

STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
PURCHASE AND SALE AGREEMENT - LAND

▶ **1. PARTIES:**

	SELLER(S)	BUYER(S)
Name(s)	_____	_____
Address	_____ _____	_____ _____

▶ **2. DESCRIPTION:** Subject to the terms and conditions hereinafter set forth, the SELLER agrees to sell and the BUYER agrees to buy SELLER'S real Parcel located at _____ as more particularly described in a deed dated _____ and recorded in the _____ Berkshire County Registry of Deeds in Book _____, Page _____, or Land Court Certificate # _____ Assessor's Map # _____ Section # _____ Lot # _____ (the "Parcel").

▶ **3. PURCHASE PRICE:** For the Parcel, BUYER shall pay the "Purchase Price" sum of.....\$ _____ of which an initial deposit has been paid this day in the amount of.....\$ _____ and within _____ days of SELLER'S signed acceptance an additional deposit in the amount of ...\$ _____ will be paid, resulting in a balance to be paid in the amount of\$ _____ in cash, wired funds, or by certified / bank check at the Closing.

3.1 Escrow: All deposits are to be held by the Listing Broker _____ ("Escrow Agent") in a non-interest bearing escrow account, unless otherwise specified herein.

▶ **4. CONTINGENCY TERMS:** The following terms and dates apply to paragraphs 6, 7 and 8 as the case may be:

4.1 Mortgage: Amt: _____ Rate: _____ Type: Fixed Variable Pts: _____ Yrs: _____

4.2 Mortgage / Insurance Application Date: _____ within _____ days of signed acceptance by SELLER

4.3 Mortgage / Insurance Contingency Date: within _____ days of signed acceptance by SELLER

4.4 Inspection Contingency Date: within _____ days of signed acceptance by SELLER

4.5 Septic System Inspection Date: (if applicable)..... within _____ days of signed acceptance by SELLER

▶ **5. CLOSING DATE:** The Deed is to be delivered and the Purchase Price paid on _____ at 2:00 p.m. (the "Closing Date") at the appropriate Registry of Deeds or such other location within the county in which the Parcel is located, as specified by BUYER.

6. MORTGAGE / INSURANCE CONTINGENCY: The Buyer's obligations under this Agreement are contingent upon the Buyer's obtaining a written commitment letter from a conventional mortgage lender for a loan consistent with the contingency term used and the BUYER'S satisfaction with the insurability of the Parcel consistent with the mortgage requirements in purchasing the Parcel. Should the Buyer be unable to obtain such a commitment letter or satisfactory insurance binder despite diligent efforts, Buyer may cancel this Agreement by written notice received by the Listing Broker or Seller's Attorney, no later than 5:00 p.m. on the Mortgage / Insurance Contingency Date, whereupon all obligations of the parties under this Agreement shall cease and Buyer's deposits shall be promptly returned in full. Buyer's failure to (a) give such written notice or (b) make a good faith mortgage or insurance application by the Mortgage /Insurance Application Date shall be a waiver of the Buyer's right to cancel under this Paragraph. If the Buyer cancels the agreement, BUYER shall attach a copy of the applicable denial letter to BUYER's cancellation notice.

7. INSPECTION CONTINGENCY: The BUYER'S obligations hereunder are contingent upon BUYER'S receipt, prior to 5:00 p.m. on the Inspection Contingency Date, of written inspection reports on the Parcel satisfactory to the BUYER. Such reports may, at Buyer's option and expense, include but are not limited to: underground tanks, septic system, well water, wetlands and environmental conditions. Should the results of any such test be



unsatisfactory to BUYER, BUYER may cancel this Agreement by written notice received by the Listing Broker or Seller's Attorney no later than 5:00 p.m. on the Inspection Contingency Date, whereupon all obligations of the parties shall cease and BUYER'S deposits shall be promptly returned in full. BUYER'S failure to give such notice shall be a waiver of BUYER'S right to cancel under this Paragraph. The BUYER and Buyer's consultants shall have the right of access to the Parcel for the purpose of conducting an inspection, at reasonable times, upon twenty-four (24) hours advance notice to the Seller's Agent. In consideration of BUYER'S right to inspect and terminate, Buyer acknowledges that by accepting the deed Buyer accepts the condition of the Parcel and releases the Seller, Seller's Agents and Buyer's Agents (which include the Selling and Listing Brokers), from any and all liability relating to any defects in the Parcel without limitation.

- ▶ **8. SEWAGE DISPOSAL:** The SELLER represents that the Parcel **is** / **is not** served by a municipal sewer system. If the premise is not served by a municipal sewer system, the sale will be subject to obtaining satisfactory results of a percolation test, deep pit soils evaluation, and high ground water determination performed to the satisfaction of the Board of Health for the municipality for which the Parcel is located and suitable for design of a septic system as defined by Title 5 of the State Environmental Code (310 CMR 15.301). Said testing and evaluation will be performed at the **SELLER'S** / **BUYER'S** sole cost and in good faith prior to the Septic System Inspection Date, as defined in paragraph 4.5.
- ▶ **9. POSSESSION:** Full possession shall be delivered at the Closing Date. The Parcel shall be free of encroachments burdening the Parcel and of improvements that encroach on adjoining Parcel, including but not limited to buildings, septic systems, well and driveway, and has sufficient legal access to a public way.
- ▶ **10. SURVEY:** SELLER represents that **new** / **no new** boundaries are being created by the sale of the Parcel. If new boundaries are being created, SELLER shall deliver to BUYER at the Closing a survey of the Parcel, in recordable form. The SELLER shall pay for the preparation and recording of the survey, unless otherwise provided herein.
- ▶ **11. WATER:** SELLER represents that the Parcel **is** / **is not** served by a municipal water system. If the Parcel is served by a municipal water system, SELLER represents that the Parcel **is** / **is not** tied into said system. If the Parcel is not served by a municipal water system, SELLER represents that the Parcel is served by **a well** / **a private water company** / **no well on Parcel** / **as outlined in paragraph 30 'Special Conditions'**. If a well is present, SELLER represents that it **is** / **is not** located entirely within the boundaries of the Parcel and **does** / **does not** contain defects known to SELLER.
- 12. ADJUSTMENTS:** Current real estate taxes, water rates, and sewer use charges are to be apportioned as of the Closing Date. If the real estate tax rate is not set as of the Closing Date, the apportionment of real estate taxes shall be made on the basis of the tax assessed for the most recent preceding year, with a readjustment at the request of either party, when the amount of the current year's tax rate is set. If the amount of the tax is reduced by abatement, the rebate, less the reasonable cost of obtaining it, shall be apportioned between the parties.
- ▶ **13. BETTERMENT ASSESSMENTS:** SELLER represents that the Parcel **is** / **is not** subject to a betterment assessment. If the Parcel is subject to a betterment assessment, the SELLER agrees to pay the total outstanding betterment assessment at the closing unless the Buyer agrees to purchase the Parcel subject to, and assumes the payment of the betterment assessment.
- ▶ **14. TITLE:** The Parcel shall be conveyed by a good and sufficient quitclaim deed unless otherwise specified herein (accompanied by a Certificate of Title, if registered), conveying a good, clear record, marketable and insurable title, free of all encumbrances and exceptions, except:
 - a) Real Estate Taxes assessed or to be assessed on the Parcel to the extent that such taxes then are not yet due and payable.
 - b) Federal, state, and local laws, ordinances, by-laws, and rules regulating the use of land, particularly environmental, building, zoning, and health, if any, applicable as of the date of this Agreement, provided that as of the Closing Date, the Parcel may be used as of right for single family residential use or, the Parcel may be used as of right for _____
 - c) Utility easements in the adjoining ways.

15. USE OF PROCEEDS TO CLEAR TITLE: To enable 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. Upon request, SELLER shall promptly provide BUYER's Attorney with written payoff instructions from all of SELLER's mortgagees. Said payoff instruction shall be in accordance with Massachusetts General Laws Chapter 183, Section 1, et seq. At closing, BUYER's Attorney shall transmit all of SELLER's payoffs to said mortgagees, and BUYER's Attorney shall be responsible to promptly secure and record the discharges of said mortgages. BUYER's attorney shall be compensated by the SELLER the customary fee associated with securing the discharge or discharges. SELLER shall pay the cost of discharge(s), and SELLER shall reimburse BUYER's Attorney the cost (if any) of overnight mail charges.

16. EXTENSION If, after a reasonable and diligent effort, SELLER is unable to deliver possession as defined in paragraph 9 or convey title of the Parcel as required hereunder, upon notice by either party, prior to the Closing Date, this Agreement shall be automatically extended for 30 days (or if Buyer's mortgage commitment sooner expires to a date one business day before the expiration of such commitment). Seller shall remove all mortgages, attachments and other encumbrances incurred or assumed by SELLER which secure the payment of money, provided the total amount thereof does not exceed the Purchase Price, and SELLER shall use reasonable and diligent efforts to remove other defects in title, or to deliver possession as provided herein, or to make the Parcel conform to the provisions hereof. At the end of the extended period, if all such defects have not been removed, or the SELLER is unable to deliver possession, or the Parcel does not conform with the requirements of this Agreement, BUYER may elect to terminate this Agreement and to receive back all deposits, upon receipt of which all obligations of the parties hereto shall cease.

17. STANDARDS: Any title matter or practice arising under or relating to this Agreement which is the subject of a Title Standard or a Practice Standard of The Real Estate Bar Association for Massachusetts shall be governed by said Standard to the extent applicable.

18. NOMINEE: BUYER may require the conveyance to be made to another person, persons, or entity ("Nominee"), upon notification in writing delivered to SELLER at least five days prior to the Date of Closing. The appointment of a Nominee shall not relieve BUYER of any obligation hereunder. Any note or mortgage or other document to be delivered from BUYER to SELLER shall be executed by or unconditionally guaranteed by BUYER, unless otherwise specified herein.

19. CLOSING: Simultaneously with the delivery of the deed, SELLER shall execute and deliver:

- A bill of sale for all personal property included as part of the sale, if requested by the BUYER.
- An affidavit, satisfying the requirements of Section 1445 of the Internal Revenue Code and regulation issued thereunder, which states, under penalty of perjury, the SELLER's United States taxpayer identification number, that the SELLER is not a foreign person, and the SELLER's address (the "1445 Affidavit");
- Internal Revenue Service Form W-8 or Form W-9, as applicable, with SELLER's tax identification number, and an affidavit furnishing the information required for the filing of Form 1099S with the Internal Revenue Service and stating SELLER is not subject to back-up withholding.

20. ACCEPTANCE OF DEED: Acceptance of the deed by BUYER shall be a full performance and shall discharge every agreement and obligation herein except any agreements which by their terms are to be performed after the Closing. THE BUYER FURTHER ACKNOWLEDGES THAT THE BUYER IS PURCHASING THE PARCEL 'AS IS' and BUYER has not relied upon any statements or representations, oral or written, regarding the condition or value, present or future, of the Parcel made either by the SELLER or the Seller's Agents, which are not otherwise contained in this Agreement and that the Seller's Agents are acting exclusively upon behalf of the SELLER. All oral or written representations between the parties are merged herein. BUYER further acknowledges it is the BUYER'S responsibility prior to closing to obtain any and all governmental permits for any intended use of the Parcel including, but not limited to, health or environmental department, planning or zoning board approvals. SELLER and SELLER'S representative(s) make no representations as to the adequacy of the Parcel being conveyed for BUYER'S intended purposes, disclosed or undisclosed.

► **21. UNDERGROUND STORAGE TANKS:** The parties acknowledge that the Massachusetts Board of Fire Prevention has issued regulations governing the maintenance, repair, and removal of underground storage tanks to prevent and detect leakage of tank contents into surrounding soil and water supplies. The SELLER hereby discloses that to the best of Seller's knowledge, there are / are not underground oil / propane storage tank(s) at the Parcel. If there are one or more underground tanks at the Parcel, the SELLER further discloses that the tanks have / have not been used within the past six (6) months exclusively for the storage of fuel oil and to the best of the SELLER'S knowledge there has been no release or leakage of oil from such



tank(s). If the Parcel is not in compliance with 527 CMR 9.00 et.seq. and BUYER does not cancel this Agreement, pursuant to paragraph 7, BUYER shall be obligated to purchase the Parcel and shall be deemed to have assumed the obligation to bring the Parcel into compliance with 527 CMR 9.00 et. seq.

22. MERGER: The parties agree that this Agreement contains all of the terms and conditions of this transaction. It is mutually agreed that any oral or prior written representation made by either party prior to the execution of this Agreement is null and void. This Agreement shall be construed as a legal contract under seal and is binding upon the parties, and their respective heirs, successors, and assigns.

23. SURVIVAL: Notwithstanding any presumptions to the contrary, all covenants, conditions, and representations contained in this Agreement, which by their nature, implicitly or explicitly, involve performance in any particular manner after the Closing and delivery of the deed, or which cannot be ascertained to have been fully performed until after the Closing and delivery of the deed, shall survive the Closing.

24. TERMINATION: In the event the BUYER terminates this Contract in accordance with the provisions herein relating to "Mortgage / Insurance Contingency," "Inspection Contingency," "Septic System Inspection", default by SELLER, or the failure of any contingency shown under special conditions, the Escrow Agent shall forthwith refund such deposit money together with accrued interest thereon (if applicable) to the BUYER.

► **25. BUYER'S DEFAULT:** If the BUYER defaults, BUYER shall be liable to the SELLER in the amount of _____% of the purchase price, as liquidated damages, which shall be Seller's exclusive remedy in law or in equity. The deposits shall be applied to the payment of said liquidated damages.

26. RELEASE OF DEPOSITS: The deposits (which term shall include all interest earned, if any) made hereunder shall be held in escrow, subject to the terms of this Agreement and shall be duly accounted for at the time for performance of this Agreement. The deposits may not be released from escrow without the assent of both BUYER and SELLER. The recording of the deed to the Parcel shall constitute such assent. In the event of any disagreement, the Escrow Agent shall retain the deposits pending written instructions by both the SELLER and BUYER, or by a court of competent jurisdiction. So long as Escrow Agent served in good faith, BUYER and SELLER each agrees to hold harmless Escrow Agent from damages, losses, or expenses, arising out of this Agreement or any action or failure to act, including reasonable attorney's fees, related thereto. BUYER and SELLER acknowledge that the Escrow Agent may be counsel or fiduciary to one of the parties and agree that Escrow Agent may continue to act as such counsel or fiduciary notwithstanding any dispute or litigation arising with respect to the deposits or Escrow Agent's duties.

27. AGREEMENT TO MEDIATE DISPUTE OR CLAIMS: Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement, or the brokerage services provided in relation to this Agreement shall be submitted to mediation in accordance with the Rules and Procedures of the Homesellers / Homebuyers Dispute Resolution System ("DRS"). Disputes and claims shall specifically include, without limitation, representations made by the SELLER, the BUYER, or the Broker(s) in connection with the sale, purchase, finance, condition, or other aspect of the Parcel to which this Agreement pertains, including without limitation, allegations of concealment, misrepresentation, negligence and / or fraud. The mediation conference shall be held within 30 days from the date on which the mediator receives notice of the dispute. If the parties reach a settlement, they shall both sign a settlement agreement. If the parties cannot reach a mutually agreeable settlement, they may arbitrate or litigate the dispute without regard to the mediation procedure. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies shall not constitute a waiver of the right to mediate under this paragraph, nor shall such filing constitute a breach of the duty to mediate. The provisions of this paragraph shall survive the closing.

28. GOVERNING LAW: This Agreement is to be governed by the laws of the Commonwealth of Massachusetts.

29. LICENSEE-CONSUMER RELATIONSHIP: BUYER and SELLER acknowledge that they have been provided with a completed copy of the 'Mandatory Licensee-Consumer Relationship' form, as mandated by the Massachusetts Board of Registration of Real Estate Brokers and Salespersons.



PURCHASE AND SALE AGREEMENT – LAND RIDER I

Notwithstanding anything to the contrary contained in the Agreement hereinbefore, the following shall apply.

1. **OBLIGATION CONDITIONS.** Buyer's obligation to purchase is subject to the following conditions which contain and X in the box () opposite the paragraph. If any of the following conditions are not met, BUYER may cancel this Agreement by notifying Listing Broker or Seller's Attorney, in writing, prior to the date indicated.

- A. Obtaining prior to _____ at **SELLER(S)** / **BUYER(S)** sole cost and in good faith, results of a percolation test, deep pit soils examination and high ground water determination performed to the satisfaction of the Board of Health for the municipality in which the Parcel is located, and suitable for design of a septic system per Title 5.
- B. Obtaining prior to _____ at **SELLER(S)** / **BUYER(S)** sole cost and in good faith, satisfactory results of a water potability test of the well located on the Parcel. Satisfactory results are defined as the acceptable standard for drinking water established by the Board of Health for the municipality in which the Parcel is located.
- C. Drilling prior to _____ at BUYER'S sole cost and in good faith, a well with a flow capacity sufficient to satisfy the need requirements for the intended use of the Parcel, which use is as a _____.
- D. Obtaining prior to _____ at BUYER'S sole cost and in good faith, satisfactory evidence from the building inspector for the municipality in which the Parcel is located that the Parcel is a legal building lot for the construction of _____.
- E. Obtaining prior to _____ at BUYER'S sole cost and in good faith, variances, special permits, zoning changes or subdivision approval, as specifically set forth on Rider II, attached hereto and incorporated herein by reference.

2. **REPRESENTATIONS AND WARRANTIES, IF ANY:**

3. **THIS IS A LEGALLY BINDING RIDER TO THE AGREEMENT.** IF NOT UNDERSTOOD, SEEK LEGAL COUNSEL. Executed under seal by the Parties hereto as of the latter of all dates set forth below, together with referenced additions, if any.

_____ SELLER:	_____ DATE	_____ BUYER:	_____ DATE
_____ SELLER:	_____ DATE	_____ BUYER:	_____ DATE

