

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made as of the 1<sup>st</sup> day of August 2017 (the "Effective Date"), by and between Newburyport Manager LLC, a Massachusetts limited liability company, as trustee of 90 Pleasant Street Nominee Trust and 81-83 Merrimac Street Nominee Trust (collectively, "Seller"), and the City of Newburyport, a Massachusetts municipal corporation ("Buyer"), and joined in for the limited purposes set forth herein by Fidelity National Title Insurance Company, having an address at 133 Federal Street, Boston, MA 02110, as escrow agent ("Escrow Agent"). Seller and Buyer are each referred to individually as a "Party" and collectively as the "Parties."

### BACKGROUND

A. Seller is the owner of certain real property in Newburyport, Essex County, Massachusetts, consisting of four contiguous parcels of land bounded by Pleasant Street, Titcomb Street and Merrimac Street, and commonly known as 63-71 Merrimac Street, 73-81 Merrimac Street, 81-83 Merrimac Street, and 90 Pleasant Street, being depicted, more or less, on that sketch plan entitled, "Existing Conditions Plan 63-71, 81-83 & 85-87 Merrimac Street 90 Pleasant Street Newburyport, Mass." dated Nov. 30, 2011, prepared by Feldman Land Surveyors, labeled "Draft 6-10-2016" (the "Plan"), having a total area of 36,461 ± square feet (together, "Seller's Property"), which property is currently improved, as depicted on the Plan, with a one-story building known and numbered as 90 Pleasant Street (the "Building"). A copy of the Plan is attached hereto and incorporated herein as Exhibit A.

B. Buyer operates a system of public parking in downtown Newburyport serving the needs of residents, businesses, and visitors in the best interest of the inhabitants of Newburyport, and such interests may be served by the development of a public parking lot or public parking garage at the Property (the "Parking Facility").

C. Buyer wishes to acquire that portion of Seller's Property more or less depicted on the Plan as "Proposed City of Newburyport Lot Area = 29,065 SQ. FT." devoid of all improvements (the "Property"). The final legal description of the Property shall be as depicted on a recordable plan to be prepared in accordance with the terms of Section 3.4.1, herein.

D. Seller is prepared to take such action as is required to sell, transfer and convey the Property to Buyer, and Buyer is prepared to take such action as is required to purchase and accept the same from Seller, all for the Purchase Price (as hereinafter defined) and on the other terms and conditions hereinafter set forth.

### TERMS AND CONDITIONS

In consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1. Sale and Purchase. Seller hereby agrees to sell, transfer and convey the Property to Buyer, and Buyer hereby agrees to purchase and accept the Property from Seller, in

each case for the Purchase Price (as hereinafter defined) and on and subject to the other terms and conditions set forth in this Agreement.

ARTICLE 2. Purchase Price. The purchase price for the Property (the "Purchase Price") shall be Two Million One Hundred Eighty-Four Thousand and 00/100 Dollars (\$2,184,000.00), which, subject to the terms and conditions hereinafter set forth, shall be paid to Seller by Buyer as follows:

2.1. Deposit. Within fourteen (14) business days after the Effective Date of this Agreement, Buyer shall deliver to the Escrow Agent a deposit in the amount of Fifty Thousand Dollars (\$50,000.00) in immediately available funds, which funds may be a City Treasurer's check (the "Deposit"), Buyer's failure to do so constituting an immediate default hereunder. All interest earned on the Deposit shall be payable to Buyer unless Seller is entitled to retain the Deposit as provided herein, in which case the interest shall be paid to Seller.

2.2. Delivery; Payment at Closing. At the Delivery Date (as hereinafter defined), Buyer shall deliver to Escrow Agent, by wire transfer of immediately available funds, an amount equal to the Purchase Price less the Deposit. At the Closing Date (as hereinafter defined), in accordance with ARTICLE 6 and the further terms of this Agreement, the Escrow Agent shall consummate the transaction contemplated hereby by paying the Purchase Price, subject to adjustments and apportionments as set forth herein, to Seller, and recording the Deed (as hereinafter defined) and such other documents as are required to be recorded.

ARTICLE 3. Due Diligence Investigations; Conveyance of Title.

3.1 Due Diligence Period; Access.

3.1.1. Buyer, its agents and representatives shall be entitled, upon reasonable prior notice to Seller, to enter upon the Property (as coordinated through Seller) during the Due Diligence Period (as hereinafter defined), to perform surveys and other noninvasive environmental studies, examinations and tests of the Property, and to review and verify the accuracy of the Property Information (as hereinafter defined). Prior to any entry onto the Property, Buyer shall deliver to Seller evidence reasonably satisfactory to Seller that Buyer and all of Buyer's agents and contractors entering onto the Property have obtained comprehensive general liability insurance naming Seller and its agents and mortgagees as additional insureds, with such limits and written on such forms as Seller may reasonably require in accordance with the terms hereof.

In connection with its right to enter upon the Property set forth in this Section 3.1.1, Buyer and its agents shall: (a) not interfere with Seller's operations at the Property or the operations of any of Seller's tenants, (b) not damage any part of the Property; (c) promptly pay when due the costs of all investigations and examinations done with regard to the Property; (d) not permit any liens to attach to the Property by reason of the exercise of its rights hereunder; (e) restore the Building and other improvements and the surface of the Property to the condition in which the same were found before any such inspections were undertaken; and (f) not reveal or disclose, other than as required by law (including the Public Records Law, so-called, M.G.L. c.66, §10A, M.G.L. c.4, §7(26), and applicable regulations), any information obtained during the

Due Diligence Period concerning the Property to anyone outside Buyer's organization other than its agents, consultants and representatives who have a duty or obligation to maintain the confidentiality of such information. No testing or sampling of any materials in or about the Property (including, without limitation, tests for mold and radon, boring, drilling and sampling of soils, air quality or water) shall be conducted without Seller's consent, which consent may be withheld in Seller's sole and absolute discretion. Buyer shall, at its sole cost and expense, comply with all applicable federal, state and local laws, statutes, rules, regulations, ordinances or policies in conducting its inspection of the Property; provided, however, should Buyer or its agents discover any discharge or other material or condition at the Property that requires giving notice or making other disclosure to any local, state, or federal regulatory authority, Buyer shall promptly notify Seller of such condition but shall not, under any circumstance, give such notice or make such disclosure to the local, state, or federal regulatory authority(ies) having jurisdiction, unless such notice or disclosure is expressly required of Buyer by law, and then only following written notice to Seller delivered not less than ten (10) business days prior to Buyer making such disclosure, or such lesser time, including after disclosure, as will allow Buyer to comply with applicable law.

Buyer shall, and does hereby agree to, indemnify, defend and hold the Seller, its members, partners, agents and their respective successors and assigns, to the extent permitted by law, harmless from and against any and all claims, demands, suits, obligations, payments, damages, losses, penalties, liabilities, costs and expenses (including but not limited to attorneys' fees) to the extent arising out of Buyer's or Buyer's agents' actions taken in, on or about the Property in the exercise of the inspection right granted pursuant to Section 3.1. This Section 3.1.1 shall survive the Closing or any termination of this Agreement notwithstanding any other provisions to the contrary.

3.1.2. The term "Due Diligence Period," as used herein, shall mean the period ending at 5:00 p.m. Boston time on the date that is forty-five (45) days after the Effective Date. Buyer may terminate this Agreement in its sole discretion, for any reason or no reason, by giving written notice of such election to Seller on any day prior to and including the final day of the Due Diligence Period, in which event the Deposit shall be returned forthwith to Buyer and, except as expressly set forth herein, neither Party shall have any further liability or obligation to the other hereunder. In the absence of such written termination notice from Buyer, Buyer's option to terminate this Agreement in accordance with this Section 3.1.2 shall no longer be applicable and Buyer shall be deemed to have accepted all matters relating to the Property as of the expiration of the Due Diligence Period, except as is otherwise expressly set forth herein, and this Agreement shall continue in full force and effect. If any date on which the expiration of the Due Diligence Period would occur by operation of this Agreement is not a business day in Boston, Massachusetts, as provided in Section 20.6, the expiration date shall be the next business day ending at 5:00 p.m. Boston time.

3.1.3. Buyer hereby agrees that, if at any time after the Closing, any third party or any governmental agency seeks to hold Buyer responsible for the presence of, or any loss, cost or damage associated with, Hazardous Materials (as hereinafter defined) in, on, above or beneath the Property or emanating therefrom, then, except as is otherwise expressly set forth herein, the Buyer waives any rights it may have against Seller in connection therewith including, without limitation, under CERCLA (as hereinafter defined), and Buyer agrees that it shall not (i) implead

the Seller, (ii) bring a contribution action or similar action against the Seller, or (iii) attempt in any way to hold the Seller responsible with respect to any such matter. The provisions of this Section 3.1.3 shall survive the Closing. As used herein, "Hazardous Materials" shall mean and include, but shall not be limited to, any petroleum product, mold, and all hazardous or toxic substances, wastes or substances, any substances which because of their quantitated concentration, chemical, or active, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including, without limitation, any hazardous or toxic waste or substances which are included under or regulated by any federal, state, or local laws, rules or regulations (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time) and any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments, relating to the protection of human health, safety and environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq. ("CERCLA"); the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Federal Clean Water Act; the Toxic Substances Control Act; and similar federal, state, and municipal laws and regulations, including but not limited to M.G.L. c. 21E and its regulations.

3.2. Property Information. To the extent that the same are within the possession of Seller, Seller will deliver copies of the following (collectively, the "Property Information") to Buyer within five (5) days of the Effective Date:

- a) Seller's title insurance policy and the most recent survey in Seller's possession or control;
- b) The environmental/hazardous waste studies and reports identified on Exhibit E, which expressly concern any past or current release or threat of release, or the presence of "hazardous materials" and "oil" on the Property, as such terms are defined in G.L. c. 21E; and
- c) All leases, occupancy agreements, and other documents concerning the Property requested by Buyer in order to determine its obligations under and comply with the Relocation Requirements (defined below) that are applicable to the transactions contemplated by this Agreement (the "Occupancy Documents").

3.2.1 Buyer hereby acknowledges and agrees that (i) Buyer will, during the Due Diligence Period, have an opportunity to review and verify the accuracy of the Property Information; (ii) Seller has not independently verified the accuracy or completeness of any of the Property Information; (iii) Seller makes no representation or warranty, express or implied, as to the accuracy or completeness of the Property Information; and (iv) except as may be otherwise expressly set forth herein, Seller shall have no liability to Buyer as a result of any inaccuracy or incompleteness of any of the Property Information.

3.2.2 Notwithstanding anything contained in this Agreement to the contrary, if this Agreement is terminated for any reason whatsoever, then Buyer shall promptly deliver to

Seller, to the extent allowed by law, all Property Information provided to Buyer by Seller, including copies thereof in any form whatsoever (including electronic form), along with any and all test results and studies performed by or on behalf of Buyer pursuant to ARTICLE 3 of this Agreement, excluding any confidential or proprietary information or financial modeling or attorney work product. Buyer's obligations under this paragraph shall survive any termination of this Agreement.

3.3 **Conveyance of Title.** The Property shall be conveyed by a Massachusetts Quitclaim Deed, duly executed and acknowledged by Seller, substantially in the form of **Exhibit B** to this Agreement (the "**Deed**"). The Deed shall convey good and clear record and marketable title to the Property, free from all liens, encumbrances, and encroachments from or on the Property except the Permitted Exceptions (as hereinafter defined). The following matters shall be deemed to be "**Permitted Exceptions**":

- 3.3.1 The lien of all ad valorem real estate taxes and assessments not yet due and payable as of the Closing Date, subject to adjustment as herein provided;
- 3.3.2 Local, state and federal laws, ordinances or governmental regulations, including but not limited to, building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Property; and
- 3.3.3 Other matters deemed Permitted Exceptions as provided below.

Notwithstanding anything herein contained, the title to the Property shall not be considered to be in compliance with this Section 3.3 unless full possession of the Property, free and clear of all leases and lessees, tenancies and tenants, and occupancies and occupants, is delivered at the time of the recordation of the Deed, said Property to be then in the same condition as it is now, reasonable use and wear thereof and the Building Demolition (as hereinafter defined) excepted.

Buyer shall be entitled personally to inspect the Property prior to the Closing in order to (i) determine whether the condition thereof complies with the terms of this Section 3.3, and (ii) subject to the provisions of ARTICLE 17, to confirm that the Building Demolition Certificate (as hereinafter defined) does not contain any material misrepresentations.

### 3.4 **Title and Plan.**

3.4.1 **Plan and Legal Description.** Prior to the expiration of the Due Diligence Period, Buyer shall prepare, at its sole cost and expense, and shall submit to Seller for its review and approval, a plan of the Property in recordable form and a legal description thereof. The Parties shall cooperate and work in good faith to reach agreement on the final form of such plan and legal description.

3.4.2 **Title.** Buyer may conduct such review of the title to the Property as it deems necessary at its own cost and expense. Except as to any matters objected to by Buyer in a written notice to Seller on or before the seventh (7<sup>th</sup>) business day prior to the expiration of the Due Diligence Period (such written notice, a "**Buyer's Title Notice**"), Buyer shall be deemed to have accepted the state of title (and to have waived any objections thereto), and any such matter



which is not objected to by Buyer on or before the seventh (7<sup>th</sup>) business day prior to the expiration of the Due Diligence Period shall be a Permitted Exception. Seller shall have three (3) business days following its receipt of a Buyer's Title Notice to notify Buyer by written notice as to whether or not Seller has elected to cure the matter or matters objected to by Buyer in such Buyer's Title Notice (a "Seller's Title Notice"). Failure of Seller to give the Seller's Title Notice shall be deemed an election by Seller not to cure such objection(s). If Seller elects or is deemed to have elected not to cure any matter objected to in such Buyer's Title and Survey Notice, Buyer shall elect, within three (3) business days following the date of such election or deemed election, either (i) to waive its objection or objections to the matter or matters not being cured by Seller, without reduction of the Purchase Price, in which case such matter shall become a Permitted Exception; or (ii) to terminate this Agreement by written notice to Seller, in which case the Deposit shall be promptly returned by the Escrow Agent to the Buyer without any further required action by either Buyer or Seller, and neither Party shall have any further liability or obligation to the other hereunder except as specifically set forth herein.

3.5. Matters to be Cured. If Seller has elected to cure any matter, such matter shall be cured by Seller prior to the Delivery Date; provided, however, Seller may elect to extend the Delivery Date by up to thirty (30) days to cure such matter but shall not be obligated to do so. Buyer shall be given a reasonable opportunity prior to the Delivery Date to verify that such matter has been cured to Buyer's reasonable satisfaction. Notwithstanding the foregoing or anything contained herein to the contrary, Seller shall cause to be released any and all mortgages or encumbrances securing the payment of money which Seller has caused to be recorded against the Property (each, a "Voluntary Monetary Encumbrance"). Seller shall be entitled to use such portion of the Purchase Price as is necessary to pay off all such Voluntary Monetary Encumbrances and any title objection that Seller agrees to cure. Buyer hereby acknowledges that any instruments evidencing the release or discharge of any Voluntary Monetary Encumbrances may be recorded at or after the Closing in accordance with standard conveyancing practice.

3.6. New Matters. Seller will not cause nor, to the best of Seller's ability, permit any encumbrances to be placed on the title after the expiration of the Due Diligence Period (each a "New Encumbrance"). In the event such New Encumbrance does arise, despite Seller's best efforts, the first Party with notice thereof shall promptly notify the other Party, and Seller shall have the same options to cure and Buyer shall have the same options to waive its objections or to terminate this Agreement as set forth in Section 3.4 above, in which event the Delivery Date shall be extended in order to accommodate the process. If any New Encumbrance is a Voluntary Monetary Encumbrance, Seller must satisfy the same on or before the Closing. No New Encumbrance shall become a Permitted Exception except upon Buyer's express review and approval, which approval shall not be unreasonably withheld.

3.7. Title Standards. Any matter or practice arising under or relating to this Agreement which is the subject of a title standard or a practice standard of The Real Estate Bar Association for Massachusetts, Inc. ("REBA") at the time of the Closing, shall be covered by said REBA title standard or practice standard to the extent applicable.

#### ARTICLE 4. Representations and Warranties of Seller; Limitations.

4.1 Representations and Warranties of Seller. Subject to all matters disclosed in any document delivered to Buyer by Seller or on any exhibit attached hereto (the "Exhibits"), and subject to any information discovered by Buyer or other information disclosed to Buyer by Seller or any other person after the date hereof and prior to the Closing Date, Seller represents and warrants to Buyer as follows:

4.1.1 Trustee. Seller is the sole trustee of (i) 90 Pleasant Street Nominee Trust, under Declaration of Trust dated January 28, 2005, filed with the Essex South Registry District of the Land Court (the "Land Court") as Document No. 450499; and (ii) 81-83 Merrimac Street Nominee Trust, under Declaration of Trust dated January 28, 2005, recorded with the Essex South Registry of Deeds (the "Registry") in Book 23921, Page 14.

4.1.2 No Conflict. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder on the part of Seller do not and will not, to the best of Seller's actual knowledge, conflict with or result in the breach of any material terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any of the Property or assets of the Seller by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which Seller is a party or which is or purports to be binding upon Seller or which otherwise affects Seller, which will not be discharged, assumed or released at or by the Closing. To the best of Seller's actual knowledge, no action by any federal, state or municipal or other governmental department, commission, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon Seller in accordance with its terms. There are no proceedings pending or, to the best of Seller's actual knowledge, threatened against Seller in any court or before any governmental authority or any tribunal which, if adversely determined, would have a material adverse effect on its ability to convey the Property or to carry out its obligations under this Agreement.

4.1.3 FIRPTA. Seller is not a "foreign person" as defined in Section 1445(f)(3) of the Internal Revenue Code.

4.1.4 Due Power and Authority. Seller has all requisite power and authority, has taken or will take all actions required by its organizational documents and applicable law, and has obtained or will obtain all necessary consents, to execute and deliver this Agreement and to consummate the transactions contemplated in this Agreement, and the persons signing this Agreement on behalf of Seller have been authorized to sign on behalf of Seller.

4.1.5 No Bankruptcy. No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under Federal or State bankruptcy laws is pending against or contemplated by Seller.

#### 4.2 Limitations Regarding Seller's Representations and Warranties.

4.2.1 Buyer agrees to inform Seller promptly in writing if it discovers that any representation or warranty of Seller is inaccurate in any material respect, or if it believes that Seller has failed to deliver to Buyer any document or material that it is obligated to deliver hereunder. To the extent that, prior to the expiration of the Due Diligence Period, Buyer obtains

actual knowledge or is deemed to know that the representations and warranties of the Seller made herein are inaccurate, untrue or incorrect in any way when made, such representations and warranties shall be deemed modified to reflect such actual or deemed knowledge as of the expiration of the Due Diligence Period. For purposes herein, Buyer shall be "deemed to know" anything reflected in the Property Information or in any other documents delivered to Buyer with respect to the Property. If after the expiration of the Due Diligence Period but prior to the Closing Date, Buyer first obtains actual knowledge that any of the representations or warranties made herein by Seller are inaccurate, untrue or incorrect in any material respect, then Buyer shall elect either to (a) waive such misrepresentations or breaches of representations and warranties and consummate the transaction contemplated hereby without any reduction of or credit against the Purchase Price, in which case Seller's representations and warranties shall be deemed to be revised to reflect such information or (b) to terminate this Agreement by notice to Seller given within five (5) business days after Buyer's discovery of such matters, in which event the Deposit shall be paid to Buyer and thereupon all obligations of the parties under this Agreement shall terminate (other than those that by their terms survive the termination of this Agreement), unless such matter is reasonably susceptible of being remedied and Seller has notified Buyer within such five (5) day period that Seller is willing to remedy such matter (in which case such remedy shall be a condition to Buyer's obligations hereunder), and if such matter arises during the thirty (30) day period immediately prior to the Closing Date, then Seller may extend the Closing Date for up to thirty (30) days by written notice to Buyer.

4.2.2 Seller shall have no liability whatsoever to Buyer with respect to any Permitted Exception.

4.2.3 As used in this Agreement, or in any other agreement, document, certificate or instrument delivered by Seller to Buyer, the phrase "to the best of Seller's actual knowledge," "to the best of Seller's knowledge," or any similar phrase shall mean the actual, not constructive or imputed, knowledge of Scott Kelley and the Seller's managers Stephen R. Karp, Steven S. Fischman, and Douglass E. Karp (collectively, "Seller's Managers"), without any obligation on their part to make any independent investigation of the matters being represented and warranted, or to make any inquiry of any other persons, or to search or examine any files, records, books, correspondence and the like. Seller's Managers shall have no personal liability under this Agreement, whether arising out of any representations or warranties made herein or otherwise.

#### ARTICLE 5. Conditions to Delivery and to Closing; Extensions to Satisfy.

5.1 Buyer's Conditions. All of Buyer's obligations hereunder are expressly conditioned on the satisfaction on or before the Delivery Date and/or the Closing Date, or at or before such earlier time, all as expressly stated below, of each of the following conditions (any one or more of which may be waived in writing in whole or in part by Buyer, at Buyer's option):

5.1.1 All of the representations and warranties by Seller set forth in this Agreement or any Exhibit attached hereto shall be true and correct in all material respects when made and shall be true and correct in all material respects as of the Delivery Date and the Closing Date;



- 5.1.2 Seller shall have performed, observed, and complied in all material respects with all covenants and agreements required by this Agreement to be performed by Seller on or prior to the Delivery Date and on or prior to the Closing Date, as applicable;
- 5.1.3 Buyer shall have obtained by the Delivery Date all approvals, authorizations, and funding (including, at Buyer's discretion, by borrowing) necessary to allow Buyer to purchase the Property on the terms set forth herein, which shall include, without limitation, a favorable vote of the Newburyport City Council to authorize the purchase and the appropriation, transfer or borrowing of sufficient funds to fulfill Buyer's obligations under this Agreement;
- 5.1.4 Seller shall have completed the Building Demolition by the Closing Date;
- 5.1.5 Buyer shall have complied by the Delivery Date with the provisions of M.G.L. c.30B (the Uniform Procurement Act), including the filing of a uniqueness determination concerning the purchase of the Property as provided for under M.G.L. c.30B, §16(e)(2) for acquisition of real property;
- 5.1.6 Seller shall have complied by the Delivery Date with the disclosure provisions of M.G.L. c.7C, §38 by executing and providing to Buyer for filing such "Disclosure of Beneficial Interests in Real Property Transaction" certificates as are required by such statute;
- 5.1.7 To the extent applicable, Buyer shall have complied by the Delivery Date with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (PL 91-646) and 49 CFR Part 24, the implementing regulation, and M.G.L. c.79A and 760 CMR 27.00, et seq. (collectively, the "Relocation Requirements");
- 5.1.8 Buyer shall have complied by the Delivery Date with any other requirements of applicable Massachusetts General or Special Laws relative to the acquisition of the Property by Buyer; and
- 5.1.9 By the Delivery Date, the Property shall have been withdrawn from Land Court registration, at Seller's sole cost and expense, pursuant to M.G. L. c. 185, §52; or, if Seller is unable to withdraw the Property from such registration, and Buyer elects to proceed with the transaction otherwise in accordance with the terms of this Agreement, then Seller shall have obtained, at its sole cost and expense, such plan as is required to convey the Property.

5.2 Seller's Conditions. Without limiting any of the other conditions to Seller's obligations to consummate the transaction contemplated by this Agreement, the obligations of Seller under this Agreement are subject to the satisfaction on or before the Delivery Date and/or

the Closing Date, of each of the following conditions (any one or more of which may be waived in writing in whole or in part by Seller, at Seller's option):

- 5.2.1 All of the representations and warranties by Buyer set forth in this Agreement or any Exhibit attached hereto shall be true and correct in all material respects when made and shall be true and correct in all material respects as of the Delivery Date and the Closing Date;
- 5.2.2 Buyer shall have performed, observed, and complied in all material respects with all covenants and agreements required by this Agreement to be performed by Buyer on or prior to the Delivery Date and on or prior to the Closing Date, as applicable; and
- 5.2.3 Buyer shall have obtained by the Delivery Date all approvals, authorizations, and funding (including, at Buyer's discretion, by borrowing) necessary to allow Buyer to purchase the Property on the terms set forth herein, which shall include, without limitation, a favorable vote of the Newburyport City Council to authorize the purchase and the appropriation, transfer or borrowing of sufficient funds to fulfill Buyer's obligations under this Agreement.
- 5.2.4 Buyer shall have complied by the Delivery Date with the provisions of M.G.L. c.30B (the Uniform Procurement Act), including the filing of a uniqueness determination concerning the purchase of the Property as provided for under M.G.L. c.30B, §16(e)(2) for acquisition of real property;
- 5.2.5 Seller shall have complied by the Delivery Date with the disclosure provisions of M.G.L. c.7C, §38 by executing and providing to Buyer for filing such "Disclosure of Beneficial Interests in Real Property Transaction" certificates as are required by such statute;
- 5.2.6 To the extent applicable, Buyer shall have complied by the Delivery Date with the Relocation Requirements;
- 5.2.7 Buyer shall have complied by the Delivery Date with any other requirements of applicable Massachusetts General or Special Laws relative to the acquisition of the Property by Buyer; and
- 5.2.8 By the Delivery Date, the Property shall have been withdrawn from Land Court registration, at Seller's sole cost and expense, pursuant to M.G. L. c. 185, §52; or, if Seller is unable to withdraw the Property from such registration, and Buyer elects to proceed with the transaction otherwise in accordance with the terms of this Agreement, then Seller shall have obtained, at its sole cost and expense, such plan as is required to convey the Property.

5.3 Extension of Closing and Delivery Date. The Parties agree to diligently pursue satisfaction of the above conditions, provided that obtaining such approvals, authorizations and funding as are necessary, as set forth in Sections 5.1.3 and 5.2.3 above, shall be at Buyer's sole discretion, and Buyer's decision not to pursue such approvals, authorizations, and/or funding, and such permits and approvals, shall not constitute a default under this Agreement. If, despite the Parties' best efforts, on or before the Delivery Date, or on or before the Closing Date, as applicable, one or more conditions to either Party's obligations set forth in Sections 5.1 and 5.2 have not been satisfied, the Party responsible for the satisfaction of such unsatisfied condition(s) may, by written notice to the other Party, elect to attempt to satisfy any such unsatisfied condition(s), and upon such election, the Delivery Date and/or the Closing Date, as applicable, shall be extended for a period of up to thirty (30) days as specified in said notice, or for such longer period as the Parties may agree. Notwithstanding anything to the contrary, in no event shall a Party be entitled to extend the Delivery Date or the Closing Date pursuant to this Section 5.3 more than once without the other Party's express written consent, which consent the other Party may withhold in its sole and absolute discretion.

5.4 Failure of Condition. If any condition to either Party's obligations set forth in Sections 5.1 and 5.2 is not satisfied at the Delivery Date or at the Closing Date, as applicable, (as the same may be extended as provided in Section 5.3), other than as a result of a default by the other Party (the remedies for which are provided in ARTICLE 10 below), such Party may either (i) terminate this Agreement by delivering written notice to the other Party on or before the Delivery Date or the Closing Date, as applicable, whereupon the Deposit together with all interest accrued thereon shall be immediately returned to Buyer (and this shall be such Party's sole and exclusive remedy at law and in equity as a result of such termination), or (ii) elect to deliver such Party's deliveries to Escrow Agent and proceed to the Closing, notwithstanding the non-satisfaction of such condition, in which event such Party shall be deemed to have waived any such condition. A Party's failure to satisfy its conditions to consummate the transaction contemplated by this Agreement, as set forth in Sections 5.1 and 5.2, despite its best efforts, shall not constitute a default under this Agreement.

#### ARTICLE 6. Closing; Deliveries.

6.1. Time of Delivery. The Delivery Date shall be 12:00 noon Boston time on August 30, 2017 (subject, however, to extension pursuant to Sections 3.5, 3.6, or 5.3) or on such other date or through such other arrangements as may be agreed to in writing by both Seller and Buyer. Documents required to be delivered and payment required to be made at such time shall be placed in escrow on the Delivery Date pursuant to escrow arrangements with the Escrow Agent.

6.2. Seller Deliveries. At the Delivery Date, Seller shall deliver to Escrow Agent the following (collectively, "Seller's Deliveries"), to be released to Buyer at Closing upon the completion of the Building Demolition (as defined in ARTICLE 17), and it shall be a condition to Buyer's obligation to consummate the transaction contemplated by this Agreement that Seller shall have delivered the same to Escrow Agent:

6.2.1. The Deed, duly executed by Seller and acknowledged as required.

- 6.2.2. The Escrow Agreement in substantially the form of **Exhibit C** (the "**Escrow Agreement**") duly executed by Seller.
- 6.2.3. Intentionally Omitted.
- 6.2.4. Such commercially reasonable affidavits or letters of indemnity as the title insurer shall customarily and reasonably require in order to issue, without extra charge, an owner's policy of title insurance free of any exceptions for unfilled mechanics' or materialmen's liens for work performed by Seller, or for rights of parties in possession.
- 6.2.5. A Non-Foreign Affidavit as required by the Foreign Investors in Real Property Tax Act ("**FIRPTA**"), as amended, in the form of **Exhibit D** to this Agreement, duly executed by Seller.
- 6.2.6. A certification by Seller that all representations and warranties made by Seller in ARTICLE 4 of this Agreement are true and correct in all material respects, except as may be set forth in such certificate.
- 6.2.7. Such evidence of good standing and authority as the title insurer may reasonably and customarily require.
- 6.2.8. Internal Revenue Service Form W-8 or Form W-9, as applicable, with Seller's tax identification number, and an affidavit furnishing the information required for the filing of Form 1099S with the Internal Revenue Service and stating Seller is not subject to back-up withholding.
- 6.2.9. All other instruments and documents reasonably required to effectuate this Agreement and the transactions contemplated thereby.

Seller shall notify Buyer in writing, prior to the Closing, of any updates to Seller's Deliveries as of the Closing Date.

6.3. **Buyer Deliveries**. At the Delivery Date, Buyer shall deliver to Escrow Agent the following (collectively, "**Buyer's Deliveries**," and together with Seller's Deliveries, all updated as necessary, the "**Closing Deliveries**"), to be released to Seller at Closing upon the completion of the Building Demolition (as defined in ARTICLE 17), and it shall be a condition to Seller's obligation to consummate the transaction contemplated by this Agreement that Buyer shall have delivered the same to Escrow Agent:

- 6.3.1. In accordance with Seller's instructions, a wire transfer in the amount required under Section 2.2 hereof (subject to the adjustments provided for in this Agreement).
- 6.3.2. A certification by Buyer that all representations and warranties made by Buyer in ARTICLE 15 of this Agreement are true and correct in all material respects, except as may be set forth in such certificate.

6.3.3 The Escrow Agreement duly executed by Buyer.

6.3.4. All other instruments and documents reasonably required to effectuate this Agreement and the transactions contemplated thereby.

Buyer shall notify Seller in writing, prior to the Closing, of any updates to Buyer's Deliveries as of the Closing Date.

6.4 Closing Escrow. Immediately upon receipt of the Closing Deliveries, Escrow Agent shall notify Buyer and Seller that all Closing Deliveries have been received and that the Escrow Agent is holding the Closing Deliveries in escrow (the "Closing Escrow") pursuant to the terms of the Escrow Agreement.

6.5 Closing. The Closing shall be conducted at 12:00 noon Boston time on the date that is ten (10) business days after the Building Demolition Certification Date (as hereinafter defined), or on such other date or through such other arrangements as may be agreed to in writing by both Seller and Buyer (the "Closing Date"). The Parties shall provide to the Escrow Agent no later than three (3) days prior to the Closing Date the Closing Deliveries updated as necessary to reflect the Closing Date. If any date on which the Closing would occur by operation of this Agreement is not a business day in Boston, Massachusetts, the Closing shall occur on the next business day, as provided in Section 20.6.

#### ARTICLE 7. AS IS, WHERE IS.

7.1 Except as expressly set forth in this Agreement or in the documents executed by Seller at Closing, it is understood and agreed that Seller is not making and has not at any time made any warranties or representations of any kind or character, express or implied, with respect to the Property, including, but not limited to, any warranties or representations as to habitability, merchantability or fitness for a particular purpose.

7.2 Buyer acknowledges and agrees that upon Closing Seller shall sell and convey to Buyer and Buyer shall accept the Property "AS IS, WHERE IS, WITH ALL FAULTS." Buyer acknowledges that it is acquiring the Property on the basis of its own investigations. Buyer has not relied and will not rely on, and Seller (including any officer, person, firm, agent or representative acting or purporting to act on behalf of the Seller) is not liable for or bound by, any express or implied warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, the Property Information and any prospectus distributed with respect to the Property) made or furnished by Seller, the managers of the Property, or any real estate broker or agent representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing, unless specifically set forth in this Agreement. Buyer also acknowledges that the Purchase Price reflects and takes into account that the Property is being sold "AS IS, WHERE IS, WITH ALL FAULTS."

7.3 Buyer represents to seller that Buyer, in a manner consistent with the terms of this Agreement, has conducted, or will conduct prior to Closing, such investigations of the Property, including but not limited to, the physical and environmental conditions thereof, as Buyer deems necessary or desirable to satisfy itself as to the condition of the Property and the existence or



nonexistence of, or curative action to be taken with respect to, any hazardous or toxic substances on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or its officers, directors, agents or employees with respect thereto, other than such representations, warranties and covenants of Seller as are expressly set forth in this Agreement or in the documents executed by Seller at closing. Upon closing, Buyer shall assume the risk that adverse matters, including but not limited to, construction defects and adverse physical and environmental conditions, may not have been revealed by Buyer's investigations, and Buyer, upon Closing shall be deemed to have waived, relinquished and released Seller (and Seller's officers, directors, shareholders, employees and agents) from and against any and all claims, demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) of any and every kind or character, known or unknown, which Buyer might have asserted or alleged against Seller (and Seller's officers, directors, shareholders, employees and agents) at any time by reason of or arising out of any latent or patent construction defects or physical conditions, violations of any applicable laws and any and all other acts, omissions, events, circumstances or matters regarding the Property.

The provisions of this ARTICLE 7 shall survive the Closing and any termination of this Agreement.

#### ARTICLE 8. Apportionments; Taxes; Expenses.

##### 8.1. Apportionments.

8.1.1. Taxes and Operating Expenses. All real estate taxes, charges and assessments affecting the Property ("Taxes"), and all utility charges, including communications, electricity, water and sewer ("Operating Expenses"), shall be prorated on a per diem basis as of the Closing Date. Taxes for the then-current fiscal year shall be adjusted in accordance with G.L. c. 59, § 72A, and real estate taxes due as of the Closing Date shall be deducted from Seller's proceeds. Any taxes paid by Seller prior to the Closing shall not be refunded. If the amount of said taxes is not known at the time of the Closing, they shall be apportioned on the basis of the taxes assessed for the preceding fiscal year. If any Operating Expenses cannot conclusively be determined as of the Closing Date, then the same shall be adjusted at Closing based upon the most recently issued bills thus far and readjusted within 120 days after the end of the calendar year in which the Closing occurs. The provisions of this Section 8.1.1 shall survive the Closing.

8.2. Expenses. Each Party will pay all its own expenses incurred in connection with this Agreement and the transactions contemplated hereby, including, without limitation, (i) all costs and expenses stated herein to be borne by a Party, and (ii) all of their respective accounting, legal and appraisal fees. Buyer, in addition to its other expenses, shall pay at Closing (i) all recording charges incident to the recording of the deed for the Real Property, (ii) premiums for any coverage under Buyer's title insurance policy, (iii) survey cost incurred in preparing a plan pursuant to Section 3.4.1, herein, and (iv) one-half of the fees, costs and expenses of Escrow Agent and the costs of any taxes assessed thereon. Seller, in addition to its other expenses, shall pay at or prior to the Closing, as the case may be, (i) the cost of obtaining and recording and/or filing such instruments as are necessary to establish Seller's good and clear record and marketable

title and Seller's authority to convey same; (ii) all costs to remove the Property from registration; under M.G. L. c. 185, §52, including the cost of survey and plan preparation and approval, if any, for such purpose (to the extent Buyer does not waive such condition as provided in Section 5.1.10); (iii) all documentary stamps, deed stamps and realty transfer taxes, and (iv) one-half of the fees, costs and expenses of Escrow Agent and the costs of any taxes assessed thereon.

#### ARTICLE 9. Damage or Destruction; Condemnation; Insurance.

9.1 The Parties acknowledge and agree that, because the Property will be conveyed free and clear of all buildings (including the Building), if, prior to Closing, the Building is damaged or destroyed by fire or other casualty, no matter the extent, Buyer shall not have the right to terminate this Agreement, and the Parties shall proceed under this Agreement and close on schedule as if such damage or casualty had not occurred.

9.2 Buyer represents and warrants that it has no knowledge of any pending or threatened taking of the Property by Buyer through condemnation, eminent domain or by agreement in lieu thereof. Buyer covenants to Seller that because Buyer's acquisition of the Property is subject to the Relocation Requirements, Buyer will not acquire the Property by condemnation or eminent domain, and such covenant shall survive the Closing and any termination of this Agreement so long as the Relocation Requirements apply. If prior the Closing Date, all or a material portion of the Property is taken by condemnation, eminent domain or by agreement in lieu thereof by a governmental authority other than Buyer, or any proceeding to acquire, take or condemn all or a material portion of the Property is threatened or commenced by a governmental authority other than Buyer, Buyer may, at its option, by written notice to Seller given within thirty (30) days after Seller notifies Buyer of such proceedings (and if necessary the Closing Date shall be automatically extended to give Buyer the full thirty (30) day period to make such election), either: (i) terminate this Agreement, in which case the Deposit shall be immediately returned to Buyer and the parties hereto shall have no further rights or obligations, other than those that by their terms survive the termination of this Agreement, or (ii) proceed under this Agreement, in which event Seller shall, at the Closing, assign to Buyer its entire right, title and interest in and to any condemnation award, and Buyer shall have the sole right after the Closing to negotiate and otherwise deal with the condemning authority in respect of such matter. If Buyer does not give Seller written notice of its election within the time required above, then Buyer shall be deemed to have elected option (ii) above.

#### ARTICLE 10. Remedies.

10.1. Buyer Default. The Parties agree that, in the event of a default by Buyer of any of its representations, warranties, covenants or obligations hereunder, resulting in Buyer's intentional failure, without legal excuse, to complete the acquisition in accordance with this Agreement, it would be extremely impracticable and difficult to estimate the damage and harm which Seller would suffer, and because a reasonable estimate of the total net detriment that Seller would suffer in the event of Buyer's failure to duly complete the acquisition hereunder is the amount of the Deposit, Seller shall be entitled to receive and retain the Deposit as Seller's sole and exclusive remedy for damages arising from Buyer's failure to complete the acquisition in accordance with the terms hereof, and Seller shall have no further recourse or remedy at law or in equity for any breach by Buyer hereunder; provided, however that, notwithstanding anything

herein to the contrary, in addition to Seller's ability to retain the Deposit, Seller shall also have the right to enforce Buyer's obligations under Sections 3.1.1 and 3.2.2 and ARTICLE 13 hereof.

10.2. Seller Default. In the event that Seller breaches or fails, without legal excuse, to complete the sale of the Property or to perform its obligations under this Agreement, Buyer may, as its sole remedy therefor and subject to Section 10.3, either:

10.2.1 Terminate this Agreement by notice to Seller, in which event the Deposit shall be paid to Buyer, and thereupon all obligations of the parties under this Agreement shall terminate (other than any Party's obligations under Sections 3.1.1 and 3.2.2 and ARTICLE 13 hereof, which shall remain in effect); or

10.2.2 Waive the default or failure of conditions and proceed to Closing in accordance with the provisions of this Agreement without any adjustment of the Purchase Price; or

10.2.3 If and to the extent Seller's breach is intentional, then and only in such event, Buyer may seek specific performance for conveyance of the Property on the terms and conditions set forth in this Agreement, but in no event shall Buyer be entitled to damages in connection with any such action. Buyer must commence any suit for specific performance within sixty (60) days following the scheduled time of Closing, and further, if such suit is instituted, Seller shall have the right, by serving written notice upon Buyer within five (5) days of service upon Seller of such suit, to require Buyer to close in accordance with this Agreement within twenty (20) days of delivery of such notice to Buyer (the "Reset Closing"). In the event Seller is ready, willing and able to close this transaction pursuant to the terms hereof on the date of the Reset Closing, Buyer shall complete this transaction in accordance with the terms of this Agreement at the Reset Closing and dismiss its suit with prejudice for specific performance and discharge any lis pendens (or similar filing) filed in connection therewith at the Reset Closing.

10.3 Damages. The Parties agree that each shall have no liability to the other for any breach of the covenants, representations or warranties made hereunder or under any other agreement, document, certificate or instrument delivered by either Party to the other, or under any law applicable to the Property or this transaction unless the valid claims for all such breaches collectively aggregate more than Fifteen Thousand Dollars (\$15,000.00), in which event the full amount of such valid claims shall be actionable, up to the cap set forth in the following sentence. Further, the Parties agree that any recovery for any breach of the covenants, representations or warranties hereunder or under any other agreement, document, certificate or instrument delivered by either Party to the other, or under any law applicable to the Property or this transaction, shall be limited to the damaged Party's actual damages not in excess of Fifty Thousand Dollars (\$50,000.00) in the aggregate, and that in no event shall the damaged Party be entitled to seek or obtain any other damages of any kind, including, without limitation, consequential, indirect or punitive damages.

ARTICLE 11. Tenant Relocation. Seller acknowledges that the execution of this Agreement and carrying out the transaction contemplated thereby may give rise to rights of tenants and other occupants of the Property to relocation assistance or benefits under the Relocation Requirements (as defined in Section 5.1.7 of this Agreement), which assistance or benefits shall be the sole responsibility of Buyer. Buyer acknowledges that Seller has delivered a termination notice to Seller's remaining tenant at the Property, and, in accordance with such notice, Seller anticipates that its remaining tenant will vacate the Property on or by the Delivery Date. Prior to the Closing, Seller will reasonably cooperate, at no cost or expense to Seller, with Buyer's efforts to comply with the Relocation Requirements, to the extent applicable to the Property; provided, however, notwithstanding anything to the contrary in this Agreement, Seller shall not have any obligation or duty, or incur any liability or be required to indemnify any party, in connection with the Relocation Requirements. In no event shall Buyer's lawful actions to satisfy the Relocation Requirements, or the results thereof, including the loss of tenants, constitute a breach of this Agreement or otherwise entitle Seller to damages.

ARTICLE 12. Notices. All notices and other communications provided for herein shall be in writing and shall be sent to the address set forth below (or such other address as a party may hereafter designate for itself by notice to the other parties as required hereby) of the party for whom such notice or communication is intended:

12.1. If to Seller:

Newburyport Manager LLC  
c/o New England Development  
75 Park Plaza  
Boston, MA 02116  
Attn: Scott Kelley  
Tel. No.: (617) 243-7847  
Email: Skelley@NEDevelopment.com

With a copy to:

Goulston & Storrs PC  
400 Atlantic Avenue  
Boston, MA 02110  
Attn: Timothy W. Sullivan, Esq.  
Tel. No.: (617) 574-4179  
Email: tsullivan@goulstonstorrs.com

12.2. If to Buyer:

City of Newburyport  
c/o Mayor of the City of Newburyport  
Newburyport City Hall

60 Pleasant Street  
Newburyport, MA 01950  
Tel. No.: (978) 465-4413  
Email: DHoladay@CityofNewburyport.com

With a copy to:

City of Newburyport  
Director of Planning and Development  
Newburyport City Hall  
60 Pleasant Street  
Newburyport, MA 01950  
Tel. No.: (978) 465-4400  
Email: APort@CityofNewburyport.com

And to:

Jonathan D. Eichman, Esq.  
KP Law, P.C  
101 Arch Street, 12<sup>th</sup> Floor  
Boston, MA 02110  
Telephone: (617) 556-0007  
Facsimile: (617) 654-1735  
E-mail: jeichman@k-plaw.com

12.3. If to the Escrow Agent to:

Fidelity National Title Insurance Company  
133 Federal Street, 3rd Floor  
Boston, MA 02110  
Attn: Kevin T. Creedon  
Tel. No.: (617) 350-8828  
Fax No.: (617) 350-8826  
Email: kcreedon@fnf.com

Any such notice or communication shall be sufficient if sent by registered or certified mail, return receipt requested, postage prepaid; by hand delivery; by overnight courier service; or by email, with an original by regular mail. Any such notice or communication shall be effective when delivered or when delivery is refused.

ARTICLE 13. Brokers. Buyer and Seller represent that they have not dealt with any broker in connection with this transaction. Each Party hereby indemnifies and holds harmless the other Party from all loss, cost, damage, liability, and expense (including reasonable attorneys' fees) arising out of a breach of its representation or undertaking set forth in this ARTICLE. The provisions of this ARTICLE shall survive the Closing or the termination of this Agreement.



ARTICLE 14. Escrow Agent. Escrow Agent shall hold the Deposit and the Closing Deliveries in accordance with the terms and provisions of this Agreement, subject to the following:

14.1. Obligations. Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties or obligations shall be read into this Agreement against Escrow Agent.

14.2. Reliance. Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes, and any statement or assertion contained in such writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instrument in connection with the provisions of this Agreement has been duly authorized to do so. Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of any instrument deposited in escrow, nor as to the identity, authority, or right of any person executing the same, and Escrow Agent's duties under this Agreement shall be limited to those provided in this Agreement. Notwithstanding the above, Escrow Agent shall take no action to discharge its duties with respect to funds or other property placed in its custody until it has determined that both Parties are fully apprised of its intended exercise of such duties and have been given equal and reasonable opportunity to apprise the Escrow Agent of their positions on the matter.

14.3. Indemnification. Unless Escrow Agent discharges any of its duties under this Agreement in a negligent manner or is guilty of willful misconduct with regard to its duties under this Agreement, Seller and Buyer shall indemnify Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or other expenses, fees, or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Agreement; and in such connection Seller and Buyer shall indemnify Escrow Agent against any and all expenses including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim in such capacity.

14.4. Disputes. If the parties (including Escrow Agent) shall be in disagreement about the interpretation of this Agreement, or about their respective rights and obligations, or the propriety of any action contemplated by Escrow Agent, or the application of the Deposit, Escrow Agent shall hold the Deposit until the receipt of joint written instructions from Buyer and Seller or a final order of a court of competent jurisdiction. In addition, in any such event, Escrow Agent may, but shall not be required to, file an action in interpleader to resolve the disagreement. Escrow Agent shall be indemnified for all costs and reasonable attorneys' fees in its capacity as Escrow Agent in connection with any such interpleader action and shall be fully protected in suspending all or part of its activities under this Agreement until a final judgment in the interpleader action is received.

14.5. Counsel. Escrow Agent may consult with counsel of its own choice and have full and complete authorization and protection in accordance with the opinion of such counsel. Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind, unless caused by its negligence or willful misconduct.

14.6. Interest. All deposits into the escrow shall be held by the Escrow Agent in an interest bearing account. All interest earned on the Deposit shall be deemed to be part of the Deposit and shall accrue to the benefit of Buyer except to the extent the Deposit becomes payable to Seller pursuant to Section 10.1. In such event the interest earned on the Deposit shall accrue to the benefit of the Seller.

ARTICLE 15. Representations of Buyer. Buyer hereby represents and warrants to Seller as of the date hereof and as of the Closing Date as follows:

15.1. Due Power and Authority. Buyer is a municipal corporation of the Commonwealth of Massachusetts and has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement by Buyer has been duly authorized, and the person(s) signing this Agreement on behalf of Buyer has been duly authorized to sign on behalf of Buyer.

15.2. No Conflict. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder on the part of Buyer does not and will not, to the best of Buyer's actual knowledge, violate any applicable law, ordinance, statute, rule, regulation, order, decree or judgment, conflict with or result in the breach of any material terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any of the property or assets of the Buyer by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which Buyer is a party or which is or purports to be binding upon Buyer or which otherwise affects Buyer, which will not be discharged, assumed or released at Closing. To the best of Buyer's actual knowledge, no action by any federal, state or municipal or other governmental department, commission, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon Buyer in accordance with its terms. There are no proceedings pending or, to the best of Buyer's actual knowledge, threatened against Buyer in any court or before any governmental authority or any tribunal which, if adversely determined, would have a material adverse effect on its ability to purchase the Property or to carry out its obligations under this Agreement.

ARTICLE 16. Cooperation; Further Assurances.

16.1 Generally. The Parties agree to cooperate with one another at reasonable times and on reasonable conditions and shall execute and deliver such instruments and documents as may be necessary in order fully to carry out the intent and purposes of the transactions contemplated hereby. Except for such instruments and documents as the parties were originally obligated to deliver by the terms of this Agreement, such cooperation shall be without additional cost or liability.

16.2 Remainder Parcel. Following the conveyance of the Property to Buyer, Seller's Property will consist of a parcel of land comprising approximately 7,396 square feet of total land area, shown on the Plan as "Remaining Land of New England Development" (the "Remainder Parcel"). Seller intends to utilize the Remainder Parcel for one or more uses, potentially including, but not limited to, parking, retail, and/or residential use. The Parties acknowledge that, due to the Remainder Parcel's size and configuration, any use or redevelopment of the

Remainder Parcel may require discretionary relief and other permits and approvals from local, state, and federal regulatory bodies, potentially including the Newburyport Zoning Board of Appeals and the Newburyport Planning Board, among others.

The provisions of this ARTICLE 16 shall survive the Closing.

#### ARTICLE 17 Building Demolition.

17.1 Within thirty (30) days of receiving written notice from the Escrow Agent that all Closing Deliveries have been received, Seller shall proceed as expeditiously as possible, at Seller's sole cost and expense and pursuant to applicable law and such permits as may be required, to demolish, remove, and properly dispose off-site any portion of the Building then located on the Property (including the foundation), with all other improvements on the Property remaining (including sidewalks, paving, and such existing utility infrastructure serving the Property as the Parties agree shall be preserved), and Seller shall leave the portion of the Property disturbed by such demolition in a backfilled with graded  $\frac{3}{4}$  inch aggregate, compacted, and rough-graded condition and shall leave the remainder of the Property in its as-is condition (all such acts, together, the "Building Demolition"). The Building Demolition shall be completed within sixty (60) days, or such further time as may be reasonably required and agreed to by the Parties. Seller shall, and does hereby agree to release and indemnify, defend and hold Buyer, its successors, departments, officers, employees, servants, attorneys and agents, harmless from and against any and all claims, demands, suits, obligations, payments, damages, losses, penalties, liabilities, costs and expenses (including but not limited to attorneys' fees), to the extent actually incurred by Buyer, arising out of Seller's or Seller's agents' actions taken in, on or about the Property in carrying out the Building Demolition, or otherwise resulting from the Building Demolition. The obligations hereunder shall not extend to claims arising solely from the negligent acts of the City, its employees, contractors, or agents. This Section shall survive the Closing and delivery of the Deed or any termination of this Agreement notwithstanding any other provisions to the contrary.

17.2 In undertaking the Building Demolition, Seller shall comply with all applicable environmental laws and regulations.

17.3 Promptly following Seller's completion of the Building Demolition, Seller shall deliver to Buyer and Escrow Agent a demolition completion certificate, signed by Seller and Seller's engineer, certifying that the Building Demolition has been completed in accordance with this ARTICLE 17 (the "Building Demolition Certificate"). The date Seller delivers the Building Demolition Certificate to Buyer and Escrow Agent is referred to as the "Building Demolition Certification Date." Buyer shall have the right, during the ten (10) business days immediately following the Building Demolition Certification Date, to inspect the Property to confirm that the Building Demolition Certificate contains no material misrepresentations (such period, the "Building Demolition Inspection Period").

17.4 If the Building Demolition Certificate contains material misrepresentations as to the satisfactory completion of the Building Demolition in accordance with this ARTICLE 17, then Buyer shall have the right, at its option, to either (i) terminate this Agreement by delivering written notice of termination to Seller and Escrow Agent prior to the conclusion of the Building

Demolition Inspection Period (a "Demolition Termination Notice"); (ii) demand that Seller complete the Building Demolition as agreed by delivering written notice to Seller and Escrow Agent (a "Demolition Demand Notice"), whereupon the Closing shall be extended for up to thirty (30) days to allow for such completion; or (iii) accept the condition of the Property and the Building Demolition Certificate and proceed to the Closing.

17.5 If Buyer fails to deliver a Demolition Termination Notice or a Demolition Demand Notice to Seller and Escrow Agent, as aforesaid, prior to the conclusion of the Building Demolition Inspection Period, then Buyer shall be deemed to have accepted the condition of the Property and the Building Demolition Certificate, and the Parties shall proceed to the Closing.

17.6 If Buyer delivers a Demolition Termination Notice to Seller and Escrow Agent, as aforesaid, then, unless otherwise agreed to by the Parties in writing, this Agreement shall be deemed terminated and Escrow Agent shall immediately return the Deposit and Buyer's Deliveries to Buyer, and Seller's Deliveries to Seller, and the Parties shall have no further rights or obligations hereunder, other than those that by their terms survive the termination of this Agreement.

17.7 If Buyer delivers a Demolition Demand Notice to Seller and Escrow Agent, as aforesaid, alleging that the Building Demolition Certificate contains material misrepresentations as to the satisfactory completion of the Building Demolition, then Seller shall, within the thirty (30) days following Seller's receipt of such notice (the "Demolition Cure Period"), use reasonable efforts to cure such alleged material misrepresentations, and the following shall apply:

17.7.1 If Seller, using its reasonable efforts, is able to correct such alleged deficiencies within the Demolition Cure Period, then Seller shall, promptly following such correction, deliver to Buyer a certificate to that effect, signed by Seller and Seller's engineer (a "Demolition Close-Out Certificate"). Buyer shall then have the right, during the five (5) business days immediately following Seller's delivery of the Demolition Close-Out Certificate to Buyer and Escrow Agent, to inspect the Property to confirm that the Demolition Close-Out Certificate contains no material misrepresentations (such period, the "Close-Out Inspection Period"). If the Demolition Close-Out Certificate contains material misrepresentations, then Buyer shall have the right, at its option, to either (i) terminate this Agreement by delivering written notice of termination to Seller and Escrow Agent prior to the conclusion of the Close-Out Inspection Period (a "Close-Out Termination Notice"); or (ii) accept the condition of the Property and the Demolition Close-Out Certificate and proceed to the Closing. If Buyer fails to deliver a Close-Out Termination Notice to Seller and Escrow Agent, as aforesaid, prior to the conclusion of the Close-Out Inspection Period, then Buyer shall be deemed to have accepted the condition of the Property and the Demolition Close-Out Certificate, and the Parties shall proceed to the Closing.

17.7.2 If, despite its reasonable efforts, Seller is unable to cure such alleged deficiency within the Demolition Cure Period, then Seller shall deliver written notice to that effect to Buyer and Escrow Agent (a "Non-Cure Notice"). Buyer shall then have the right, within the five (5) business days immediately following Seller's delivery of the Non-Cure Notice to Buyer and Escrow Agent (such period, the "Non-Cure Notice Period"), to either (i) terminate this Agreement by delivering written notice of termination to Seller and Escrow Agent prior to the conclusion of the Non-Cure Notice Period (a "Non-Cure Termination Notice"); or (ii) accept the condition of the Property and proceed to the Closing. If Buyer fails to deliver a Non-Cure Termination Notice to Seller and Escrow Agent, as aforesaid, prior to the conclusion of the Non-Cure Notice Period, then Buyer shall be deemed to have accepted the condition of the Property, and the Parties shall proceed to the Closing.

17.8 Buyer covenants and agrees, at no cost to Buyer, to reasonably cooperate with Seller's efforts to secure all necessary permits, approvals, decrees, consents, and other authorizations that may be required to complete the Building Demolition.

#### ARTICLE 18. Future Dispositions; Seller's Right of First Refusal.

18.1 The following definitions shall apply to this ARTICLE 18 in addition to any other definitions employed elsewhere in this Agreement:

18.1.1 "Appraised Value" shall mean the value of the Property determined through procedures customarily accepted by the appraising profession as valid.

18.1.2 "Exercise Period" shall mean the sixty (60) calendar day period, following Seller's receipt of the Selected Proposal, during which Seller may exercise its Right of First Refusal by submitting a Notice of Exercise to Buyer.

18.1.3 "Notice of Exercise" shall mean a written notice sent by Seller to Buyer through which Seller exercises its Right of First Refusal.

18.1.4 "Disposition Event" shall mean Buyer's election to undertake a Voluntary Disposition within ten (10) years of the Closing where Substantial Completion has not been achieved.

18.1.5 "Right of First Refusal" shall mean the right of Seller, but not the obligation, to accept a Voluntary Disposition on the same terms offered to Buyer in the Selected Proposal (or, if the Voluntary Disposition is not subject to M.G.L. c. 30B, §16, on the same terms under which Buyer is willing to effect such Voluntary Disposition).

18.1.6 "Selected Proposal" shall mean the proposal selected by the Buyer as a result of the solicitation process undertaken in accordance with M.G.L. c. 30B, § 16 in response to a Disposition Event.



- 18.1.7 “Solicitation” shall mean an invitation for proposals, prepared and advertised as specified in M.G.L. c. 30B, § 16 and this ARTICLE 18, to make a Voluntary Disposition.
- 18.1.8 “Substantial Completion” shall mean the Parking Facility has been completed and is ready for occupancy (as evidenced by the issuance of a Certificate of Occupancy) except for landscape improvements and items of work and adjustment of equipment and fixtures that can be completed after occupancy has been taken without causing substantial interference with the use of the Parking Facility (*i.e.*, so-called “punch list” items).
- 18.1.9 “Voluntary Disposition” shall mean the sale, transfer, assignment, conveyance, or other disposition of Buyer’s right, title, or interest in or to all or any portion of the Property to a person, firm or entity other than an agency or instrumentality of Buyer using the Property as a parking garage or parking lot. Voluntary Disposition shall not include disposition of any interest in the Property (but not a fee interest) necessary or convenient to effectuate the construction and/or use of the Parking Facility.

18.2 If Buyer desires to undertake a Voluntary Disposition prior to the tenth anniversary of the Effective Date of this Agreement, and Substantial Completion has not been achieved, then, within thirty (30) calendar days following such Disposition Event, Buyer shall determine the Appraised Value of the Property (or portion thereof if the proposed Voluntary Disposition is for less than all of the Property) and shall publish a Solicitation for proposals to acquire all of Buyer’s right and interest in and to the Property (or portion thereof, as applicable) by purchase, transfer, or assignment, as the case may be. Seller shall retain a recurring Right of First Refusal to reacquire the Property from Buyer on the same terms as are contained in the Selected Proposal or, in the case of a Voluntary Disposition not subject to M.G.L. c. 30B, § 16, as provided in Section 18.7. Buyer’s Solicitation materials shall disclose that the Solicitation is subject at all times and in all circumstances to Seller’s recurring Right of First Refusal as set forth in this ARTICLE 18. The contract terms and conditions included in the Solicitation shall not include any use restriction or similar encumbrance against the Property not then a matter of record, nor shall they grant Buyer any future interest in or recapture right or similar restriction over the Property. Buyer shall deliver to Seller a copy of any publication or advertisement of the Solicitation no later than three (3) business days after Buyer publishes or advertises the same. As required by M.G.L. c. 30B, § 16(f), Buyer shall open and evaluate, in public, any proposals received in response to the Solicitation, and shall choose the Selected Proposal, if any, based on the criteria specified in the Solicitation. Buyer may reject any or all proposals at its discretion.

18.3 Seller may exercise its Right of First Refusal over the Selected Proposal at any time during the Exercise Period by submitting a Notice of Exercise to Buyer. Buyer shall not consummate the transaction contemplated in the Selected Proposal unless and until the Exercise Period expires with Seller having declined or having failed to deliver a Notice of Exercise to Buyer.

18.4 In the event that Seller exercises its Right of First Refusal over a particular Selected Proposal, Seller and Buyer shall negotiate a purchase and sale agreement for the sale of

the Property to Seller, in accordance with the terms of the Solicitation, which agreement shall constitute a contract for the sale or transfer or assignment by Buyer, as the case may be, and the purchase or acceptance by Seller, as the case may be, of the right, title, or interest affected by such Selected Proposal.

18.5 If Seller does not exercise its Right of First Refusal during the Exercise Period, Buyer may consummate the transaction contemplated in the Selected Proposal, but any material change in the terms of such transaction shall constitute a new disposition requiring new written notice and a further Right of First Refusal to be given to Seller.

18.6 If Buyer desires to undertake a Voluntary Disposition not subject to M.G.L. c. 30B, §16, the provisions of this ARTICLE 18 shall nevertheless apply, except that in lieu of submitting a Solicitation, Buyer shall notify Seller in writing of Buyer's desire to undertake such Voluntary Disposition, and the terms thereof, and shall give Seller sixty (60) calendar days in which to exercise its Right of First Refusal to accept such Voluntary Disposition.

18.7 Seller may seek specific performance for Buyer's breach of this ARTICLE 18 in addition to any other rights and remedies available at law or in equity.

18.8 The provisions of this ARTICLE 18 shall survive the Closing and shall run with the land, binding Buyer and its successors and assigns. Seller may record an instrument with the Registry evidencing its rights under this ARTICLE 18.

#### ARTICLE 19. Miscellaneous.

19.1. Assignability. Buyer may not assign or transfer its rights or obligations under this Agreement without Seller's prior written consent, which consent may be withheld in Seller's sole discretion.

19.2 Entire Agreement; Amendments. This Agreement and its Exhibits set forth all of the promises, covenants, agreements, conditions and undertakings between the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as contained herein. This Agreement may not be changed orally but only by an agreement in writing, duly executed by or on behalf of the party or parties against whom enforcement of any waiver, change, modification, consent or discharge is sought.

19.3 Bind and Inure. This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, assigns and personal representatives.

19.4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of choice of law or conflicts of law.

19.5. No Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Seller or Buyer of the breach of any covenant of this Agreement shall

be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

19.6. Time of the Essence: Time Periods. Time is of the essence of this Agreement. Any reference in this Agreement to the time for the performance of obligations or elapsed time shall mean consecutive calendar or business days, months, or years, as applicable. As used in this Agreement, the term "business day" shall mean any day other than a Saturday, Sunday, recognized federal holiday or a recognized state holiday in the Commonwealth of Massachusetts. If the last date for performance by either Party under this Agreement occurs on a day which is not a business day, then the last date for such performance shall be extended to the next occurring business day.

19.7. Severability. If any term, provision, covenant, or condition of this Agreement, or the application thereof to any person or any circumstance, is held to be unenforceable, invalid or illegal (in whole or in part) for any reason (in any relevant jurisdiction), the remaining terms, provisions, covenants, and conditions of this Agreement, modified by the deletion of the unenforceable, invalid or illegal portion (in any relevant jurisdiction), will continue in full force and effect, and such unenforceability, invalidity, or illegality will not otherwise affect the enforceability, validity or legality of the remaining terms, provisions, covenants and conditions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the deletion of such portion of this Agreement will not substantially impair the respective expectations of the parties or the practical realization of the benefits that would otherwise be enforced upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited or unenforceable provision with a valid provision, the economic effect of which comes as close as possible to that of the prohibited or unenforceable provision.

19.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but any number of which, taken together, shall be deemed to constitute one and the same instrument.

19.9. Headings: Construction of Agreement. The headings preceding the text of the paragraphs and subparagraphs of this Agreement are inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared primarily by counsel for one of the Parties, it being recognized that both Buyer and Seller have contributed substantially and materially to the preparation of this Agreement.

19.10. Merger. Except as otherwise specifically provided herein or in any closing document, the acceptance of the Deed by the recordation thereof shall be deemed to be a full and complete performance and discharge of every agreement and obligation of the Seller contained in this Agreement.

19.11. Recording. This Agreement or any notice or memorandum hereof shall not be recorded in any Registry of Deeds. A violation of this prohibition by Buyer shall constitute a material breach, entitling Seller to terminate this Agreement.

19.12. No Third Party Beneficiaries. Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

19.13. Use of Proceeds to Clear Title. To enable Seller to make conveyance as herein provided, Seller may, at the time of Closing, use the Purchase Price or any portion thereof to clear the title of any or all encumbrances or interests, provided that provision reasonably satisfactory to Buyer's attorney is made for prompt recording of all instruments so procured in accordance with conveyancing practice in the jurisdiction in which the Property is located.

19.14. Submission not an Offer or Option. The submission of this Agreement or a summary of some or all of its provisions for examination or negotiation by Buyer or Seller does not constitute an offer by Seller or Buyer to enter into an agreement to sell or purchase the Property, and neither Party shall be bound to the other with respect to any such purchase and sale until a definitive agreement satisfactory to the Buyer and Seller in their sole discretion is executed and delivered by both Seller and Buyer.

19.15. IRS Real Estate Sales Reporting. Buyer, Seller and Escrow Agent hereby agree that Escrow Agent shall act as "the person responsible for closing" the transaction which is the subject of this Agreement pursuant to Section 6045(e) of the Code. Escrow Agent shall prepare and file all informational returns, including IRS Form 1099S, and shall otherwise comply with the provisions of Section 6045(e) of the Code.

19.16. Like-Kind Exchange. At Seller's election, Buyer shall cooperate with Seller in effecting a so-called Section 1031 like-kind exchange provided that (a) all costs and liabilities associated with such exchange shall be borne by Seller; (b) such cooperation shall not require Buyer to take title to any real estate other than the Property; (c) such exchange shall not affect Seller's obligation to deliver title in accordance with the terms hereof; and (d) Seller shall indemnify and hold Buyer harmless from any and all cost, liability or expense, including legal fees, arising out of such cooperation, including without limitation any liability or costs incurred by Buyer arising from any tax proceedings or investigations conducted in connection with the exchange. Seller expressly acknowledges that Buyer, in assisting Seller in consummating the exchange contemplated by this Section, is making no representations or warranties whatsoever with respect to whether or not the exchange contemplated by Seller will qualify as a tax-deferred exchange pursuant to the Internal Revenue Code, and Buyer shall have no liability whatsoever to Seller in the event that it is determined or adjudged that this exchange transaction does not qualify as a tax-deferred exchange pursuant to the Internal Revenue Code. The provisions of this paragraph shall survive the Closing.

19.17 Extensions. The Parties hereby authorize their respective attorneys (as the case may be) to execute on their behalf any extensions to the time for performance and any change of location and/or time of the Closing. The Parties shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge before the execution or other consent to such extensions, that either Party has disclaimed the authority granted herein to bind them. For purposes of this Agreement, facsimile signatures shall be construed as original.

*[Signatures Follow]*



IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

**BUYER:**

CITY OF NEWBURYPORT,  
a Massachusetts municipal corporation

By: Donna D. Holaday  
Name: Donna D. Holaday  
Title: Mayor

**SELLER:**

**81-83 MERRIMAC STREET NOMINEE TRUST**

By: NEWBURYPORT MANAGER LLC, a  
Massachusetts limited liability company,  
its sole trustee

By: \_\_\_\_\_  
Name:  
Title: Manager

**90 PLEASANT STREET NOMINEE TRUST**

By: NEWBURYPORT MANAGER LLC, a  
Massachusetts limited liability company,  
its sole trustee

By: \_\_\_\_\_  
Name:  
Title: Manager

**ESCROW AGENT:**

FIDELITY NATIONAL TITLE INSURANCE  
COMPANY

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

**BUYER:**


CITY OF NEWBURYPORT,  
a Massachusetts municipal corporation

By: \_\_\_\_\_  
Name: Donna D. Holaday  
Title: Mayor

**SELLER:**


**81-83 MERRIMAC STREET NOMINEE TRUST**

By: NEWBURYPORT MANAGER LLC, a  
Massachusetts limited liability company,  
its sole trustee

By:   
Name: Steven S. Fischman  
Title: Manager

**90 PLEASANT STREET NOMINEE TRUST**

By: NEWBURYPORT MANAGER LLC, a  
Massachusetts limited liability company,  
its sole trustee

By:   
Name: Steven S. Fischman  
Title: Manager

**ESCROW AGENT:**

FIDELITY NATIONAL TITLE INSURANCE  
COMPANY

By: \_\_\_\_\_  
Name:  
Title:

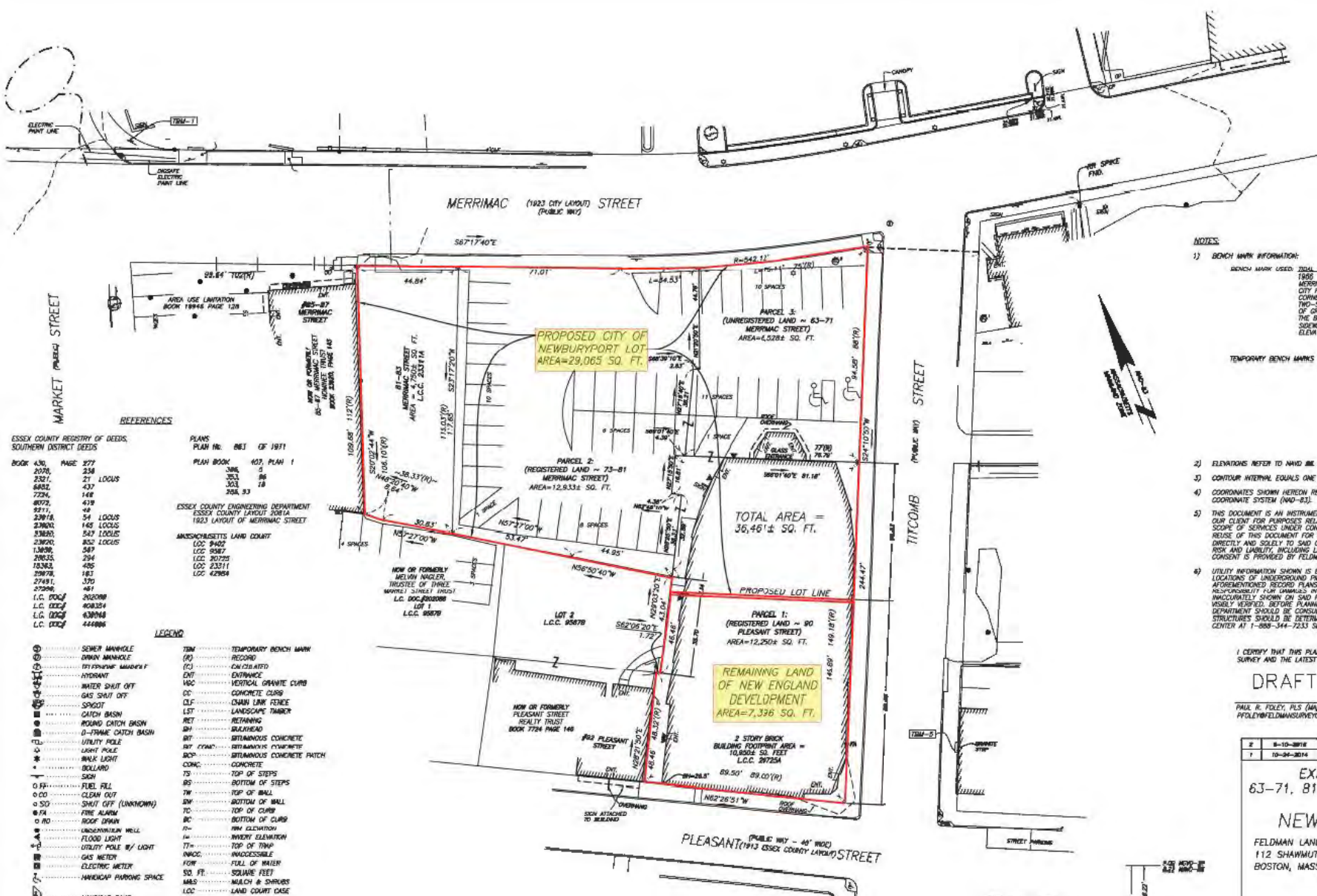
List of Exhibits

Exhibit A	-	Description of Property
Exhibit B	-	Form of Deed
Exhibit C	-	Form of Escrow Agreement
Exhibit D	-	Non-Foreign Affidavit
Exhibit E	-	List of Environmental Reports

**EXHIBIT A**

Description of the Property

**[See Attached Plan]**



ESSEX COUNTY REGISTRY OF DEEDS, SOUTHERN DISTRICT DEEDS

BOOK	PAGE	DATE
2076	277	2/1/88
2321	21	10/2/88
2452	437	10/2/88
2724	148	10/2/88
2872	419	10/2/88
2917	48	10/2/88
2987	54	10/2/88
2988	148	10/2/88
2989	547	10/2/88
2990	852	10/2/88
2991	587	10/2/88
2992	294	10/2/88
2993	485	10/2/88
2994	181	10/2/88
2995	370	10/2/88
2996	481	10/2/88
L.C. 20725	202088	10/2/88
L.C. 20726	408324	10/2/88
L.C. 20727	430948	10/2/88
L.C. 20728	444886	10/2/88

LEGEND

1	SEWER MANHOLE	10	TEMPORARY BENCH MARK
2	DRAIN MANHOLE	11	RECORD
3	15" FURNACE MANHOLE	12	CONCRETE
4	HYDRANT	13	ENTRANCE
5	WATER SHUT OFF	14	VEGETATION
6	GAS SHUT OFF	15	CONCRETE CURB
7	SPIGOT	16	CHAIN LINK FENCE
8	CATCH BASIN	17	LANDSCAPE TREES
9	ROUND CATCH BASIN	18	RETAINING
10	U-TURN CATCH BASIN	19	BULKHEAD
11	UTILITY POLE	20	BITUMINOUS CONCRETE
12	LIGHT POLE	21	BITUMINOUS CONCRETE
13	WATER LIGHT	22	BITUMINOUS CONCRETE PATCH
14	BOLLARD	23	CONCRETE
15	SKIN	24	TOP OF STEPS
16	FUEL TANK	25	BOTTOM OF STEPS
17	CLEAN OUT	26	TOP OF WALL
18	SHUT OFF (UNKNOWN)	27	BOTTOM OF WALL
19	FIRE ALARM	28	TOP OF CURB
20	ROOF DRAIN	29	BOTTOM OF CURB
21	UNDERGROUND WELL	30	FIN ELEVATION
22	FLOOD LIGHT	31	INVERT ELEVATION
23	UTILITY POLE W/ LIGHT	32	TOP OF TANK
24	GAS METER	33	INACCESSIBLE
25	ELECTRIC METER	34	FULL OF WATER
26	HANDICAP PARKING SPACE	35	SQ. FT. SQUARE FEET
27	HANDICAP RAMP	36	MAS. MULCH & SHRUBS
28	DATE POST	37	LAND COURT CASE
29	GUARD RAIL	38	BRICK
30	FENCE	39	OVER
31	WOOD FENCE	40	RADIUS OR FIN ELEVATION
32	SEWER	41	LENGTH
33	DRAIN	42	WATER
34		43	GAS
35		44	ELECTRIC
36		45	TELEPHONE
37		46	OVERHEAD WIRES

- NOTES
- 1) BENCH MARK INFORMATION:  
BENCH MARK USED: TOTAL BENCHMARK #1, DESCRIBED BY NATIONAL GEODETIC SURVEY 1985 AT NEWBURYPORT, ALONG GREEN STREET, BETWEEN MERRIMAC STREET AND PLEASANT STREET, DIRECTLY BEHIND THE CITY HALL, SET VERTICALLY IN THE SOUTH FACE AT THE SOUTHWEST CORNER OF THE POLICE STATION AND DISTRICT COURT A TWO-STORY BRICK BUILDING, 54 FEET WEST OF THE WEST CURB OF GREEN STREET, 1.5 FEET EAST OF THE SOUTHWEST CORNER OF THE BUILDING, AND ABOUT 1.7 FEET ABOVE THE LEVEL OF THE SIDEWALK.  
ELEVATION = 25.85
  - 2) ELEVATIONS REFER TO NAVD 83.
  - 3) CONTOUR INTERVAL EQUALS ONE (1) FOOT.
  - 4) COORDINATES SHOWN HEREON REFER TO MASSACHUSETTS STATE PLANE MAINLAND ZONE COORDINATE SYSTEM (NAD-83).
  - 5) THIS DOCUMENT IS AN INSTRUMENT OF SERVICE OF FELDMAN LAND SURVEYORS, ISSUED TO OUR CLIENT FOR PURPOSES RELATED DIRECTLY AND SOLELY TO FELDMAN LAND SURVEYORS' SCOPE OF SERVICES UNDER CONTRACT TO OUR CLIENT FOR THIS PROJECT. ANY USE OR REUSE OF THIS DOCUMENT FOR ANY REASON BY ANY PARTY FOR PURPOSES UNRELATED DIRECTLY AND SOLELY TO SAID CONTRACT SHALL BE AT THE USER'S SOLE AND EXCLUSIVE RISK AND LIABILITY, INCLUDING LIABILITY FOR VIOLATION OF COPYRIGHT LAWS, UNLESS WRITTEN CONSENT IS PROVIDED BY FELDMAN LAND SURVEYORS.
  - 6) UTILITY INFORMATION SHOWN IS BASED ON BOTH A FIELD SURVEY AND PLANS OF RECORD. THE LOCATIONS OF UNDERGROUND PIPES AND CONDUITS HAVE BEEN DETERMINED FROM THE AFORESAID RECORD PLANS AND ARE APPROXIMATE ONLY. WE CANNOT ASSUME RESPONSIBILITY FOR DAMAGES INCURRED AS A RESULT OF UNDETECTED PIPES OR CONDUITS OR INACCURATELY SHOWN ON SAID RECORD PLANS, SINCE SUB-SURFACE UTILITIES CANNOT BE VISUALLY VERIFIED. BEFORE PLANNING FUTURE CONNECTIONS, THE PROPER UTILITY ENGINEERING DEPARTMENT SHOULD BE CONSULTED AND THE ACTUAL LOCATION OF SUB-SURFACE STRUCTURES SHOULD BE DETERMINED IN THE FIELD, CALL, TOLL FREE, THE DIG SAFE CALL CENTER AT 1-888-344-7233 SEVENTY-TWO HOURS PRIOR TO EXCAVATION.

DRAFT 6-10-2016

PAUL R. FOLEY, PLS. (MA# 48355)  
FOLEY@FELDMANSURVEYORS.COM

DATE

EXISTING CONDITIONS PLAN  
63-71, 81-83 & 85-87 MERRIMAC STREET  
90 PLEASANT STREET  
NEWBURYPORT, MASS.

FELDMAN LAND SURVEYORS  
112 SHAWMUT AVENUE  
BOSTON, MASS. 02118

NOVEMBER 30, 2011  
PHONE: (617)357-9740  
www.feldmansurveyors.com

FELDMAN LAND SURVEYORS

SCALE: 1"=20'

GRAPHIC SCALE: 0 20 40 60 80 FEET

DATE: 6-10-2016

PROJECT: 63-71, 81-83 & 85-87 MERRIMAC STREET, 90 PLEASANT STREET, NEWBURYPORT, MASS.

REVISIONS: 1. FIELD CHECK BY PLS. AND PLS. APPROVED: 6-10-2016  
2. CADD BY PLS. APPROVED: 6-10-2016  
3. CADD BY PLS. APPROVED: 6-10-2016  
4. CADD BY PLS. APPROVED: 6-10-2016

**EXHIBIT B**

Deed

(Follows this Page)



## QUITCLAIM DEED

\_\_\_\_\_, a \_\_\_\_\_ with an address of \_\_\_\_\_  
\_\_\_\_\_, (“Grantor”), for consideration paid and full consideration of \_\_\_\_\_  
\_\_\_\_\_ DOLLARS (\$) \_\_\_\_\_ grants to \_\_\_\_\_, a \_\_\_\_\_  
\_\_\_\_\_ with an address of \_\_\_\_\_ [and \_\_\_\_\_  
\_\_\_\_\_, a \_\_\_\_\_ with an address of \_\_\_\_\_  
\_\_\_\_\_, as \_\_\_\_\_], with QUITCLAIM COVENANTS, the  
land, together with any improvements thereon, located in \_\_\_\_\_,  
County, Massachusetts, as more particularly described in **Exhibit A** attached hereto and made a  
part hereof.

The conveyance is made together with and subject to all recorded easements, conditions, restrictions and agreements and all other matters of record that lawfully apply to the property hereby conveyed.

The premises do not constitute all or substantially all of the Grantor’s property in the Commonwealth of Massachusetts.

For Grantor’s title, see Deed of \_\_\_\_\_, dated \_\_\_\_\_ [recorded with the \_\_\_\_\_ Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_] [filed with the \_\_\_\_\_ Registry District of the Land Court as Document No. \_\_\_\_\_].

[Balance of page intentionally left blank]

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared \_\_\_\_\_ provided to me through satisfactory evidence of identification which were to be the person whose name is signed on the preceding or attached document and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose as \_\_\_\_\_ for \_\_\_\_\_.

\_\_\_\_\_  
(official signature and seal of notary)

My commission expires:

Exhibit A

**EXHIBIT C**  
**ESCROW AGREEMENT**  
**[See Attached]**

## ESCROW AGREEMENT

This Escrow Agreement (this "Agreement") is entered into as of \_\_\_\_\_, 2017, by and among NEWBURYPORT MANAGER LLC, a Massachusetts limited liability company, as trustee of 90 Pleasant Street Nominee Trust and 81-83 Merrimac Street Nominee Trust (collectively, "Seller"), the CITY OF NEWBURYPORT, a Massachusetts municipal corporation ("Buyer"), and FIDELITY NATIONAL TITLE INSURANCE COMPANY, having an address at 133 Federal Street, Boston, MA 02110, as escrow agent ("Escrow Agent").

## BACKGROUND

A. This Agreement is the "Escrow Agreement" referred to in Section 6.2.2 of that certain Purchase and Sale Agreement dated \_\_\_\_\_, 2017, by and between Seller and Buyer (the "Purchase Agreement") for the purchase of certain land more or less depicted as "Proposed City of Newburyport Lot Area = 29,065 SQ. FT." on a certain sketch plan entitled, "Existing Conditions Plan 63-71, 81-83 & 85-87 Merrimac Street 90 Pleasant Street Newburyport, Mass." dated Nov. 30, 2011, prepared by Feldman Land Surveyors, labeled "Draft 6-10-2016."

B. Capitalized terms used in this Agreement without definition shall have the respective meanings given to such terms in the Purchase Agreement.

The parties, intending to be legally bound, hereby agree as follows:

## TERMS AND CONDITIONS

### 1. Establishment of Escrow.

(a) Buyer has delivered and deposited, or will deliver and deposit, the Deposit with Escrow Agent as required by the Purchase Agreement. Upon receipt of the Deposit, Escrow Agent shall immediately provide written notice to Seller and Buyer acknowledging such receipt.

(b) On the Delivery Date, Seller will deliver Seller's Deliveries, and Buyer will deliver Buyer's Deliveries (including, without limitation, the Purchase Price less the Deposit), to Escrow Agent in accordance with the terms of the Purchase Agreement. Upon receipt of the Closing Deliveries, Escrow Agent shall immediately provide written notice to Seller and Buyer acknowledging such receipt. The Deposit and the Purchase Price less the Deposit are referred to collectively as "Buyer's Closing Funds."

(c) Escrow Agent hereby agrees to act as escrow agent and to hold, safeguard, and handle the Deposit and the Closing Deliveries in accordance with the terms and conditions of this Agreement.

### 2. Release of Escrow.

(a) Escrow Agent shall hold the Closing Deliveries (including Buyer's Closing Funds) in escrow until all of the following conditions are satisfied:

1. Escrow Agent has received the Deposit and all of Buyer's Deliveries (including, without limitation, Buyer's Closing Funds) in the form and manner prescribed by the Purchase Agreement;
2. Escrow Agent has received all of Seller's Deliveries in the form and manner prescribed by the Purchase Agreement; and
3. Seller has delivered the Building Demolition Certificate to Buyer and Escrow Agent in the form and manner prescribed by the Purchase Agreement.

(b) If, on the first (1<sup>st</sup>) business day immediately following the conclusion of the Building Demolition Inspection Period, either Buyer affirmatively approves the Building Demolition completed by Seller or Buyer has failed to deliver a Demolition Termination Notice or a Demolition Demand Notice to Escrow Agent in the form and manner prescribed by Article 17 of the Purchase Agreement, then Escrow Agent shall take the following steps in the following order:

- i. Release Buyer's Closing Funds to Seller;
- ii. Record and/or file the Deed with the Registry and/or the Land Court, as applicable, in accordance with the Purchase Agreement; and

***[Note: Land Court would be the appropriate registry if the Site cannot be withdrawn from Land Court registration and Buyer waives the requirement to deregister the land]***

- iii. Record and/or file with the Registry and/or the Land Court, as applicable, any other instruments or documents required to effectuate the Purchase Agreement and the transactions contemplated thereby, including, without limitation, evidence of good standing and authority of Buyer and Seller.

(c) If Escrow Agent receives a Demolition Termination Notice from Buyer, in the form and manner prescribed by Article 17 of the Purchase Agreement, prior to 5:00 PM Boston time on the last day of the Building Demolition Inspection Period, then Escrow Agent shall, unless otherwise directed by joint written instructions from Buyer and Seller, immediately return Buyer's Deliveries (including, without limitation, Buyer's Closing Funds) to Buyer, and Seller's Deliveries to Seller, and, upon such return, Escrow Agent shall be relieved of its duties hereunder and shall have no liability thereafter to any party whatsoever.

(d) If Escrow Agent receives a Demolition Demand Notice from Buyer, in the form and manner prescribed by Article 17 of the Purchase Agreement, prior to 5:00 PM Boston time on the last day of the Building Demolition Inspection Period, Escrow Agent shall continue to hold the Closing Deliveries in escrow pursuant to the terms of this Agreement subject to the following provisions:



1. If, following the delivery of a Demolition Demand Notice from Buyer, Escrow Agent receives a Demolition Close-Out Certificate from Seller in the form and manner prescribed by Article 17 of the Purchase Agreement, then the following shall apply:
  - i. If, on the first (1<sup>st</sup>) business day immediately following the conclusion of the Close-Out Inspection Period, Escrow Agent has not received a Close-Out Termination Notice from Buyer in the form and manner prescribed by Article 17 of the Purchase Agreement, then Escrow Agent shall take the actions set forth in Section 2(b)(i)-(iii) of this Agreement, in the order prescribed by such section.
  - ii. If Escrow Agent receives a Close-Out Termination Notice from Buyer, in the form and manner prescribed by Article 17 of the Purchase Agreement, prior to 5:00 PM Boston Time on the last day of the Close-Out Inspection Period, then, unless otherwise directed by joint written instructions from Buyer and Seller, Escrow Agent shall immediately return Buyer's Deliveries (including, without limitation, Buyer's Closing Funds) to Buyer, and Seller's Deliveries to Seller, and, upon such return, Escrow Agent shall be relieved of its duties hereunder and shall have no liability thereafter to any party whatsoever.
2. If, following the delivery of a Demolition Demand Notice from Buyer, Escrow Agent receives a Non-Cure Notice from Seller in the form and manner prescribed by Article 17 of the Purchase Agreement, then the following shall apply:
  - i. If, on the first (1<sup>st</sup>) business day immediately following the conclusion of the Non-Cure Notice Period, Escrow Agent has not received a Non-Cure Termination Notice from Buyer in the form and manner prescribed by Article 17 of the Purchase Agreement, then Escrow Agent shall take the actions set forth in Section 2(b)(i)-(iii) of this Agreement, in the order prescribed by such section.
  - ii. If Escrow Agent receives a Non-Cure Termination Notice from Buyer, in the form and manner prescribed by Article 17 of the Purchase Agreement, prior to 5:00 PM Boston Time on the last day of the Non-Cure Notice Period, then, unless otherwise directed by joint written instructions from Buyer and Seller, Escrow Agent shall immediately return Buyer's Deliveries (including, without limitation, Buyer's Closing Funds) to Buyer, and Seller's Deliveries to Seller, and, upon such return, Escrow Agent shall be relieved of its duties hereunder and shall have no liability thereafter to any party whatsoever.
3. If, on the thirty-first (31<sup>st</sup>) day following the delivery of a Demolition Demand Notice from Buyer, Escrow Agent receives neither a Demolition Close-Out

Certificate from Seller nor a Non-Cure Notice from Seller, then, unless otherwise directed by joint written instructions from Buyer and Seller, Escrow Agent shall immediately return Buyer's Deliveries (including, without limitation, Buyer's Closing Funds) to Buyer, and Seller's Deliveries to Seller, and, upon such return, Escrow Agent shall be relieved of its duties hereunder and shall have no liability thereafter to any party whatsoever.

- (e) The parties shall not be entitled to return of their Closing Deliveries other than in accordance with the terms of this Agreement or in accordance with their joint written instructions to the Escrow Agent, and agree that if, following the Escrow Agent's receipt of both Buyer's and Seller's Deliveries, either party expressly seeks to terminate or expressly refuses to satisfy its further obligations under the Purchase Agreement, the other party shall be entitled, notwithstanding terms of the Purchase Agreement that may be construed to the contrary, to seek specific performance of such obligations and the completion of the subject conveyance, and the Escrow Agent shall suspend further performance under this Agreement during the pendency of such suit.

3. Duties of Escrow Agent.

(a) Escrow Agent shall hold the Closing Deliveries (including Buyer's Closing Funds) in accordance with the terms and provisions of this Agreement, subject to the following:

1. Obligations. Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement and the Purchase Agreement, and no implied duties or obligations shall be read into this Agreement or the Purchase Agreement against Escrow Agent.
2. Reliance. Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes, and any statement or assertion contained in such writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instrument in connection with the provisions of this Agreement and/or the Purchase Agreement has been duly authorized to do so. Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of any instrument deposited in escrow, nor as to the identity, authority, or right of any person executing the same, and Escrow Agent's duties under this Agreement shall be limited to those provided in this Agreement. Notwithstanding the above, Escrow Agent shall take no action to discharge its duties with respect to funds or other property placed in its custody until it has determined that Buyer and Seller are fully apprised of its intended exercise of such duties and have been given equal and reasonable opportunity to apprise the Escrow Agent of their positions on the matter.
3. Indemnification. Unless Escrow Agent discharges any of its duties under this Agreement in a negligent manner or is guilty of willful misconduct

with regard to its duties under this Agreement, Seller and Buyer shall indemnify Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or other expenses, fees, or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Agreement; and in such connection Seller and Buyer shall indemnify Escrow Agent against any and all expenses including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim in such capacity.

4. Disputes. If the parties (including Escrow Agent) shall be in disagreement about the interpretation of this Agreement and/or the Purchase Agreement, or about their respective rights and obligations, or the propriety of any action contemplated by Escrow Agent, Escrow Agent shall hold the Deposit until the receipt of joint written instructions from Buyer and Seller or a final order of a court of competent jurisdiction. In addition, in any such event, Escrow Agent may, but shall not be required to, file an action in interpleader to resolve the disagreement. Escrow Agent shall be indemnified for all costs and reasonable attorneys' fees in its capacity as Escrow Agent in connection with any such interpleader action and shall be fully protected in suspending all or part of its activities under this Agreement until a final judgment in the interpleader action is received.
5. Counsel. Escrow Agent may consult with counsel of its own choice and have full and complete authorization and protection in accordance with the opinion of such counsel. Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind, unless caused by its negligence or willful misconduct.
6. Interest. All deposits into the escrow (including Buyer's Closing Funds) shall be held by the Escrow Agent in an interest-bearing account. All interest earned on Buyer's Closing Funds shall accrue to the benefit of Buyer except to the extent the Deposit becomes payable to Seller pursuant to Section 10.1 of the Purchase Agreement. In such event, the interest earned on the Deposit shall accrue to the benefit of Seller.

4. Limited Responsibility.

This Agreement expressly sets forth all the duties of Escrow Agent with respect to any and all matters pertinent hereto. Escrow Agent shall not be bound by the provisions of any agreement among the other parties hereto except this Agreement and the Purchase Agreement.

5. Ownership of Escrow Funds for Tax Purposes.

Buyer agrees that, for purposes of federal and other taxes based on income, Buyer will be treated as the owner of the Escrow Funds until the same are released from Escrow.

6. Notices.

All notices and other communications provided for herein shall be in writing and shall be sent to the address set forth below (or such other address as a party may hereafter designate for itself by notice to the other parties as required hereby) of the party for whom such notice or communication is intended:

If to Seller: Newburyport Manager LLC  
c/o New England Development  
75 Park Plaza  
Boston, MA 02116  
Attn: Scott Kelley  
Tel. No.: (617) 243-7847  
Email: [Skelley@NEDevelopment.com](mailto:Skelley@NEDevelopment.com)

With a copy to: Goulston & Storrs PC  
400 Atlantic Avenue  
Boston, MA 02110  
Attn: Timothy W. Sullivan, Esq.  
Tel. No.: (617) 574-4179  
Email: [tsullivan@goulstonstorrs.com](mailto:tsullivan@goulstonstorrs.com)

If to Buyer: City of Newburyport  
c/o Mayor of the City of Newburyport  
Newburyport City Hall  
60 Pleasant Street  
Newburyport, MA 01950  
Tel. No.: (978) 465-4413  
Email: [DHoladay@CityofNewburyport.com](mailto:DHoladay@CityofNewburyport.com)

With a copy to: City of Newburyport  
Director of Planning and Development  
Newburyport City Hall  
60 Pleasant Street  
Newburyport, MA 01950  
Tel. No.: (978) 465-4400  
Email: [APort@CityofNewburyport.com](mailto:APort@CityofNewburyport.com)

And to: Jonathan D. Eichman, Esq.  
KP Law, P.C  
101 Arch Street, 12<sup>th</sup> Floor  
Boston, MA 02110  
Telephone: (617) 556-0007  
Facsimile: (617) 654-1735  
E-mail: [jeichman@k-plaw.com](mailto:jeichman@k-plaw.com)

If to the Escrow Agent: Fidelity National Title Insurance Company  
133 Federal Street, 3<sup>rd</sup> Floor  
Boston, MA 02110  
Attn: Kevin T. Creedon  
Tel. No.: (617) 350-8828  
Fax No.: (617) 350-8826  
Email: [kcreedon@fnf.com](mailto:kcreedon@fnf.com)

Any such notice or communication shall be sufficient if sent by registered or certified mail, return receipt requested, postage prepaid; by hand delivery; by overnight courier service; or by email, with an original by regular mail. Any such notice or communication shall be effective when delivered or when delivery is refused.

7. Section Headings.

The headings of sections in this Agreement are provided solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.

8. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of choice of law or conflicts of law.

9. Severability.

If any term or provision of this Agreement is held to be invalid or unenforceable by final judgment or order of a court of competent jurisdiction, the remaining provisions and obligations of this Agreement shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

10. Amendments.

This Agreement may not be amended except by a written agreement executed by Buyer, Seller, and Escrow Agent.

11. Counterparts.

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, and all of which, when taken together, will be deemed to constitute one and the same instrument.

*[Signatures Follow]*

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

**BUYER:**

CITY OF NEWBURYPORT,  
a Massachusetts municipal corporation

By: \_\_\_\_\_  
Name: Donna D. Holaday  
Title: Mayor

**SELLER:**

81-83 MERRIMAC STREET NOMINEE TRUST

By: NEWBURYPORT MANAGER LLC, a  
Massachusetts limited liability company,  
its sole trustee

By: \_\_\_\_\_  
Name:  
Title: Manager

90 PLEASANT STREET NOMINEE TRUST

By: NEWBURYPORT MANAGER LLC, a  
Massachusetts limited liability company,  
its sole trustee

By: \_\_\_\_\_  
Name:  
Title: Manager

**ESCROW AGENT:**

FIDELITY NATIONAL TITLE INSURANCE  
COMPANY

By: \_\_\_\_\_  
Name:  
Title:



## EXHIBIT D

### Non-Foreign Affidavit

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by \_\_\_\_\_ ("Seller"), the undersigned hereby certifies the following:

1. Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. [Seller is not a disregarded entity as defined in Treasury Regulation §1.1445-2(b)(2)(iii);] OR [Seller is a single member limited liability company whose sole member is \_\_\_\_\_ and is a disregarded entity for U.S. tax purposes, and \_\_\_\_\_ is not a disregarded entity as defined in Treasury Regulation §1.1445-2(b)(2)(iii).] [NOTE: IF SELLER IS A DISREGARDED ENTITY, THEN THE AFFIDAVIT MUST COME FROM SELLER'S MEMBER]
2. Seller's U.S. taxpayer identification number is [\_\_\_\_\_]; and
3. Seller's address is \_\_\_\_\_.

The undersigned understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both. Under penalties of perjury, the undersigned declares that it has examined this certification and to the best of its knowledge and belief it is true, correct, and complete, and further declares that it has authority to sign this document.

Date: As of \_\_\_\_\_, 2016

By: \_\_\_\_\_  
Name:  
Title:

## EXHIBIT E

### ENVIRONMENTAL REPORTS

- Phase I Environmental Site Assessment, 90 Pleasant Street, Newburyport, Massachusetts, prepared by Ransom Environmental Consultants, Inc., dated June 29, 2001 (*on file with the City*)
- Phase I Environmental Site Assessment, 81-83 Merrimac Street, Newburyport, Massachusetts, prepared by Ransom Environmental Consultants, Inc., dated June 29, 2001 (*on file with the City*)
- Letter from Jared Connelly, Karma Environmental Services, Inc., dated July 9, 2014, enclosing Asbestos Survey Report, 81-83 Merrimac Street, AEC Project No. 421591, prepared by American Environmental Consultants, Inc., dated July 7, 2014 (*on file with the City*)
- Letter from Erin Connelly, Karma Environmental Services, Inc., dated September 2, 2014, enclosing certain "closeout paperwork" for 81-83 Merrimac Street (*on file with the City*)
- Excerpts of Environmental Due Diligence Summary, Portfolio of Properties, Newburyport, Massachusetts, File 2345.00, prepared by Sanborn, Head & Associates, Inc., dated May 2004, relating to 90 Pleasant Street and 81-83 Merrimac Street, with information concerning other properties redacted (*on file with the City*)