

## **PURCHASE AND SALE AGREEMENT**

This Purchase and Sale Agreement (this “**Agreement**”) is dated the 31<sup>st</sup> day of July, 2020 (the “**Effective Date**”) and is by and between **SANTANDER BANK, N.A.**, a national banking association, having an address of 2 Morrissey Boulevard, Dorchester, Massachusetts 02125 (“**Seller**”), and **REID A. DUNN**, an individual with a mailing address of 455 State Road, PMB 108, Vineyard Haven, Massachusetts 02568 (“**Buyer**”).

### **ARTICLE 1**

#### **PURCHASE AND SALE**

1.1 **Agreement to Purchase and Sell.** In consideration of the mutual obligations of the parties set forth in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Buyer hereby agrees to purchase the Property, as that term is defined in Section 2.1, from Seller, and Seller hereby agrees to sell the Property to Buyer, on the terms and conditions set forth in this Agreement.

### **ARTICLE 2**

#### **THE PROPERTY**

2.1 **Description of the Property.** The “**Property**” consists of the following:

- (a) The land located at and known as 75 Main Street and 16 Union Street, Vineyard Haven, Massachusetts, which is approximately shown on Tisbury Assessors’ Map 7D, Parcels 7 and 10 (the “**Land**”);
- (b) All buildings, improvements and fixtures located on the Land (the “**Improvements**”), if any; and
- (c) All rights, privileges and easements appurtenant to the Land owned by Seller, including, without limitation, all mineral, oil, gas and water rights relating to the Land, all rights to any land lying in the bed of any street, road or alley adjoining the Land and all strips and gores adjoining the Land (the “**Appurtenances**”); and
- (d) The Town of Tisbury Bus Shelter License Agreement (the “**License**”).

Excepted and excluded from the Property is the grandfather clock located at the Property, which Seller shall remove from the Property prior to the Closing.

## ARTICLE 3

### **PURCHASE PRICE, DEPOSIT, ESCROW, ADJUSTMENTS**

3.1 **Purchase Price.** The purchase price for the Property (the “**Purchase Price**”) is two million five hundred thousand and 00/100 dollars (\$2,500,000.00). The Purchase Price is due and payable from Buyer to Seller on the Closing Date, as that term is defined in Section 4.1, subject to adjustment as provided in this Agreement.

3.2 **Deposit.** On or before the first business day following the thirtieth (30<sup>th</sup>) after execution of this Agreement, Buyer shall deposit one hundred thousand and 00/100 dollars (\$100,000.00) (the “**Deposit**”) with Mirick, O’Connell, DeMallie & Lougee, LLP (the “**Escrow Agent**”) to secure the performance of Buyer’s obligations under this Agreement.

3.3 **Balance of Purchase Price.** On the Closing Date, Buyer shall pay the balance of the Purchase Price in immediately available funds, subject to adjustment as provided in this Agreement, by wire transfer.

3.4 **Escrow.** The Escrow Agent shall not be liable for any action or nonaction taken in good faith in connection with the performance of the Escrow Agent’s duties under this Agreement, but the Escrow Agent shall be liable for the Escrow Agent’s own gross negligence. Notwithstanding anything contained in this Agreement to the contrary, should any dispute arise with respect to the delivery of the Deposit, or ownership or right to possession of the Deposit, or both, then the Escrow Agent shall retain the Deposit pending receipt of:

(a) written direction of and by mutual agreement between the parties,  
or

(b) final order, decree or judgment by a court of competent jurisdiction in the United States of America (and no such order, decree or judgment shall be deemed to be “final” unless and until the time of the appeal has expired and no appeal has been perfected);

in which case the Escrow Agent shall make payment of such amount as the parties may have mutually agreed in writing or in accordance with such final order, decree or judgment.

In no event shall the Escrow Agent be under any duty whatsoever to institute or defend any such proceeding, nor shall the Escrow Agent have any liability to any party to this Agreement because of retention of the Deposit prior to receipt of the direction or final order or decree referenced above.

Buyer agrees that if a dispute arises between the parties with respect to the Deposit, or this Agreement, or both, then the Escrow Agent shall not be precluded from representing Seller in such dispute as a result of the Escrow Agent being the Escrow Agent under this Agreement, but prior to such representation, Escrow Agent shall pay the

Deposit into a court of competent jurisdiction or to an alternate Escrow Agent acceptable to the parties to this Agreement.

3.5 Adjustments. The following adjustments, calculated as of the end of the day prior to the Closing Date, shall be made between Buyer and Seller;

(a) all real and personal property taxes, if any, attributable to the fiscal year in which the Closing, as that term is defined in Section 4.1, occurs, regardless of whether such taxes are then due and payable or delinquent. If the Closing occurs before the current tax rate is fixed, the adjustment of taxes at the Closing shall be upon the basis of the taxes assessed for the preceding fiscal year. Promptly after the new rate is fixed, either BUYER or SELLER may recalculate the adjustment of taxes and thereupon any net debit or credit resulting from such recomputation shall be paid promptly in cash to the party entitled thereto;

(b) municipal water and sewer use charges applicable to the Property, if any;

(c) the value of any heating or cooking fuels at the Property and belonging to Seller, if any; and

(d) the license fee owed under the License.

3.6 Seller's Closing Costs. At the Closing, Seller shall pay (i) the deed excise tax imposed in connection with the consummation of the transaction contemplated by this Agreement, (ii) recording charges for any instrument that releases or discharges any lien or other matter of record title as required by Article 6 of this Agreement or that is necessary for SELLER to convey title as required by this Agreement, (iii) fees and expenses of Seller's counsel; (iv) costs to payoff and discharge any lien or encumbrance incurred by SELLER and burdening the Property; and (v) the balance due for any brokerage fee or commission incurred as a result of the transaction contemplated by this Agreement.

3.7 Buyer's Closing Costs. At the Closing, Buyer shall pay for (i) usual and customary recording charges charged to a purchaser of real property in Massachusetts, other than those listed in Section 3.6, (ii) charges necessary to obtain any survey, (iii) charges necessary to obtain any title insurance policy and all endorsements, (iv) the fees and expenses of Buyer's counsel, and (v) the Land Bank Transfer Fee.

3.8 Closing Statement. Buyer shall prepare a draft closing statement at least two (2) days prior to the Closing Date (the "Closing Statement").

3.9 Survival. If any errors or omissions are found to have occurred in any calculations or figures used in the settlement statement (or would have been included if not for any error or omission) and notice of such error or omission is given within two (2) months of the Time of Closing to the party to be charged, then such party agrees to make a payment to correct the error or omission and the provisions of this Article 3 shall survive Closing for this purpose.

## ARTICLE 4

### **CLOSING, CLOSING DATE AND DELIVERABLES**

4.1 **Closing.** The consummation of the transaction contemplated by this Agreement (the “**Closing**”) shall occur at 10:00 a.m. at the offices of McCarron, Murphy & Vukota, LLP, 282 Upper Main Street, Edgartown, Massachusetts, or such other location as the parties may agree on November 13, 2020 (the “**Closing Date**”). It is agreed that time is of the essence with respect to the Closing Date and all time and date deadlines set forth in this Agreement.

4.2 **Seller’s Closing Deliverables.** On the Closing Date, Seller shall deliver, or cause to be delivered at Seller’s expense, each of the following items to Buyer:

- (a) A duly executed and acknowledged quitclaim deed conveying the Land, the Improvements and the Appurtenances to Buyer or Buyer’s nominee;
- (b) A duly executed certificate of non-foreign status from Seller in a customary form prepared by Buyer;
- (c) Customary affidavits requested by Buyer’s title insurer;
- (d) A Certificate of Incumbency or Assistant Secretary’s Certificate;
- (e) A counterpart original of the Closing Statement setting forth the Purchase Price and the adjustments;
- (f) Keys to the Improvements;
- (g) The ATM Lease, as that term is defined in Section 5.6;
- (h) An Assignment and Assumption Agreement for the License, in the form to be agreed upon by the parties prior to the Due Diligence Date; and
- (i) The Encroachment Documents, as that term is defined in Section 6.7.
- (j) Such other instruments and certificates as Buyer may reasonably request to effectuate the transaction contemplated by this Agreement without additional liability or expense to Seller.

4.3 **Buyer’s Closing Deliverables.** On the Closing Date, Buyer shall deliver, or cause to be delivered at Buyer’s expense, each of the following to Seller:

- (a) The Purchase Price as reflected on the Closing Statement;

(b) A counterpart original of the Closing Statement setting forth the Purchase Price and the adjustments;

(c) The Assignment and Assumption Agreement for the License;

(d) The ATM Lease, as that term is defined in Section 5.6; and

(e) Such other instruments and certificates as Seller may reasonably request to effectuate the transaction contemplated by this Agreement without additional liability or expense to Buyer, including, without limitation, evidence reasonably satisfactory to Seller of Buyer's authority to purchase the Property.

4.4 Use of Proceeds to Clear Title. Any outstanding mortgages, unpaid taxes, unpaid assessments and unpaid water and sewer charges, together with any interest and penalties on the same to be calculated to the fifth business day after the Closing Date, and any other liens and encumbrances that Seller is obligated or elects to pay and discharge pursuant to this Agreement, shall be deducted from and paid out of the Purchase Price paid to Seller.

## ARTICLE 5

### ACCESS; DUE DILLIGENCE; ATM LEASE

5.1 Investigations. Subject to the terms of this Agreement, Buyer may perform a due diligence investigation(s) of the Property and in this regard Buyer shall have the full opportunity to (i) inspect, take measurements, conduct surveys and perform tests, (ii) show the Property to contractors, architects, surveyors, engineers, insurers, banks and other lenders and investors, (iii) make legal, financial, zoning, engineering, accounting and other reviews or investigations of the Property, (iv) make inquiries of municipal, regional or state officials having permitting jurisdiction over any aspect of the Property for a use reasonably contemplated by Buyer, (v) inspect the structural or physical conditions of the Improvements and all fixtures, systems, apparatus or components thereof; and (vi) review and analyze the License and the Encroachment. Notwithstanding the foregoing to the contrary, Buyer shall not perform any soil or groundwater testing for the presence of Hazardous Materials without Seller's prior written approval, which approval may be withheld in Seller's sole and absolute discretion. As used in this Agreement, "Hazardous Materials" means all chemicals, materials, substances, pollutants, contaminants and wastes, including, without limitation, oil, petroleum, petroleum containing substances, PCBs, asbestos containing materials, mold, mildew, fungus, microbial contaminants or pathogenic organisms or any other chemicals, materials, substances, pollutants, contaminants or wastes regulated under the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act, the Resource Conservation and Recovery Act, Chapter 21E and Chapter 21C of the Massachusetts General Laws, all regulations promulgated under the foregoing and any other federal, state or local law, ordinance, bylaw or regulation applicable to the Property. Buyer shall, immediately at the conclusion of Buyer's investigation of the Property, at Buyer's sole cost and expense,

restore the Property to as near the condition which existed immediately prior to Buyer's investigations as is reasonably possible, including replacing paving and landscaping. Buyer, its employees, agents, contractors, subcontractors, consultants and other representatives ("**Buyer's Representatives**") shall take all reasonable precautions to minimize the impact of Buyer's investigations on the Property.

5.2 **Termination.** If Buyer's investigations of the Property are not satisfactory to Buyer, in Buyer's sole and absolute discretion, then Buyer may terminate this Agreement by written notice delivered to Seller not later than 5:00 P.M. on [INSERT THE DATE THAT IS 90 DAYS AFTER THE DATE OF THIS AGREEMENT] (the "**Due Diligence Date**"). If Buyer shall not have terminated this Agreement by written notice delivered to Seller on or before 5:00 P.M. on the Due Diligence Date, then Buyer shall have no right to terminate this Agreement pursuant to this Section. If Buyer terminates this Agreement as set forth in this Section, then the Deposit shall be refunded to Buyer and all rights and obligations under this Agreement shall be void. Prior to the Due Diligence Date, Seller may continue to market the Property, provided, however, that any offer accepted by Seller shall be contingent upon Seller's obligations contained in this Agreement and void in the event that the Property is conveyed to Buyer..

5.3 **Access; Permit Applications.** All of Buyer's investigations which are permitted under this Agreement shall be done after three (3) days' prior notice (which need not be in writing) to John Butterworth ("**Seller's Representative**"), at times reasonably convenient to Seller, and in the presence of Seller or an agent appointed by Seller. Except as set forth in this Section, in no event shall Buyer contact any of Seller's employees, officers, or agents, except for Seller's Representative, without the prior written consent of Seller. If Buyer desires to submit any permits or approvals to a permitting body with respect to the Buyer's proposed use of the Property after the Closing, then Seller shall cooperate with said applications at no cost to Seller and Buyer shall provide a copy of said applications to Seller.

5.4 **Confidentiality.** All information (collectively, "**Investigation Materials**") acquired by Buyer or any of Buyer's Representatives with respect to the Property, whether delivered by Seller or obtained by Buyer's investigations of the Property, shall be used by Buyer solely for the purpose of determining whether or not the Property is suitable for Buyer's intended use and for no other reason. All Investigation Materials shall be kept by Buyer in strict confidence and shall not be disclosed to any other individual or entity without the prior written consent of Seller other than (i) to those representatives of Buyer who need to know the information for the purpose of assisting Buyer in making the determination permitted by this Agreement, (ii) to Buyer's prospective purchasers or lessees of all or any part of the Property, or (iii) to third parties to whom inquiries are made to assist Buyer in Buyer's due diligence. Buyer shall not, and Buyer shall direct all of Buyer's Representatives not to, disclose to any individual or entity either the fact that discussions or negotiations are taking place concerning the possible purchase of the Property or any of the terms, conditions or other facts with respect to the same. Buyer shall indemnify and hold Seller harmless from and against any and all costs, losses, claims, demands, damages, liabilities and expenses Seller may suffer or incur as a result of disclosure of any Investigation Materials to any individual or

entity not authorized by this Agreement. If Buyer elects to terminate this Agreement pursuant to any provision in this Agreement, or if the Closing shall fail to take place for any other reason whatsoever, then Buyer shall promptly return to Seller all Investigation Materials provided by Seller and in the possession or control of Buyer, or any of Buyer's Representatives, as a condition to the return to Buyer of the Deposit.

5.5 Indemnity. Buyer assumes all risks associated with conducting Buyer's investigations of the Property and agrees to protect, defend, indemnify and hold harmless Seller and its officers, directors, shareholders, partners, members, managers, employees, successors and assigns from and against any and all costs, losses, claims, demands, damages, liabilities and expenses and other obligations (including, without limitation, attorneys' fees and court costs) arising from, out of, or in connection with or otherwise relating to, the entry by and the activities, studies and tests performed by Buyer or any of Buyer's Representatives in or upon the Property. Any contractor entering upon the Property, shall first provide to Seller, prior to any such entry, evidence of insurance in amounts reasonably acceptable to Seller, with companies reasonably acceptable to Seller, and naming Seller as an additional insured, covering the activities to be conducted by Buyer and Buyer's Representatives.

5.6 ATM Lease. Seller desires to maintain a 10' x 15' ATM Kiosk and two (2) associated parking spaces at the Property for a term of ten (10) years following the Closing (the "ATM Kiosk"). Prior to the expiration of the Due Diligence Date, Buyer and Seller shall negotiate a lease for the ATM Kiosk (the "ATM Lease"). The ATM Lease shall contain the following terms (i) the ATM Kiosk shall be at a location on the Property mutually agreeable to Buyer and Seller, (ii) the term of the Lease shall be for ten (10) years, (iii) Seller shall pay Buyer or Buyer's nominee gross rent of \$15,000 per year, (iv) access to the ATM Kiosk shall comply with all applicable federal, state and local laws, including the American's with Disabilities Act, (v) during the term of the ATM Lease Buyer (or Buyer's nominee) shall not permit any other financial institution to maintain an ATM on the Property; (vi) BUYER's plans accompanying any applicable permit application shall show the ATM Kiosk; and (vii) Buyer shall not oppose any permit application by Seller to construct, install and maintain the ATM Kiosk. If Buyer and Seller cannot agree on the form of the ATM Lease prior to the expiration of the Due Diligence Date, then either party may terminate this Agreement by written notice to the other, said termination to be effective on the date set forth in the notice. If this Agreement is terminated as set forth in this Section, then the Deposit shall be refunded to Buyer. Seller, at Seller's sole cost and expense, shall obtain all permits required for the ATM Kiosk. Prior to the Due Diligence Date, Seller may terminate this Agreement if the Seller is not satisfied that Seller will be able to obtain all necessary permits for the ATM Kiosk..

5.7 Survival. The indemnity provisions of section 5.5 shall survive the Closing or the earlier termination of this Agreement.

## ARTICLE 6

### TITLE AND SURVEY

6.1 Deed. The Land, the Improvements and the Appurtenances shall be conveyed by a good and sufficient Massachusetts quitclaim deed (the “**Deed**”) running to Buyer or to such nominee as Buyer may designate by written notice delivered to Seller before the Closing Date, and subject to such nominee’s compliance with OFAC requirements. The Deed shall convey good, clear, record and marketable title to the Land, the Improvements and the Appurtenances free from all encumbrances except for the following:

- (a) provisions of existing and future federal, state or local laws, regulations, restrictions, requirements, ordinances, resolutions and orders (including, without limitation, any relating to building, zoning and environmental protection) as to the use, occupancy subdivision or improvement of the Land, the Improvements and the Appurtenances;
- (b) such real and personal property taxes for the then current tax period as are not due and payable on the Closing Date;
- (c) any liens for municipal betterments assessed after the Effective Date on the Property;
- (d) the License; and
- (e) the Encroachment, as that term is defined in Section 6.7

6.2 Title Commitment. Buyer may, at Buyer’s expense, obtain an ALTA Title Insurance Commitment showing all matters affecting title to the Land, the Improvements and the Appurtenances (the “**Title Commitment**”). Buyer shall furnish to Seller a copy of the Title Commitment and any amendments to the Title Commitment promptly upon Buyer’s receipt of the same, but failure to do so shall not be a default by Buyer under this Agreement.

6.3 Survey. Buyer may, at Buyer’s expense, employ a surveyor or surveying firm, licensed in Massachusetts, to prepare a survey of the Land, the Improvements and the Appurtenances (the “**Survey**”). Buyer shall furnish to Seller a copy of the Survey and any amendments to the Survey promptly upon Buyer’s receipt of the same, but failure to do so shall not be a default by Buyer under this Agreement.

6.4 Buyer’s Title Objections. Buyer may furnish to Seller a written statement specifically identifying any liens, encumbrances, encroachments or other objections to the title to the Land, the Improvements or the Appurtenances identified by Buyer (“**Buyer’s Title Notice**”). A copy of the Title Commitment and the Survey shall accompany Buyer’s Title Notice if the same have not been previously provided to Seller but the willingness of any title insurance company to affirmatively insure or provide a “clean” policy, so called, for any particular title objection shall not require Buyer to elect



to accept same, and Buyer shall have the right, in Buyer's sole discretion, to deem title to the premises unacceptable or unmarketable, notwithstanding such affirmative insurance or "clean" policy, and to terminate this Agreement and receive immediate refund of all amounts deposited hereunder and any interest thereon. Buyer may not object to the matters set forth in Section 6.1(a) through Section 6.1(e). If Seller does not receive Buyer's Title Notice on or before 5:00 P.M. on or before the Due Diligence Date, then Buyer shall be deemed to have waived Buyer's right to object to matters of title or matters of survey that were of record or in existence on the Effective Date.

6.5 Seller's Obligation to Cure. In addition to Seller's obligations under section 12.1, Seller shall remove those objections listed on Buyer's Title Notice that (i) are mortgages or other liens created by, through or under Seller which secure solely the payment of a stated indebtedness, (ii) were voluntarily placed on the record title by Seller after the Effective Date, or (iii) may be removed solely by delivery of an affidavit of Seller, or other publicly available certificate or document.

6.6 Seller's Election to Cure. If objections appear on Buyer's Title Notice that Seller is not obligated to remove pursuant to Section 6.5 or section 12.1, then Seller, within five (5) business days of Seller's receipt of Buyer's Title Notice, shall send written notice to Buyer indicating which, if any, of the remaining objections Seller has elected to eliminate prior to the Closing ("**Seller's Title Notice**"). Buyer, within five (5) business days of Buyer's receipt of Seller's Title Notice, shall either (i) elect to terminate this Agreement, in which case the Deposit shall be refunded to Buyer, or (ii) elect to accept title to the Property subject to the title and survey matters Seller has elected not to remove without any abatement of the Purchase Price. If Seller fails to send Seller's Title Notice within said five (5) day period, then Seller shall be deemed to have elected to remove all of the objections listed on Buyer's Title Notice. If Buyer fails to make Buyer's election within said five (5) day period, then Buyer shall be deemed to have elected clause (ii) above.

6.7 Encroachment. Seller represents that the owner of the property (the "**Encroaching Owner**") located at 79 Main Street in Vineyard Haven has asserted prescriptive easements over portions of the Property (the "**Encroachment**"). Following execution of this Agreement, Seller shall provide Buyer any written documentation received by it from the Encroaching Owner asserting his claim to the Encroachment. Prior to the Due Diligence Date, Buyer, Seller and the Encroaching Owner shall attempt to agree upon a resolution of the Encroachment issue. The Resolution may involve the granting of an easement to the Encroaching Owner and result in financial obligations by Seller up to the financial limits established under section 12.1. Any documents that Buyer, Seller and the Encroaching Owner agree to as a resolution of the Encroachment issue are referred to in this Agreement as the "**Encroachment Documents**". The Encroachment Documents shall be binding on Buyer, Seller and the Encroaching Owner and recorded at the Closing. If Buyer is not satisfied with the terms of the Encroaching Documents, in Buyer's sole discretion, prior to the expiration of the Due Diligence Date, then Buyer may terminate this Agreement by written notice to Seller, whereupon this Agreement shall be void and the Deposit shall be refunded to Buyer.

6.8 New Title and Survey Matters. Buyer shall have the right to object to any title matters or survey matters that first arise after the Effective Date, in which case said matters shall be resolved in the manner set forth in this Article and, if required, the Closing Date shall be extended for a period of up to thirty (30) days or such other longer period as the parties may agree. Either party shall notify the other upon learning of any title or survey matter arising on or after the Effective Date.

## ARTICLE 7

### REPRESENTATIONS AND WARRANTIES OF SELLER

7.1 Seller's Representations and Warranties. Seller represents and warrants to Buyer as of the Effective Date as follows:

(a) Leases. Except for the License, there are no leases, licenses, occupancy agreements or other rental agreements (written or verbal) that grant any possessory interest in and to any space situated on the Land or in the Improvements;

(b) Contracts. There are no service, maintenance, supply or management contracts affecting the Property that will survive the Closing and be binding on Buyer;

(c) Ability to Perform. Seller has full power to execute, deliver and carry out the terms and provisions of this Agreement, Seller has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and the person signing this Agreement on behalf of Seller is authorized to do so;

(d) No Impediments. There is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Seller which, if adversely determined, could individually or in the aggregate materially interfere with the consummation of the transactions contemplated by this Agreement;

(e) Not a Foreign Person. Seller is not a foreign person within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended; and

(f) Litigation. Except for the Encroachment, Seller has received no written notice of litigation affecting the Property or Seller's ability to fulfill its obligations under this Agreement, nor has any such action been threatened in writing.

7.2 Survival of Seller's Representations and Warranties. The representations and warranties of Seller set forth in this Agreement shall survive the Closing for a period of three (3) months. No claim for a breach of any representation or warranty of Seller shall be actionable or payable (i) if the breach in question results from or is based on a condition, state of facts or other matter which was known to Buyer as of the Closing Date, (ii) unless the valid claims for all such breaches collectively aggregate more than \$50,000, in which event the full amount of such claims, up to but not exceeding the sum of \$1,000,000, shall be actionable, and (iii) unless written notice containing a description of the specific nature of such breach shall have been given by Buyer to Seller prior to the

expiration of said three (3) month period and an action shall have been commenced by Buyer against Seller within one year from the Closing Date.

7.3 Seller's Knowledge. All of the representations and warranties of Seller contained in this Agreement are based on Seller's knowledge. The term "Seller's knowledge" shall mean the actual, not constructive or implied, knowledge of Michael Kuronen without any further obligation of Michael Kuronen to make any independent investigation of the matters being represented and warranted, or to make any further inquiry of any other persons, or to search or examine any files, records, books or correspondence. Buyer acknowledges that the individual or individuals named above are named solely for the purpose of defining and narrowing the scope of Seller's knowledge and not for the purpose of imposing any liability on or creating any duties running from such individual or individuals to Buyer. Buyer agrees that Buyer shall not bring an action of any kind against such individual or individuals, any shareholder, member, manager, partner, officer or employee of Seller, as applicable, related to or arising out of these representations and warranties.

## **ARTICLE 8**

### **REPRESENTATIONS AND WARRANTIES OF BUYER**

8.1 Buyer's Representations and Warranties. Buyer represents and warrants to Seller as of the Effective Date as follows:

(a) Ability to Perform. Buyer has the full power to execute, deliver and carry out the terms and provisions of this Agreement, Buyer has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the person signing this Agreement on behalf of Buyer is authorized to do so; and

(b) No Impediments. There is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Buyer which, if adversely determined, could individually or in the aggregate materially interfere with the consummation of the transactions contemplated by this Agreement.

8.2 Survival of Buyer's Representations and Warranties. The representations and warranties of Buyer set forth in this Agreement shall survive the Closing for a period of three (3) months.

## **ARTICLE 9**

### **OBLIGATIONS OF SELLER PRIOR TO CLOSING**

9.1 No New Leases. Seller shall not, without Buyer's consent, which consent shall not be unreasonably withheld or delayed, enter into any new lease for space on the Land or in the Improvements.

9.2 No New Contracts. Seller shall not enter into any new service, maintenance, supply or management contracts with respect to the Property unless the same are terminable without penalty prior to the Closing.

9.3 Maintenance of Insurance. Seller shall continue in force and effect until the Closing Date all policies of property and casualty insurance maintained by Seller with respect to the Property that are in existence on the Effective Date. Subject to Article 11, the risk of loss in and to the Property shall remain vested in Seller until the Closing.

9.4 Continued Operation. Until the Closing Date, Seller (i) shall continue to operate and maintain the Property in a prudent manner consistent with current operating standards for the Property, (ii) shall not make any material alterations to the Property. The Property is presently vacant and no operations will resume prior to the Closing.

## **ARTICLE 10**

### **CLOSING CONDITIONS**

10.1 Conditions to Buyer's Obligation to Close. The obligation of Buyer to consummate the transaction contemplated by this Agreement is conditioned upon:

- (a) Seller having performed Seller's obligations under this Agreement and having tendered all deliverables to be made on or before the Closing;
- (b) Buyer and Seller having agreed upon the ATM Lease; and
- (c) Buyer and Seller having agreed upon a resolution of the Encroachment.

10.2 Conditions to Seller's Obligation to Close. The obligation of Seller to consummate the transaction contemplated by this Agreement is conditioned upon

- (a) Buyer having performed Buyer's obligations under this Agreement and having tendered all deliverables to be made on or before Closing, including, without limitation, payment of the Purchase Price;
- (b) Buyer and Seller having agreed upon the ATM Lease; and
- (c) Buyer and Seller having agreed upon a resolution of the Encroachment.

## **ARTICLE 11**

### **RISK OF LOSS**

11.1 Casualty. For the purposes of this Section 11.1, a "material part" of the Property shall mean a part of the Property as shall have a value, as reasonably determined by Seller's insurance company, in excess of the lesser of Seller's insurance deductible or

\$75,000. If the Property or any part thereof shall have been materially damaged by fire or casualty insured against, then Buyer may elect to terminate this Agreement and receive a full refund of the Deposits. If Buyer does not elect to terminate, then at the Closing and as directed by Buyer, Seller shall, unless the Seller has previously restored the Property to their former condition, either:

- (a) Pay over to the Buyer the deductible under Seller's insurance policy, and assign to Buyer all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by the Seller for any partial restoration, or
- (b) Give to the Buyer a credit against the purchase price, on delivery of the deed, equal to the insurance amounts so recovered or recoverable under Seller's insurance policy, less any amounts reasonably expended by the Seller for any partial restoration.

11.2 Eminent Domain. If, prior to the Closing, all or any significant portion of the Property is taken by eminent domain (or is the subject of a pending taking which has not yet been consummated), then Seller shall notify Buyer of such fact and both Buyer and Seller shall have the right to terminate this Agreement by giving written notice to the other not later than ten (10) days after the giving of Seller's notice, in which case the Deposit shall be refunded to Buyer. For the purposes of this Section 11.2, a "significant portion" of the Property shall mean such a portion of the Property as shall have a value, as reasonably determined by Seller, in excess of \$100,000. If neither Seller nor Buyer elects to terminate this Agreement, or if anything less than a significant portion of the Property is taken by eminent domain (or becomes the subject of a pending taking), then there shall be no abatement of the Purchase Price and Seller shall assign to Buyer (without recourse) at the Closing the right of Seller to the awards, if any, for the taking, and Buyer shall be entitled to receive and keep all awards for the taking of the Property.

## **ARTICLE 12**

### **EXTENSION TO PERFECT TITLE; DEFAULT**

12.1 Extension to Perfect Title. If Seller shall be unable to give title or make conveyance of the Property as required by this Agreement, or if at the Closing the Property does not conform with the provisions of this Agreement, then Seller shall use reasonable efforts to remove any defects in title or make the Property conform to the provisions of this Agreement, as the case may be, in which event Seller shall give written notice to Buyer on or before the Closing, and the Closing shall be extended to a date mutually agreeable to Buyer and Seller, and absent such agreement then for a period of thirty (30) days (the "**Extended Closing Date**"). Seller shall not be required to expend more than \$25,000 (exclusive of any amount required to discharge a mortgage or other lien and exclusive of Seller's attorneys' fees) in using reasonable efforts to remove any defects in title or make the Property conform to the provisions of this Agreement. If Seller is unable to give title, make conveyance or make the Property conform to the

provisions of this Agreement by the Extended Closing Date, then Buyer may elect on the Extended Closing Date to either (i) accept such title as Seller can deliver to the Property in its then condition and to pay the full Purchase Price for the Property, or (ii) terminate this Agreement in which case the Deposit shall be refunded to Buyer and neither Seller nor Buyer shall have any further rights, obligations or liabilities under this Agreement except for the obligations expressly deemed, pursuant to this Agreement, to survive the termination of this Agreement.

12.2 Seller's Default. If Seller shall default in its obligation to sell the Property under this Agreement, then Buyer may elect to exercise, by written notice to Seller and the Escrow Agent and as Buyer's sole and exclusive right and remedy, one (1) of the following rights and remedies: (i) to terminate this Agreement in which event the Deposit shall be returned to Buyer and neither Seller nor Buyer shall have any further rights, obligations or liabilities under this Agreement except for the obligations expressly deemed, pursuant to this Agreement, to survive the termination of this Agreement, (ii) to forbear, the satisfaction of any unsatisfied conditions and consummate the Closing without reduction in the Purchase Price, or (iii) to seek specific performance of this Agreement and seek all rights and remedies thereunder, provided, however, that any action for specific performance must be brought within six (6) months after the Closing Date.

12.3 Buyer's Default. The parties acknowledge that in the event of Buyer's failure to pay the Purchase Price for the Property at the Closing it is impossible to compute exactly the damage that Seller would suffer due to such failure. The parties have taken these facts into account in setting the amount of the Deposit and agree that (i) the Deposit is the best estimate of the damage Seller would suffer, (ii) the Deposit represents damage and not a penalty against Buyer, and (iii) if this Agreement shall be terminated by Seller by reason of Buyer's failure to pay the Purchase Price for the Property at the Closing, then the Escrow Agent shall pay the Deposit to Seller as Seller's full and liquidated damages and this shall be Seller's sole and exclusive remedy for any breach by Buyer under this Agreement

## ARTICLE 13

### BROKERAGE

13.1 Brokerage Fees. Seller and Buyer mutually represent and warrant that CBRE (the "**Broker**") is the only broker with whom Seller and Buyer have dealt in connection with this Agreement and that neither Seller nor Buyer knows of any other broker who has claimed, or may have the right to claim, a commission in connection with this Agreement. Seller shall pay the commission of the Broker, pursuant to a separate agreement, if, as and when the Closing occurs and the Purchase Price is paid in full. Seller and Buyer shall indemnify and defend each other against any costs, claims or expenses, including attorneys' fees, arising out of the breach on their respective parts of the representation and warranty contained in this Section. The representation and warranty contained in this Section shall survive the Closing or the earlier termination of this Agreement.

## ARTICLE 14

### NOTICES

14.1 Notices. Any notices required or permitted to be given under this Agreement shall be given in writing and shall be delivered (i) by certified mail, postage prepaid, return receipt requested, (ii) by a commercial overnight courier that guarantees next day delivery and provides a receipt, (iii) by electronic mail (with a hard copy sent by certified mail or by overnight courier), and such notices shall be addressed as follows:

To Seller: Santander Bank, N.A.  
75 State Street, 4<sup>th</sup> Floor  
Mail Code: MA1-SST-04-01  
Boston, Massachusetts 02109  
Attention: Corporate Real Estate Counsel

With a copy to: Todd K. Helwig, Esq.  
Mirick O'Connell  
1800 West Park Drive, Suite 400  
Westborough, MA 01581-3926  
Email: [thelwig@mirickoconnell.com](mailto:thelwig@mirickoconnell.com)

To Buyer: Reid A. Dunn  
455 State Road PMB 108  
Vineyard Haven, MA 02568  
Email: [samdunn@rcn.com](mailto:samdunn@rcn.com)

With a copy to: Robert McCarron, Esq.  
McCarron, Murphy and Vukota LLP  
282 Upper Main Street, P O Box 1270  
Edgartown, MA 02539  
Email: [rmm@edgartownlaw.com](mailto:rmm@edgartownlaw.com)

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be effective when sent, provided that the sender has evidence of delivery, which may include written receipt, written evidence of attempted delivery or confirmation of receipt.

## ARTICLE 15

### DISCLAIMERS AND WAIVERS

15.1 No Reliance. Except as expressly stated in this Agreement, Seller makes no representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered by Seller or its brokers or agents to Buyer in connection

with the transaction contemplated by this Agreement. Buyer acknowledges and agrees that all materials, data and information delivered by Seller to Buyer in connection with the transaction contemplated by this Agreement are provided to Buyer as a convenience only and that any reliance on or use of such materials, data or information by Buyer shall be at the sole risk of Buyer, except as otherwise expressly stated in this Agreement. Without limiting the generality of the foregoing, Buyer agrees that (i) any environmental, engineering or other report with respect to the Property which is delivered by Seller to Buyer shall be for general informational purposes only, (ii) Buyer shall not have any right to rely on any such report delivered by Seller to Buyer, but rather shall rely on Buyer's own inspections and investigations of the Property and reports commissioned by Buyer with respect to the Property, and (iii) neither Seller nor any affiliate of Seller shall have any liability to Buyer for any inaccuracy in or omission from any such report.

15.2 Disclaimers. Except as expressly set forth in this Agreement, Buyer agrees that Seller is not making, and has not at any time made, any representations or warranties of any kind or character, express or implied, with respect to the Property, including, but not limited to, any representations or warranties as to habitability, merchantability, fitness for a particular purpose, title, zoning, tax consequences, latent or patent physical or environmental condition, the presence of any Hazardous Materials, utilities, operating history or projections, valuation, governmental approvals, the compliance of the Property with laws, the truth, accuracy or completeness of the documents or any other information provided by or on behalf of Seller to Buyer, or any other matter or thing regarding the Property. Buyer acknowledges and agrees that at the Closing Seller shall sell and convey to Buyer and Buyer shall accept the Property "as is, where is, and with all faults", except to the extent expressly provided otherwise in this Agreement. Buyer has not relied and will not rely on, and Seller is not liable for or bound by, any express or implied warranties, guaranties, statements, representations or information pertaining to the Property or relating to the same (including, without limitation, property information packages distributed with respect to the Property) made or furnished by Seller, the manager 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 represents to Seller that Buyer has conducted, or will conduct prior to Closing, such investigations of the Property, including, but not limited to, the physical and environmental condition of the Property, as Buyer deems necessary to satisfy Buyer as to the condition of the Property and the existence or nonexistence or curative action to be taken with respect to any Hazardous Materials on, in, under or discharged from the Property, and will rely solely upon the same and not upon any information provided by or on behalf of Seller or its agents or employees with respect to the same. At the Closing, Buyer shall assume the risk that adverse matters, including, but not limited to, construction defects, adverse physical conditions and adverse 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, partners, members, managers, employees and agents) from and against any and all claims, demands, causes of action (including causes of action in tort and statutory claims), losses, damages, liabilities, costs and expenses (including attorneys' fees and court costs) 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, members, managers, employees and agents) at any time by reason of or arising out of any latent or patent construction defects or physical or environmental conditions, violations of any applicable laws (including, without limitation, any environmental laws) and any and all other acts, omissions, events, circumstances or matters regarding the Property. Buyer agrees that should any cleanup, remediation or removal of Hazardous Materials or other environmental conditions on the Property be required after the Closing Date, such cleanup, removal or remediation shall be the responsibility of, and shall be performed at the sole cost and expense of, Buyer and that Buyer shall have no claim, including, without limitation, any statutory claims or claims for contribution or joint liability, against Seller (or Seller's officers, directors, shareholders, partners, members, managers, employees and agents).

15.3 Effect and Survival of Disclaimers. Seller and Buyer acknowledge that the Purchase Price to be paid to Seller for the Property takes into account that the Property is being sold subject to the provisions of this Article 15. Seller and Buyer agree that the provisions of this Article 15 shall survive the Closing.

## ARTICLE 16

### PATRIOT ACT COMPLIANCE

16.1 Patriot Act. All words and phrases and all defined terms used in the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001), as amended (the "Patriot Act"), and in other statutes and all orders, rules and regulations of the United States government and its various executive departments, agencies and offices related to the subject matter of the Patriot Act, including, but not limited to, Executive Order 13224 effective September 24, 2001, are collectively referred to in this Agreement as the "Patriot Rules."

16.2 Representation and Warranty. Buyer represents and warrants to Seller, and Seller represents and warrants to Buyer, that each and every person or entity (i) affiliated with the respective party, (ii) that has an economic interest in the respective party, (iii) that has or will have an interest in the transaction contemplated by this Agreement or in the Property, and (iv) that will participate, in any manner whatsoever, in the purchase of the Property, is:

(a) Not a blocked person listed in the Annex to Executive Order Nos. 12947, 13099 and 13224, as amended (the "Annex");

(b) In full compliance with the requirements of the Patriot Rules and all other requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("OFAC");

(c) Operated under policies, procedures and practices, if any, that are in compliance with the Patriot Rules and available to Seller for Seller's review and inspection during normal business hours and upon reasonable prior notice;

(d) Not in receipt of any notice from the Secretary of State or the Attorney General of the United States or any other department, agency or office of the United States claiming a violation or possible violation of the Patriot Rules;

(e) Not listed as a Specially Designated Terrorist or as a blocked person on any lists maintained by OFAC pursuant to the Patriot Rules or any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC issued pursuant to the Patriot Rules or on any other list of terrorists or terrorist organizations maintained pursuant to the Patriot Rules;

(f) Not a person who has been determined by competent authority to be subject to the prohibitions contained in the Patriot Rules; and

(g) Not owned or controlled by, or now acting on behalf of, any person or entity named in the Annex, any other list promulgated under the Patriot Rules or any other person who has been determined to be subject to the prohibitions contained in the Patriot Rules.

16.3 Termination. Each party covenants and agrees that in the event it receives any notice that it or any of its affiliates, shareholders, officers, directors, partners, members or managers becomes listed in the Annex or any other list promulgated under the Patriot Rules or is indicted or arraigned, or detained on charges involving money laundering or predicate crimes to money laundering, the party receiving the notice shall immediately notify the other and, in such event, this Agreement shall automatically terminate and the Deposit shall be refunded to Buyer.

## ARTICLE 17

### MISCELLANEOUS PROVISIONS

17.1 Assignment. Buyer may not assign Buyer's rights, obligations or interest in this Agreement to any other person or entity without first obtaining Seller's prior written consent, which consent may be given or withheld in Seller's sole discretion. Any assignment, with or without Seller's consent, shall not relieve Buyer from any liability or obligation under this Agreement. Nothing herein shall limit or prohibit Buyer from designating a title nominee to BUYER's issue, a partnership, limited partnership, corporation, limited liability partnership or limited liability company in which BUYER, BUYER's issue have an interest, or to any trust for the benefit of one or more of the BUYER, BUYER'S issue.

17.2 Integration. This Agreement embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated by this Agreement, and all prior agreements, understandings, representations and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision of this Agreement may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

17.3 Public Disclosure. Any release to the public of information with respect to the sale contemplated by this Agreement, or any matters set forth in this Agreement, shall be made only in the form approved by Buyer and Seller and their respective counsel.

17.4 No Recording. Buyer agrees that neither this Agreement nor any memorandum of this Agreement shall be recorded and that any such recordation shall, at Seller's election, be a default by Buyer under this Agreement.

17.5 Captions. The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions of this Agreement.

17.6 Drafts. This Agreement shall not be binding or effective until properly executed and delivered by both Seller and Buyer.

17.7 Number and Gender. As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context may require.

17.8 Attachments. If the provisions of any schedule or rider to this Agreement are inconsistent with the provisions of this Agreement, the provisions of such schedule or rider shall prevail. All attached schedules are hereby incorporated as integral parts of this Agreement.

17.9 Further Assurances. Each party agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, Buyer shall, if requested by Seller, execute acknowledgments of receipt with respect to any materials delivered by Seller to Buyer with respect to the Property. The provisions of this Section shall survive the Closing.

17.10 Counterparts. This Agreement may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement. The transmission of a signed counterpart of this Agreement by portable document format (.pdf) shall have the same force and effect as delivery of an original signed counterpart of this Agreement and shall constitute valid and effective delivery for all purposes of this Agreement.

17.11 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect so long as the intent of the parties can be reasonably accomplished thereby.

17.12 No Third Party Beneficiaries. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of

Seller and Buyer only and are not for the benefit of any third party. Accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at the Closing.

17.13 Limited Liability. Neither the shareholders, members, managers, officers, employees, partners, advisors or agents of Seller, nor the shareholders, members, managers, officers, employees, partners, advisors or agents of any of them, shall be liable under this Agreement and all parties shall look solely to the assets of Seller for the payment of any claim or the performance of any obligation by Seller. Neither the shareholders, members, managers, officers, employees, partners, advisors or agents of Buyer, nor the shareholders, members, managers, officers, employees, partners, advisors or agents of any of them shall be liable under this Agreement and all parties shall look solely to the assets of Buyer for the payment of any claim or the performance of any obligation by Buyer.

17.14 Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments to this Agreement.

17.15 Termination of Agreement. The parties understand and agree that if either Buyer or Seller terminates this Agreement pursuant to a right of termination granted in this Agreement, such termination shall operate to relieve Seller and Buyer from all obligations under this Agreement, except for such obligations that expressly survive the termination of this Agreement.

17.16 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts. Seller and Buyer hereby irrevocably submit to the jurisdiction of any state or federal court sitting in the Commonwealth of Massachusetts in any action or proceeding arising out of or relating to this Agreement and hereby irrevocably agree that all claims in respect of such action or proceeding shall be heard and determined in a state or federal court sitting in the Commonwealth of Massachusetts. Buyer and Seller agree that the provisions of this Section shall survive the Closing or the earlier termination of this Agreement.

17.17 Time of the Essence. Time is of the essence of this Agreement and of each provision in which time is an element

17.18 Merger. Except as otherwise specifically provided in this Agreement, the delivery of the Deed by Seller, and the acceptance of the Deed by Buyer, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed under this Agreement.

17.19 Title Standards. Any title matter or conveyancing practice which is the subject of a title standard or practice standard of the Real Estate Bar Association for

Massachusetts shall be governed by said title standard or practice standard to the extent applicable.

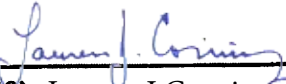
17.20 WAIVER OF JURY TRIAL. BUYER AND SELLER HEREBY WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS AGREEMENT AND ALL MATTERS CONTEMPLATED BY THIS AGREEMENT.

**[SIGNATURE PAGE FOLLOWS]**

The parties have executed this instrument under seal as of the Effective Date.

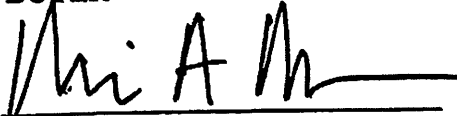
**SELLER**

**SANTANDER BANK, N.A.**

By:   
Name: Lauren J Corning  
Title: VP Retail 8/4/20

*Michael Kuronen*  
By: \_\_\_\_\_  
Name: Michael Kuronen  
Title: SVP Retail Property 8/4/2020

**BUYER**

  
Reid A. Dunn