

PURCHASE AND SALE AGREEMENT

1. PARTIES

This 23rd day of February, 2018

Dean Cartwright a/k/a Dean B. Cartwright of 140 Worcester Street, Wellesley, MA
hereinafter called the SELLER, agrees to SELL and

Behrend Construction LLC or Nominee of 136 Worcester Street, Wellesley, MA
hereinafter called the BUYER or PURCHASER, agrees to BUY, upon the terms hereinafter set forth,
the following described premises:

2. DESCRIPTION

The land, with the buildings thereon, known and numbered as **140, 140R and 142 Worcester Street, Wellesley, Norfolk County, MA**, and further described in a deed recorded with Norfolk Registry of Deeds in **Book 5900, Page 102, Book 8413, Page 133 and Book 22510, Page 542. Lot 140 containing 7,078 SF, Lot 140R containing 2,450 SF and Lot 142 containing 1,701 SF, all according to Assessors Plan Sheet 10, more or less.**

3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES

Included in the sale as a part of said premises are the buildings, structures, and improvements now thereon, and the fixtures belonging to the SELLER and used in connection therewith including, if any, all venetian blinds, window shades, screens, screen doors, storm windows and doors, awnings, shutters, furnaces, heaters, heating equipment, ranges, oil and gas burners and fixtures appurtenant thereto, hot water heaters, plumbing and bathroom fixtures, electric and other lighting fixtures, mantels, outside television antennas, fences, gates, trees, shrubs, plants,

Specifically **included** in the sale:

Specifically **excluded** from the sale:

4. TITLE DEED

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

- (a) Provisions of existing building and zoning laws;
- (b) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
- (c) Any liens for municipal betterments assessed after the date of closing;
- (d) Easements and restrictions of record, if any, insofar as they do not prohibit or materially interfere with the current use of said premises.

5. PURCHASE PRICE

The agreed purchase price for said premises is Six Hundred Twenty-Five Thousand and 00/100
..... (\$625,000.00) Dollars, of which

\$	<u>1,000.00</u>	was paid as a deposit with the Offer to Purchase;
\$	<u>19,000.00</u>	is to be paid as a deposit by Buyer at the time of signing this agreement, and
\$	<u>180,000.00</u>	to be paid as an additional deposit as per provision 51 below
\$	<u>425,000.00</u>	to be paid at the time of delivery of the deed by certified, cashier's, treasurer's or bank check, or by attorney's IOLTA check
\$	<u>625,000.00</u>	TOTAL

6. TIME FOR PERFORMANCE; DELIVERY OF DEED

Such deed is to be delivered at 10:00 o'clock A.M. on or before forty-five (45) days after Buyer obtains all permits and approvals with all appeal periods having expired for construction of "The Crossings" at Wellesley, MA but no later than September 1, 2019. Closing shall take place at the office of Buyer's attorney, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement.

7. POSSESSION AND CONDITION OF PREMISES

Full possession of said premises free of tenants and occupants is to be delivered at the time of the delivery of the deed, said premises to be then (a) in the same condition as they now are, reasonable use and wear thereof excepted, and (b) not in violation of said building and zoning laws, and (c) in compliance with the provisions of any instruments referred to in clause 4 hereof. The BUYER shall be entitled to an inspection of said premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.

8. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM

If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at any time of the delivery of the deed the premises do not conform with the provisions hereof, the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice to the BUYER at or before the time for performance hereunder, and thereupon the time for performance shall be extended for a period of up to thirty (30) days. **Excluding discharge of mortgages and liens, about which Seller has actual knowledge at the time of the signing of this agreement, the Seller shall not be required to incur costs or expenses totaling in excess of \$3,500.00 to make the premises conform or to deliver possession as agreed, except as otherwise agreed to herein.**

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

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

10. BUYER'S ELECTION TO ACCEPT TITLE

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

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

11. ACCEPTANCE OF DEED

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

12. 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, provided that all instruments so procured are recorded with the deed, **or in the case of institutional lenders being paid at the time of closing, in due course after the closing pursuant to local conveyancing practices.**

13. INSURANCE

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

Type of Insurance	Amount of Coverage
(a) Fire and Extended Coverage	* as presently insured

Risk of loss to remain with Seller until recording of the deed.

14. ADJUSTMENTS

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

15. ADJUSTMENT OF UNASSESSED AND ABATED TAXES

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 fiscal year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement unless herein otherwise agreed.

16. BROKER'S FEE:

DELETED

17. BROKER'S WARRANTY:

DELETED

18. DEPOSIT

All deposits, if any, made hereunder shall be held in Escrow by Sellers' attorney Domenic Marinelli, Esq., as escrow agent, subject to the terms of this agreement and shall be duly accounted for at the time for performance of this agreement. In the event of any disagreement between the parties, the escrow agent **shall** retain all deposits made under this agreement pending instructions mutually given in writing by the SELLER and the BUYER, **or pursuant to a final order of a court of competent jurisdiction or mutually agreed upon binding arbitrator. No interest shall be paid on said deposits.** Within thirty (30) days of this agreement, Buyer shall complete a title examination on the property described in Provision 2 above. So long as Buyer determines that Seller can convey good, clear, record and marketable title, Escrow Agent shall then be authorized to release the deposit from escrow to SELLER as a useable deposit toward the purchase of Seller's alternative housing. Upon release of escrow funds to seller, funds to become nonrefundable to Buyer unless Seller defaults on this Agreement.

19. BUYER'S DEFAULT; DAMAGES

If the BUYER shall fail to fulfill the BUYER'S agreements herein, then the deposit shall be retained by the SELLER as liquidated damages, and this shall be SELLER'S sole and exclusive remedy at law or in equity. The parties acknowledge that SELLER has no adequate remedy in the event of BUYER'S default hereunder because it is impossible to compute exactly the damages which would accrue to the SELLER in such event and the deposit is the parties best estimate of Sellers' damages.

20. BROKER AS A PARTY:

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

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

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

22. WARRANTIES AND REPRESENTATIONS

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either the SELLER or the Broker(s): NONE. BUYER further acknowledges that it is the responsibility of BUYER to independently verify any assumptions, information, or facts concerning the premises that are essential or material to the BUYER's decision to purchase the premises and has been given the opportunity to do so. BUYER shall not hold SELLER or SELLER's agent liable at law or in equity for any warranties, representations or statements made by SELLER or any agent of SELLER not expressly set forth or incorporated herein or for any assumptions, information, facts or omissions relied upon by BUYER to be true or accurate. The provisions of this clause 22 shall survive the delivery of the deed.

23. CONSTRUCTION OF AGREEMENT

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

24. LEAD PAINT LAW

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

25. SMOKE AND CARBON MONOXIDE DETECTORS

The SELLER shall deliver a certificate from the fire department of the city or town in which said premises are located stating that said premises have been equipped with approved smoke and carbon monoxide detectors in conformity with applicable law.

26. MORTGAGE CONTINGENCY

INTENTIONALLY DELETED.

27. **TITLE.** Except as agreed to hereunder, any matter of practice arising under or relating to this Agreement which is the subject of a title standard or a practice standard of the Massachusetts Real Estate Bar Association at the time for delivery of the deed hereunder shall be governed by said title standard or practice standard to the extent possible.

28. **NOTICES:** Any notices required under this Agreement shall be deemed sufficient if delivered in hand, by facsimile or email with confirmation of receipt, by national overnight courier service, or by first class mail, postage prepaid, postmarked as of the date required for notice hereunder, to the BUYER's or SELLER's respective attorney or agent as set forth below:

TO THE BUYER:

Alan H. Shocket, Esq.
Shocket Law Office, LLC
175 Highland Avenue, Suite 303
Needham, MA 01760
Tel 781-429-3110 Fax 781-429-3113

ashocket@shocketlaw.com

TO THE SELLER:

Domenic Marinelli, Esq.
402 Washington Street
Wellesley Hills, MA 02481
781-235-5432 / Fax 781-235-7250
dmarinellilaw@gmail.com

Each of the undersigned hereby authorizes his or her respective attorney or agent to assent to and execute on that party's behalf any agreements extending the time for the performance of any event or of any notice that may be given under this Agreement.

29. **BROKER INDEMNIFICATION.** The BUYER warrants and represents to the SELLER and the SELLER represents and warrants to the BUYER that neither has dealt with any broker or other person entitled to a broker's commission in connection with the negotiation or execution of this Agreement or the consummation of the transaction contemplated hereby, except the broker(s) listed herein, and each agrees to hold the other harmless and indemnify the other against all damages, claims, losses and liabilities, including legal fees, incurred by the other, arising out of or resulting from the failure of its representation and warranty. This provision shall survive delivery of the deed hereunder.

30. **LEAD PAINT NOTIFICATION AND DISCLOSURE.** The Buyer acknowledges that Seller have complied with the requirements of Massachusetts General Laws Chapter 111, as amended, relative to the possible presence of lead paint in the premises, including the provisions of Section 197A of Chapter 111. Buyer acknowledges having been verbally informed of the possible presence of dangerous levels of lead in the premises and of the provisions of the lead paint statute, so called (M.G.L. chapter 111, sections 190-199A), and the regulations promulgated thereunder, and acknowledge receipt from Seller of a Commonwealth of Massachusetts, Department of Health Standard Notification Form, and further acknowledges being informed by Seller about the availability of inspections for dangerous levels of lead. Buyer hereby waives any such right to inspect the premises for the presence of lead and hereby releases Seller from liability for any damages, costs, or expenses Buyer incurs as a result of the presence of lead in the premises or in the soil surrounding the premises. The provisions of this paragraph shall survive delivery of the deed hereunder.

31. **CONDITION OF PREMISES:** The Seller agrees to deliver the premises at the time of delivery of the Seller's deed in broom clean condition. At the closing, Seller agrees to deliver to Buyer all keys and electronic garage door openers to the premises, if any, in the possession or under the control of Seller and any warranties for personal property from the manufacturer.

32. **PREMISES BEING SOLD AS IS.** Except as expressly set forth herein to the contrary, Buyer acknowledges they are buying the premises in an "as is" condition as of the date of this agreement, excepting reasonable and ordinary wear and tear, and that Buyer has fully and completely inspected the premises, is satisfied with the condition (structural, termite and otherwise) of the premises and is satisfied as to the condition of all mechanical, electrical, heating and other systems and services in the premises. Seller has made no warranties or representations on which the Buyer has relied (except as otherwise specifically set forth in this Agreement) with respect to the premises, and it is the understanding of the parties that the entire agreement of the parties with respect to the transaction which is set forth in the Agreement is fully and completely set forth in the Agreement. Buyer's agreement herein shall survive the delivery of the deed.

33. **ACCESS:** The Buyers, and their duly-authorized agents, shall have the right of access to the premises prior to the performance date hereunder for the purpose of taking measurements, planning or showing the premises to prospective mortgage lenders, appraisers, surveyors, or others, and inspecting the premises in order to determine compliance with the terms of Paragraph 7 of the Purchase and Sale Agreement. Said right of access shall be exercised only at reasonable times, in a reasonable manner, after reasonable notice thereof to the Seller. Buyer shall not access the home without Seller or Seller's agent present unless affirmative authorization has otherwise been given. Buyer shall indemnify and hold Seller harmless for any damage, injury, claim or cost resulting from Buyer's or Buyer's agents, guests or invitees' access to the premises.

34. **INTEGRATION:** This agreement supersedes all prior agreements, memoranda and other understandings between the parties and represents the complete and full agreement of the parties hereto except as this Agreement is modified or altered by written agreement signed by the parties hereto. All prior offers, agreements and memoranda, including any Contract (Offer) to Purchase, Listing Sheet and any Statement of Condition and Seller's Disclosure Statement, with respect to the transactions contemplated hereby shall be null and void.

35. **AGREEMENT NOT TO BE ASSIGNED NOR RECORDED.** This Agreement may not be assigned by the BUYER without the prior written consent of the SELLER and any purported assignment in violation of this provision shall be null and void. In addition, BUYER shall not record a copy of this Agreement or any memorandum or notice thereof in any public office. If BUYER either makes an assignment of its rights under this Agreement or records a copy of this Agreement or any memorandum or notice thereof, SELLER, at its option, may deem BUYER to be in default of its obligations hereunder and may declare SELLER'S obligations hereunder to be null and void and retain BUYER'S deposits hereunder and any interest earned thereon. This provision is not in derogation of the BUYER'S rights under Clause 4 to designate a nominee to take title.

36. **LEGAL COUNSEL.** The parties hereto acknowledge that they have been afforded the opportunity to confer with legal counsel of their own choice prior to the execution of this Agreement.

37. This Agreement may be signed in multiple counterparts and by facsimile or electronically, which counterparts and signatures shall all be treated as original signatures.

38. Buyer acknowledges and agrees that Buyer's obligation to purchase the premises is not, in any way, contingent upon the sale of any Buyer assets.

39. **TITLE.** It is understood and agreed by the parties that the premises shall not be in conformity with the Title provisions of this Agreement unless:

- a) all buildings, structures and improvements, including but not limited to, any driveways, garages, septic systems and cesspools, and all means of access to the premises, shall be located completely within the boundary lines of said premises and shall not encroach upon or under the property of any other person or entities, unless under recorded easement;
- b) no building, structure or improvement of any kind belonging to any other person or entity shall encroach upon or under said premises, unless under recorded easement;
- c) the premises shall abut a public way or a private way to which Buyer shall have both pedestrian and vehicular access, and if a private way, that such private way in turn has satisfactory access to a public way, which public way is duly laid out or accepted as such by the city or town in which said premises are located.
- d) Any/all orders of condition shall be released of record.
- e) There are no easements, restrictions or covenants that create access rights to the parcel in any third party other than the usual utility easements that run along the public way that abuts the property.
- f) The property shall not be located in a Flood Zone "A" which would require the placement of Federal Flood Insurance.

40. **TITLE INSURANCE DOCUMENTS.** At the closing, the Seller shall execute and deliver to any title insurance company insuring the premises to the Buyer and/or any lender granting mortgage financing to the Buyer with respect to the premises an affidavit with respect to: (a) mechanics' or materialmen's liens with regard to the premises sufficient in form and substance to enable the title insurance company to delete its standard ALTA exception for such liens; (b) bills which could become liens pursuant to Chapter 551 of the Acts of 1980 (Municipal Lighting Plants Real Estate Liens) have been paid; and (c) there being no parties in possession of or entitled to possession of the premises. In addition, the Seller hereby agrees to sign and deliver, at the time of performance, such affidavits, documents and certificates as may be reasonably required by the lending institution which is providing the purchase money mortgage funds to the Buyer for this transaction, **however, Seller shall not be required to execute any survey affidavit or similar affidavit containing warranties and representations about the premises other than those contained in a standard mechanic's lien, UFFL, 1099/non-foreign, Lead Paint and Smoke/CO affidavit.**

41. **INSURABILITY OF TITLE.** The Buyer's performance hereunder is conditioned upon title to the premises being insurable for the benefit of the Buyer on a standard American Land Title Association form insurance policy currently in use by a title insurance company licensed to do business in the Commonwealth of Massachusetts, at normal premium rates, subject only to those printed exceptions to title normally included in the "jacket" to such form and to the exceptions set forth in Paragraph 4 of this Agreement.

42. **UREA FORMALDEHYDE FOAM.** Intentionally deleted.

43. **NON-FOREIGN AFFIDAVIT.** The Seller warrants and represents that the Seller is not a "foreign person" as defined in I.R.C. Section 1445. This warranty shall survive delivery of the deed. The Seller agrees to deliver to Buyer at or before the closing a "non-foreign" affidavit in compliance with I.R.C. Section 1445(b)(2) and the regulations thereunder.

44. **PROCEEDS**. Notwithstanding the provisions of Paragraph 6 of this agreement, Seller agrees the sale proceeds may be held in escrow by Seller's attorney following the closing, for a reasonable period of time, until the deed can be recorded in the appropriate registry of deeds, which shall in no event be later than 12:00 pm on the first business day after closing.

45. **PARAGRAPH 8**. The extension provided for in Paragraph 8 above may be for such shorter period of time than the thirty days referred to as may be set forth in a written notice from Seller to Buyer delivered at or before the original time for closing.

46. **MAINTENANCE OF GROUNDS**. The Seller agrees to maintain the lawn, shrubbery and exterior grounds of the premises during the term of this agreement in a manner consistent with that which they have been kept to date.

47. **REPRESENTATIONS**. The Seller hereby represents to the Buyer to the best of Seller's actual knowledge but without further duty to inquire:

- a. the Seller has not received notice that the premises is in violation of any federal, state or local environmental, sanitary, health or safety statute, ordinance, code, by-law, rule or regulation;
- b. the Seller is not aware of an underground oil storage tank;
- c. There are no contracts, oral or written, involving the Premises which the Seller has negotiated or contracted for which will be binding upon the Buyer or affect the Premises in any manner after the Closing;
- d. There is no pending or, to Seller's knowledge, contemplated condemnation, eminent domain proceedings with respect to any portion of the premises;
- e. There is no action, suit or proceeding pending or threatened against or affecting the premises, or arising out of the ownership, or the transaction contemplated hereby;
- f. There are no tenancies, occupancies or licensees in or to the Premises;

48. All of Seller's representations under this Agreement are to the Seller's actual knowledge, and without conducting any independent investigation or inquiry and are not intended to imply or create any obligation for the Seller to take additional actions or more further inquiry with regard to any topics contained within this Agreement or elsewhere, including but not limited to, documents, to be executed in conjunction with the Closing; furthermore, it is acknowledged and agreed by the Parties that any such representations shall not constitute a representation or warranty against the existence of such conditions about which Seller has no knowledge, nor a representation or warranty against the discovery or occurrence of such conditions. The provisions of this paragraph shall survive the Closing and delivery of the Deed hereunder.

49. Buyer shall pay all costs for permitting approval for creation of "The Crossing", Wellesley, MA. Seller agrees to cooperate with Buyer to execute any and all documents required by Buyer to be submitted to the Town of Wellesley or Commonwealth of Massachusetts to facilitate the permitting process.

50. DELETED

51. By October 15, 2018 and monthly thereafter, Buyer shall provide Seller with an estimate of time for issuance of the permits for construction of "The Crossing." When Buyer concludes that the permits will be issued within the following three (3) months, Seller shall be so informed. Seller shall then begin to shop for alternative housing. So long as Buyer has received all permits and approvals for construction of "The Crossing", one week prior to Sellers' purchase, Buyer shall deposit \$[REDACTED] into escrow with Seller's attorney for Sellers' purchase. Prior to said funds being placed in escrow, Seller shall execute and record a performance mortgage in favor of Buyer to secure Seller's promises contained within this Purchase and Sale Agreement. The \$[REDACTED] additional deposit shall be credited to the purchase price herein and shall be non-refundable to Buyer in the event Buyer does not purchase the subject property. Upon release of said additional deposit in escrow to Seller, funds to become nonrefundable unless Seller defaults on this Agreement.

THIS AGREEMENT MAY BE EXECUTED IN MULTIPLE COUNTERPARTS - FACSIMILE SIGNATURES ON THIS AGREEMENT SHALL BE ACCEPTABLE AS ORIGINAL SIGNATURES.

In Witness Whereof the parties hereto set their hands and seals as of the day first above written.



Behrend Construction LLC, BUYER

Dean Behrend, Its duly authorized Manager



Dean Cartwright a/k/a Dean B. Cartwright

SELLER