

COMMERCIAL
PURCHASE AND SALE AGREEMENT

AGREEMENT made this ____ day of April, 2008, by and between Ruth I. Mercer, an individual residing at 12 Dallaire Avenue, Chicopee, Massachusetts 01020 (hereinafter called the "SELLER"), who agrees to SELL, and _____, _____, _____ (hereinafter called the "BUYER"), who agrees to BUY the Premises hereinafter described, upon the terms and conditions hereinafter set forth.

1. Description. The Premises are bounded and described as follows: The land and building located at 12 Dallaire Avenue, Chicopee, Massachusetts, as more particularly described in deed recorded in the Hampden County Registry of Deeds attached hereto as Exhibit "A".

2. Buildings, Structures, Improvements, Fixtures. Included in the sale as a part of said Premises are the buildings, structures, and improvements now thereon, and the installed permanent fixtures belonging to the SELLER and used in connection therewith including, if any, all furnaces, heaters, heating equipment, oil and gas burners and fixtures appurtenant thereto, hot water heaters, plumbing and bathroom fixtures, electric and other lighting fixtures, trees, shrubs and plants.

3. Title Deed. Said Premises are to be conveyed by a good and sufficient Quitclaim Deed running to the BUYER, said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except for the Permitted Encumbrances as follows:

- (a) Provisions of existing building and zoning laws;
- (b) Existing rights and obligations in party walls which are not the subject of written agreement;
- (c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
- (d) Any liens for municipal betterments assessed after the date of this agreement;
- (e) All easements, restrictions, if any, of record provided they do not substantially interfere with the current use of the property; and
- (f) Other terms announced at the Public Auction.

4. Title. BUYER agrees to order a title examination at its sole cost and expense. Within twenty (20) days from the date hereof, BUYER shall furnish to SELLER written

notice of any objections to title. Any matter not mentioned in the aforesaid notice shall not thereafter be deemed to affect the marketability of title. The BUYER shall afford the SELLER a reasonable time (which shall be deemed to be a period of not more than sixty (60) days from the date written notice of any defect is delivered by the BUYER to the SELLER) to cure or correct any defects or objections to title. The SELLER shall be obligated to remove all mortgages, liens or other financial encumbrances, and shall make commercially reasonable diligent efforts to cure or correct any other defects or objections of title. In the event the SELLER is unable to cure such defects or objections to title, the BUYER shall have the option of either accepting such title as the SELLER can convey, or of rescinding this Agreement; and if the BUYER shall elect to rescind, the SELLER shall repay to the BUYER all sums deposited on account of the purchase price hereunder, and this Agreement shall then be terminated without any further loss, cost, damage, right or remedy in favor of any party against the other. Any encumbrance arising after the date of BUYER'S title search, which date shall be set forth in BUYER'S notice, shall be the responsibility of the SELLER, who shall be given a reasonable time to postpone the closing of title to remove the encumbrance (Reasonable time shall be deemed a period not to exceed thirty (30) days from the date written notice of the encumbrance is given to SELLER). It is mutually understood and agreed that no matter shall be construed as an encumbrance or defect in title unless so construed pursuant to the Title Standards of the Real Estate Bar Association of Massachusetts.

5. Consideration. The agreed purchase price for said Premises is _____ Thousand Dollars (\$_____) (*the agreed purchase price has been calculated by adding the high bid amount of \$_____ and the buyer's premium (3 ½ % of high bid) in the amount of \$_____*), of which Fifteen Thousand Dollars (\$15,000.00) have been paid as an initial deposit this day which shall be applied to the purchase price. Buyer shall pay an additional deposit of _____ Dollars (\$_____) within five (5) days of executing this Agreement so that the total of the initial deposit and additional deposit equal ten percent (10%) of the purchase price. The balance of _____ Thousand Dollars (\$_____) to be paid at the time of delivery of the Deed in certified funds.

6. Closing. The Deed is to be delivered and the consideration paid, (the "Closing") at the offices of Buyer's attorney on May 26, 2008, **TIME BEING OF THE ESSENCE**, at 10:00 a.m. unless some other place and time should be mutually agreed upon in writing.

7. Delivery of Documents. At the Closing, the SELLER shall deliver to the BUYER the following documents (the "Documents"):

(a) Quitclaim Deed (the "Deed") sufficient to convey to the BUYER good and marketable, fee simple title to the Premises, the appurtenant rights and the building equipment, free from all encumbrances and defects other than Permitted Encumbrances; and

(b) Affidavits customarily required by title insurance companies in the Commonwealth of Massachusetts for the issuing of title insurance protecting against mechanics' liens and parties in possession.

8. Possession and Condition of Premises. Full possession of said Premises to be delivered at the Closing. Said Premises to be AS IS and WHERE IS, without any warranties either express, implied or imposed by law.

9. Condemnation and Casualty.

Condemnation.

(a) If any authority having the right to eminent domain shall commence negotiations with SELLER or shall commence legal action against SELLER for the damaging, taking or acquiring of all or any part of the Premises, either temporarily or permanently, in any condemnation proceeding or by exercise of the right of eminent domain, SELLER shall immediately give notice of the same to BUYER. Upon the occurrence of any of the foregoing events, BUYER shall have the right, at its option, to terminate this Agreement by giving notice thereof to SELLER on or before the date fixed for the delivery of the Deed, but in any event within thirty (30) days of the receipt of notice of such event by SELLER to BUYER, in which event BUYER shall be released of all further obligations hereunder and BUYER'S deposit shall be returned. If BUYER does not so terminate this Agreement, the purchase price for the Premises shall be reduced by the total of any awards, settlement proceeds, or other proceeds received by the SELLER at or prior to the delivery of the Deed with respect to any damaging, taking or acquiring and after Closing and transfer of title to BUYER, the balance of any award shall become the property of the BUYER. At the time of delivery of the Deed, SELLER shall assign to BUYER all rights of SELLER in and to any awards, settlement proceeds or other proceeds payable by reason of any such damaging, taking or acquiring. The risk of condemnation or eminent domain shall be borne by the SELLER until the delivery of the Deed. In the event of any negotiations with any authority regarding the payment of any awards or other sums or regarding any settlement on account of any damaging, taking or acquiring through condemnation or eminent domain, SELLER will inform BUYER of all such negotiations of which SELLER has notice and, if BUYER elects to proceed with the Closing, will permit BUYER to take part therein.

(b) Casualty. This risk of loss, or damage to the Premises by fire or other casualty, prior to the Closing, is assumed by SELLER. Upon the occurrence of any insured casualty the BUYER may, within ten (10) days of receiving notice thereof from SELLER, make the following election:

- (i) If such casualty is in excess of One Hundred Thousand Dollars (\$100,000) of value, the BUYER shall have the right to terminate this Agreement and to the return of the Deposit and all accrued interest thereon;
- (ii) To accept conveyance of the Premises in their damaged condition in which event the SELLER shall assign all rights in the insurance claim including rights in any rental value insurance; or

- (iii) If such casualty is less than One Hundred Thousand Dollars (\$100,000) of value, the BUYER shall accept the Premises in their damaged condition and SELLER shall assign to BUYER all amounts recovered or recoverable on account of such insurance less any amounts reasonably expended by the SELLER for any partial restorations.

Upon the occurrence of an uninsured casualty, the BUYER shall have the right to terminate this Agreement unless the SELLER shall have elected to repair and/or restore the Premises to substantially the same condition they were in prior to such casualty prior to Closing (and without delay in Closing).

10. Acceptance of Deed. The acceptance of a Deed by the BUYER shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said Deed.

11. Use of Purchase Money to Clear Title. To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the Deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests.

12. Insurance. Until the delivery of the Deed, the SELLER shall maintain insurance on said Premises as follows:

<u>Type of Insurance</u>	<u>Amount of Coverage</u>
Fire and Extended Coverage	As Currently Insured

13. Adjustments. Fuel, water rates, sewer use and taxes for the then current year shall be apportioned as of the day of delivery of the Deed; and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the BUYER at the time of delivery of the Deed.

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

14. Deposits. All deposits made hereunder shall be held until the Closing of title by Siddall & Siddall, P.C. and/or Aaron Posnik & Co., Inc., as Escrow Agent, in a non-interest-bearing account, and shall be duly accounted for at the time for performance of this agreement.

15. Broker's Fee. Except for Aaron Posnik & Co., Inc., the parties represent to each other that they have not dealt with any real estate agent or broker with respect to this transaction. If any agent or broker is entitled to a commission as a result of this transaction it shall be paid by the party with whom the other agent or broker dealt and the party breaching this representation shall indemnify and hold the other party harmless from any claims as a result of such breach. Notwithstanding the foregoing, Aaron Posnik & Co., Inc. is offering a two percent (2%) Broker Incentive to any realtor who introduces their client to the property and said client is the high bidder and closes on the purchase of the property.

16. Default. If the BUYER shall fail to fulfill the BUYER'S agreement herein, all deposits made hereunder by the BUYER together with interest accrued thereon shall be forfeited by the BUYER and retained by the SELLER as liquidated damages and not as a penalty thereof. In addition, the BUYER shall pay all costs and expenses incurred by SELLER in connection with the enforcement of this Agreement, including without limitation, all attorney's fees and auctioneer fees.

17. Mortgage Financing. This Agreement is not contingent upon the BUYER'S ability to obtain financing.

18. BUYER'S Default, Sale to the Second Highest Bidder. The SELLER may, at is option, sell the Premises to the second highest bidder at the auction should the BUYER fail to fulfill the BUYER'S obligations herein, and no such sale of the Premises by the SELLER to such second highest bidder shall relieve the BUYER from its obligations hereunder nor operate as a waiver by the SELLER or its rights and remedies against the BUYER.

19. Warranties and Representations. This Agreement is made without any representations or warranties as to the following:

(a) The title to the Premises and the validity, enforceability, or perfection of the Seller's right or interest therein;

(b) Compliance with any building, zoning, health, environmental, or other state, local or federal laws which any affect the use, development, or occupancy of the Premises, including, without limitation, the existence of availability of any permits or approvals relating to use, development or occupancy of the Premises;

(c) The existence on the Premises of any hazardous waste, asbestos, lead-based paint, plaster, or other lead-based accessible material, or any other materials which may be subject to governmental regulation or restriction;

(d) The availability of any certificate concerning compliance of the Premises with any state, local or federal statute, including, without limitation, a smoke detector certificate, if applicable.

To the extent any tests, reports, or approvals are determined by the BUYER to be necessary in connection with the use, development or occupancy of the Premises, such reports, permits and

approvals shall be the responsibility of the BUYER, at BUYER'S sole cost and expense and the BUYER'S obtaining any such reports, permits or approvals shall not be a pre-condition to BUYER'S obligations hereunder. This clause shall survive the delivery of the Deed.

The parties agree that the Seller shall not provide a smoke detector certificate and the Buyer agrees to execute a hold harmless agreement with respect to same.

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has it relied upon any warranties or representations not set forth or incorporated in this Agreement or previously made in writing. BUYER specifically acknowledges that SELLER has not made any representation or warranty as to any matter affecting or relating to the Premises, including, but not limited to, warranties relating to the physical condition of any building contained thereon. BUYER agrees that SELLER shall not be held liable for any representations made or furnished to BUYER by any of SELLER'S officers, agents, servants, attorneys or any other person.

20. Escrow Agent. The deposit has been paid by and on behalf and at the direction of SELLER to Siddall & Siddall, P.C. ("Escrow Agent") to be held by Escrow Agent on the terms hereinafter set forth. If the Closing takes place under this Agreement, Escrow Agent shall pay the amount of monies deposited with Escrow Agent to or upon the instructions of SELLER at the time of Closing.

If no Closing takes place hereunder, Escrow Agent shall continue to hold the monies unless directed to dispose of same in accordance with the provisions hereinafter set forth in this clause.

It is agreed that the duties of Escrow Agent are only such as are herein specifically provided, being purely ministerial in nature, and that Escrow Agent shall incur no liability whatever except for willful misconduct or gross negligence so long as Escrow Agent has acted in good faith. SELLER and BUYER hereby release Escrow Agent from any act done or omitted to be done by Escrow Agent in good faith in the performance of Escrow Agent's duties hereunder.

Escrow Agent shall be under no responsibility in respect of any of the monies deposited with it other than faithfully to follow the instructions herein contained.

Escrow Agent may consult with counsel and shall be fully protected in any action taken in good faith, in accordance with such advice. Escrow Agent shall not be required to defend any legal proceedings that may be instituted against Escrow Agent in respect of the subject of these instructions unless requested so to do by SELLER and BUYER and indemnified to the satisfaction of Escrow Agent against the cost and expense of such defense. Escrow Agent shall not be required to institute legal proceedings of any kind. Escrow Agent shall have no responsibility for the genuineness or validity of any document or other item deposited with Escrow Agent, and shall be fully protected in acting in accordance with any written instructions given to Escrow Agent hereunder and believed by Escrow Agent to have been signed by the proper parties.

Escrow Agent assumes no liability under this Agreement except that of a stakeholder. If there is any dispute as to whether Escrow Agent is obligated to deliver the escrow

monies, or as to whom that sum is to be delivered, Escrow Agent will not be obligated to make any delivery of the sum, but in such event may hold the sum until receipt by Escrow Agent of an authorization in writing signed by all persons having interest in such dispute, directing the disposition of the sum, or in the absence of such authorization. Escrow Agent may hold the sum until the final determination of the rights of the parties in an appropriate proceeding. If such written authorization is not given, or proceedings for such determination are not begun and diligently continued, Escrow Agent is not required to bring an appropriate action or proceeding for leave to deposit the sum in court, pending such determination. In making delivery of the monies in the manner provided for in this Agreement, Escrow Agent shall have no further liability in the matter.

Escrow Agent has executed this Agreement at the end thereof to confirm that Escrow Agent is holding, and will hold the monies in escrow pursuant to the provisions of this paragraph. Nothing contained in this Agreement shall prevent Escrow Agent from representing SELLER in this transaction.

21. Notices. Any notices hereunder shall be given in writing by (i) certified mail, return receipt requested; (ii) a national overnight courier service; or (iii) by facsimile with the original sent by first class mail and sent as follows:

SELLER:

Ruth I. Mercer
12 Dallaire Avenue
Chicopee, MA 01020

with a copy to:

Michael R. Siddall, Esquire
Siddall & Siddall, P.C.
1350 Main Street, 10th Floor
Springfield, MA 01103

BUYER:

with a copy to:

Any notice shall be effective upon (i) placement with a national overnight courier service; (ii) receipt of mailing certified mail, return receipt requested; or (iii) on the date faxed.

22. Concluding Provisions.

(a) Entire Agreement. This Agreement contains the entire understanding of the parties with regard to the subject matter contained herein. There are no oral understandings, terms or conditions, and no party has relied upon any representation, express or implied, not contained in this Agreement.

(b) Amendments. This Agreement may not be amended in any respect whatsoever except by a further agreement, in writing, fully executed by each of the parties.

(c) Successors. This Agreement shall be binding upon and inure to the benefit of the parties and to their respective heirs, personal representatives, successors and assigns.

(d) Joint Effort. Preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than the other.

(e) Captions. The captions of this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement.

(f) Arbitration. In the event of any dispute among any parties bound by the terms of this Agreement, such dispute shall be settled by arbitration in accordance with the rules of the American Arbitration Association as then existing in Springfield, Massachusetts, and judgment upon the award rendered may be entered in any court having jurisdiction.

(g) Counterparts. This Agreement may be executed in one or more copies, each of which shall be deemed an original.

(h) Partial Invalidity. The invalidity of one or more of the phrases, sentences, clauses, Sections or Articles contained in this Agreement shall not affect the validity of the remaining portions so long as the material purposes of this Agreement can be determined and effectuated.

(i) Applicable Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

(j) Exhibits. All exhibits referred to in this Agreement shall be incorporated into this Agreement by such reference and shall be deemed a part of this Agreement as if fully set forth in this Agreement.

(k) Effective Date. This Agreement shall be dated and effective as of the date signed by the last party to sign.

(l) No Offer. The delivery of an unexecuted copy of this Agreement shall not be deemed an offer. No rights are to be conferred upon any party until this Agreement has been executed and delivered to each party.

(m) Genders. Any reference to the masculine gender shall be deemed to include the feminine and neuter genders, and vice versa, and any reference to the singular shall include the plural, and vice versa, unless the context otherwise requires.

(n) Initialing. Each page which contains a handwritten or typewritten change and each exhibit which is not attached to this Agreement shall be initialed or signed by each party.

(o) Confidentiality. SELLER and BUYER agree that any information furnished by either of them to the other shall be treated as confidential and shall not be disclosed to persons or entities other than those associated with SELLER or BUYER who have a need to know such information in connection herewith.

SELLER:

Ruth I. Mercer

BUYER:

The undersigned Escrow Agent joins this Agreement solely for the purpose of acting pursuant to the provisions of Section 20 herein.

By: _____