall abide by any Court decision concerning to whom the funds shall be paid and shall not be made a party to a lawsuit solely as a result of holding escrowed funds. Should the escrow agent be made a party in violation of this paragraph, the escrow agent shall be dismissed and the party asserting a claim against the escrow agent shall pay the agent's reasonable attorneys' fees and costs. [If interest is to accrue on escrowed funds, indicate to whom it shall be paid.]

5. Time For Performance. The SELLER shall deliver the deed and the BUYER shall pay the balance of the purchase price at _____ 2 _____ o'clock _____ p. m. on the _____ 28th _____ day of _____ February _____, _____ 2020 _____, at the _____ Registry of Deeds, or at such other time and place as is mutually agreed in writing. TIME IS OF THE ESSENCE AS TO EACH PROVISION OF THIS AGREEMENT. Unless the deed and other documents required by this Agreement are recorded at the time for performance, all documents and funds are to be held in escrow,

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pending prompt rundown of the title and recording (or registration in the case of registered land). SELLER'S attorney or other escrow agent shall disburse funds the next business day following the date for performance, provided that the recording attorney has not reported a problem outside the recording attorney's control.

6. **Title/Plans.** The SELLER shall convey the Premises by a good and sufficient quitclaim deed running to the BUYER or to the BUYER'S nominee, conveying good and clear record and marketable title to the Premises, free from liens and encumbrances, except:

- (a) Real estate taxes assessed on the Premises which are not yet due and payable;
- (b) Betterment assessments, if any, which are not a recorded lien on the date of this Agreement;
- (c) Federal, state and local laws, ordinances, bylaws, rules and regulations regulating use of land, including building codes, zoning bylaws, health and environmental laws;
- (d) Rights and obligations in party walls;
- (e) Any easement, restriction or agreement of record presently in force which does not interfere with the reasonable use of the Premises as now used;
- (f) Utility easements in the adjoining ways;
- (g) Matters that would be disclosed by an accurate survey of the Premises; and
- (h) **none**

[insert in (h) references to any other easement, restriction, lease or encumbrance which may continue after title is transferred]
If the deed refers to a plan needed to be recorded with it, at the time for performance the SELLER shall deliver the plan with the deed in proper form for recording or registration. BUYER agrees to indemnify SELLER for any claim for by a tenant for breach or interference with any lease or rental agreement, *provided that* the existence and terms of such lease or rental agreement has been disclosed to BUYER by SELLER.

7. **Title Insurance.** BUYER'S obligations are contingent upon the availability (at normal premium rates) of an owner's title insurance policy insuring BUYER'S title to the premises without exceptions other than the standard exclusions from coverage printed in the current American Land Title Association ("ALTA") policy cover, the standard printed exceptions contained in the ALTA form currently in use for survey matters and real estate taxes (which shall only except real estate taxes not yet due and payable) and those exceptions permitted by paragraph 6 of this Agreement.

8. **Closing Certifications and Documents.** The SELLER shall execute and deliver simultaneously with the delivery of the deed such certifications and documents as may customarily and reasonably be required by the BUYER'S attorney, BUYER'S lender, BUYER'S lender's attorney or any title insurance company insuring the BUYER'S title to the Premises, including, without limitation, certifications and documents relating to:

- (a) parties in possession of the premises;
 - (b) the creation of mechanics' or materialmen's liens;
 - (c) the settlement statement and other financial affidavits and agreements as may reasonably be required by the lender or lender's attorney;
 - (d) the citizenship and residency of SELLER as required by law; and
 - (e) information required to permit the closing agent to report the transaction to the Internal Revenue Service.
- At the time of delivery of the deed, the SELLER may use monies from the purchase to clear the title, provided that all documents related thereto are recorded with the deed or within a reasonable time thereafter acceptable to the BUYER and, provided further, that discharges of mortgages from banks, credit unions, insurance companies and other institutional lenders may be recorded within a reasonable time after recording of the deed in accordance with usual conveyancing practices. If the SELLER is an individual, the SELLER'S spouse hereby agrees to release all statutory, common law or other rights or interest in the Premises and to execute the deed, if necessary.

9. **Possession And Condition Of Premises.** At the time for performance the SELLER shall give the BUYER possession of the entire Premises, free of all occupants and tenants and of all personal property, except property included in the sale or tenants permitted to remain. At the time for performance the Premises also shall comply with the requirements of paragraph 6, and be broom clean and in the same condition as the Premises now are, reasonable wear and tear excepted, with the SELLER to have performed all maintenance customarily undertaken by the SELLER between the date of this Agreement and the time for performance, and there shall be no outstanding notices of violation of any building, zoning, health or environmental law, bylaw, code or regulation, except as agreed. The BUYER shall have the right to enter the

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Premises within forty-eight (48) hours prior to the time for performance or such other time as may be agreed and upon reasonable notice to SELLER for the purpose of determining compliance with this paragraph. At the time of recording of the deed, or as otherwise agreed, the SELLER shall deliver to BUYER all keys to the Premises, remote door openers and any security codes. Until delivery of the deed, the SELLER shall maintain fire and extended coverage insurance on the Premises in the same amount as currently insured. SELLER agrees to make the Premises available, upon reasonable notice, for inspection and measurement by representatives or agents of the BUYER or any proposed lender, including, but not limited to, any appraiser, insurer, engineer or surveyor.

10. **Extension Of Time For Performance.** If the SELLER cannot convey title as required by this Agreement or cannot deliver possession of the Premises as agreed, or if at the time of the delivery of the deed the Premises do not conform with the requirements set forth in this Agreement or the BUYER is unable to obtain title insurance in accordance with paragraph 7, upon written notice given no later than the time for performance from either party to the other, the time for performance shall be automatically extended for thirty (30) days, except that if BUYER'S mortgage commitment expires or the terms will materially and adversely change in fewer than thirty (30) days, the time for performance set forth in paragraph 5 shall be extended to one business day before expiration of the mortgage commitment. SELLER shall use reasonable efforts to make title conform or to deliver possession as agreed, or to make the Premises conform to the requirements of this Agreement. Excluding discharge of mortgages and liens, about which the SELLER has actual knowledge at the time of signing this Agreement, the SELLER shall not be required to incur costs or expenses totaling in excess of One (1) percent of the purchase price to make the title or the Premises conform or to deliver possession as agreed. If at the expiration of the time for performance, or if there has been an extension, at the expiration of the time for performance as extended, the SELLER, despite reasonable efforts, cannot make the title or Premises conform, as agreed, or cannot deliver possession, as agreed, or if during the period of this Agreement or any extension thereof, the SELLER has been unable to use proceeds from an insurance claim, if any, to make the Premises conform, then, at the BUYER'S election, any payments made by the BUYER pursuant to this Agreement shall be immediately returned. Upon return of all such funds, all obligations of the BUYER and SELLER shall terminate and this Agreement shall automatically become void and neither the BUYER nor SELLER shall have further recourse or remedy against the other.

11. **Nonconformance Of Premises.** If the Premises do not conform to the requirements of paragraph 9 because they have been damaged by fire or other casualty (occurring after the date of this Agreement) that is covered by insurance, then the BUYER shall have the right to elect whether or not to proceed to accept the Premises and take title. If BUYER elects to proceed BUYER shall have the right to elect to have the SELLER pay or assign to the BUYER, at the time for performance, the proceeds recoverable on account of such insurance, less any cost reasonably incurred by the SELLER for any incomplete repairs or restoration. If the SELLER, despite reasonable efforts, has neither been able to restore the Premises to its former condition nor to pay or assign to the BUYER the appropriate portion of insurance proceeds, the BUYER shall have the right to elect to have the SELLER give the BUYER a credit toward the purchase price, for the appropriate amount of insurance proceeds recoverable less any costs reasonably incurred by the SELLER for any incomplete restoration.

12. **Acceptance Of Deed.** The BUYER shall have the right to accept such title to the Premises as the SELLER can deliver at the time for performance and if extended, shall have such right at the time for performance, as extended. The BUYER shall also have the right to accept the Premises in the then current condition and to pay the purchase price without reduction of price. Upon notice in writing of BUYER'S decision to accept the Premises and title, the SELLER shall convey title and deliver possession. Acceptance of a deed by the BUYER or BUYER'S nominee, if any, shall constitute full performance by the SELLER and by SELLER'S agents and BUYER shall be deemed to release and discharge the SELLER and SELLER'S agents from every duty and obligation set forth in this Agreement, except any duty or obligation of the SELLER that the SELLER has agreed to perform after the time for performance. Notwithstanding the foregoing, the warranties, if any, made by the SELLER shall survive delivery of the deed.

13. **Adjustments.** At the time for performance of this Agreement adjustments shall be made as of the date of performance for current real estate taxes, fuel value, water rates, sewer use charges, collected rents, uncollected rents (if and when collected by either party), security deposits, prepaid premiums on insurance if assigned. The net total of such adjustments shall be added to or deducted from the purchase price payable by the BUYER at the time for performance. If the real estate

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tax rate or assessment has not been established at the time for performance, apportionment of real estate taxes shall be made on the basis of the tax for the most recent tax year with either party having the right to request apportionment from the other within twelve months of the date that the amount of the current year's tax is established. SELLER further agrees to deliver to BUYER each security deposit and advance rental payment as a credit toward the purchase price.

14. **Acknowledgment Of Fee Due Broker.** The SELLER and BUYER acknowledge that a fee of _____ (_____) for professional services shall be paid by the SELLER to _____ as per MLS _____, the "BROKER", at the time for performance. In the event of a conflict between the terms of this Agreement and a prior fee agreement with BROKER, the terms of the prior fee agreement shall control unless BROKER has expressly agreed to a change in writing. The BUYER and SELLER acknowledge receipt of a notice from BROKER, pursuant to 254 of the Code of Massachusetts Regulations Section 3.0 (13), regarding any agency relationship of the BROKER with the BUYER and/or the SELLER. The BUYER and SELLER understand that _____ N/A [insert name], a real estate broker, is seeking a fee from _____ [name of listing broker, seller or buyer, if applicable] for services rendered as a seller's subagent buyer's agent [check one]. The BUYER further represents and warrants that there is no other broker with whom BUYER has dealt in connection with the purchase of the Premises.

15. **Buyer's Default.** If the BUYER or BUYER'S nominee breaches this Agreement, all escrowed funds paid or deposited by the BUYER shall be paid to the SELLER as liquidated damages. Receipt of such payment shall constitute the SELLER'S sole remedy, at law, in equity or otherwise, for BUYER'S default. The BUYER and SELLER agree that in the event of default by the BUYER the amount of damages suffered by the SELLER will be difficult to ascertain with certainty and, therefore, BUYER and SELLER agree that the amount of the BUYER'S deposit represents a reasonable estimate of the damages likely to be suffered.

16. **Buyer's Financing.** (Delete if Waived) The BUYER'S obligation to purchase is conditioned upon obtaining a written commitment for mortgage financing in the amount of \$ _____ at prevailing rates, terms and conditions by _____. The BUYER shall have an obligation to act reasonably diligently to satisfy any condition within BUYER'S control. If, despite such diligent efforts, the BUYER has been unable to obtain such written commitment, the BUYER may terminate this Agreement by giving written notice that is received by SELLER or SELLER'S agent by 5:00 p.m. on the calendar day after the date set forth above. In the event that notice has not been actually or constructively received, this condition is deemed waived. In the event that due notice has been received, all monies deposited or paid by the BUYER shall be returned and all obligations of the BUYER and SELLER pursuant to this Agreement shall cease and this Agreement shall become void. In no event shall the BUYER be deemed to have used reasonable efforts to obtain financing unless the BUYER has submitted at least one (1) application to a licensed mortgage lender by _____ and acted reasonably promptly in providing any additional information requested by the mortgage lender.

17. **Inspections/Survey.** (Delete if Waived) The BUYER'S obligations under this Agreement are subject to the right to obtain inspection(s) of the Premises or any aspect thereof, including, but not limited to, building, pest, radon, septic/sewer, water quality, water drainage and oil and hazardous materials, by consultant(s) regularly in the business of conducting said inspections, of BUYER'S own choosing, and at BUYER'S sole cost within as per agreement days after SELLER'S acceptance of this agreement. If the results are not satisfactory to BUYER, in BUYER'S sole discretion, BUYER shall have the right to give written notice received by the SELLER or SELLER'S agent by 5:00 p.m. on the calendar day after the date set forth above, terminating this agreement. Upon receipt of such notice this agreement shall be void and all monies deposited by the BUYER shall be returned. Failure to provide timely notice of termination shall constitute a waiver. In the event that the BUYER does not exercise the right to have such inspection(s) or to so terminate, the SELLER and the listing broker are each released from claims relating to the condition of the Premises that the BUYER or the BUYER'S consultants could reasonably have discovered.

18. **Schedule Of Leases / Tenancies.** The SELLER represents that Exhibit "A" attached hereto is a complete and accurate schedule of all tenancies and leases for the Premises and that complete and accurate copies of all leases and tenancy agreements as well as copies of all material notices and modifications have been provided to BUYER. SELLER agrees to

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provide BUYER with originals of each lease and tenancy agreement at the time of delivery of the deed. SELLER further agrees to deliver to BUYER a copy of a notice to each tenant of the sale of the Premises to BUYER and directing the tenants to make rental payments thereafter to BUYER. SELLER further agrees to deliver to BUYER an assignment of all leases and tenancy agreements, in a form that is satisfactory to BUYER, at the time of delivery of the deed. In the event that any rentable space in the Premises is now available for rent or hereafter becomes available for rent, SELLER shall not enter into a lease or tenancy agreement (except as required by an existing agreement) without prior written authorization of BUYER. Neither shall SELLER extend or renew any existing tenancy nor waive any other rights without prior written authorization of BUYER. BUYER agrees that it will not unreasonably withhold such consent.

19. **Warranties And Representations.** The SELLER represents and warrants that the Premises is is not [check one] served by a septic system or cesspool. [If yes, a copy of the Title 5 Addendum is attached.] The SELLER further represents that there is is no underground storage tank. The SELLER further represents and warrants that SELLER has full authority to enter into this Agreement. The SELLER agrees to execute and deliver to BUYER at the time of delivery of the deed: (1) a non-foreign affidavit, in compliance with applicable law; (2) an affidavit in the form reasonably required by any title insurance company for the BUYER which states that there is no person to whom payment is due for labor or materials furnished for the Premises; (3) an affidavit that there is no person occupying any portion of the Premises other than as set forth in the leases or tenancy agreements provided; and such other documents that may reasonably be required by the BUYER or BUYER'S mortgage lender. The SELLER further warrants that SELLER has no knowledge of any existing or contemplated lawsuit, administrative proceeding or enforcement action with regard to the Premises other than disclosed; that the SELLER has not received notice of any condemnation proceeding; eminent domain or other proceeding affecting the Premises and that SELLER has no knowledge of any such contemplated proceeding; that there is no undisclosed agreement regarding the management of the Premises or the provision of labor, equipment, supplies or services; that SELLER agrees to pay all outstanding amounts for utilities, goods, labor, materials and services furnished to the Premises prior to delivery of the deed; that SELLER has not received notice of any violation of a building or zoning code or ordinance or of any municipal, state or federal law or regulation, other than disclosed; and that the SELLER has not received any notice of any charge for a betterment or governmental improvement for or benefiting the Premises. The BUYER acknowledges that BUYER has not relied upon any warranties or representations other than those incorporated in this Agreement, except for the following additional warranties and representations, if any, made by either the SELLER or the SELLER'S real estate agent: Buyer acknowledges that Seller is a licensed Real Estate Agent in Massachusetts and has a financial interest in the property.

[If none, state "none"; if any listed, indicate by whom the warranty or representation was made.]

20. **Notices.** All notices required or permitted to be made under this Agreement shall be in writing and delivered in hand, sent by certified mail, return receipt requested or sent by United States Postal Service overnight Express Mail or other overnight delivery service, addressed to the BUYER or SELLER or their authorized representative at the address set forth in this paragraph. Such notice shall be deemed to have been given upon delivery or, if sent by certified mail on the date of delivery set forth in the receipt or in the absence of a receipt three business days after deposited or, if sent by overnight mail or delivery, the next business day after deposit with the overnight mail or delivery service, whether or not a signature is required. Acceptance of any notice, whether by delivery or mail, shall be sufficient if accepted or signed by a person having express or implied authority to receive same. Notice shall also be deemed adequate if given in any other form permitted by law. [If there are multiple buyers, identify the mailing address of each buyer in paragraph 22.]

BUYER New Bedford Port Authority
Address: 52 Fisherman's Wharf, New Bedford, MA 02740

SELLER Ronald Oliveira
Address: 5 Archer's Way
Acushnet, MA 02743

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