

**[DRAFT P&S: AUCTION SALE]
w/ DATA ROOM**

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT (the "Agreement"), dated as of the ____ day of _____ 200__, is made by and between _____, a _____ corporation ("Seller"), having an office at _____, and _____, a _____ ("Purchaser"), having an office at _____.

RECITALS:

Seller desires to sell certain improved real property in _____, _____, known as _____ (the "Building") and the garage adjacent thereto (the "Garage"), along with certain related tangible and intangible personal property, and Purchaser desires to purchase such real, tangible and intangible personal property.

NOW, THEREFORE, in consideration of the foregoing, of the covenants, promises and undertakings set forth herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Purchaser agree as follows:

1. The Property.

1.1 Description. Subject to the terms and conditions of this Agreement, and for the consideration herein set forth, Seller agrees to sell and transfer, and Purchaser agrees to purchase and acquire, all of Seller's right, title and interest in and to the following (collectively, the "Property"):

1.1.1 Certain land (the "Land") located in _____, _____, and more specifically described in Exhibit 1.1.1 attached hereto;

1.1.2 The rights appurtenant to the Land set forth in the Easement Agreement, the form of which is attached hereto as Exhibit 1.1.2 (the "Easement Agreement");

1.1.3 All easements, licenses, hereditaments, and appurtenances belonging to or inuring to the benefit of Seller and pertaining to the Land, if any;

1.1.4 Any street or road abutting the Land to the center line thereof;

1.1.5 The Building, Garage, parking areas, other improvements, and fixtures now situated on the Land (the "Improvements") (the Land, the Easement Agreement, the appurtenant rights set forth in Sections 1.1.3 and 1.1.4 above and the Improvements being the "Real Property");

1.1.6 All furniture, tangible personal property, machinery, apparatus, and equipment owned by Seller and currently used in the operation, repair and maintenance of the Land and the Improvements and situated thereon, excluding, however, tangible personal

property and fixtures which are owned by tenants, licensees, the operator of the Garage and other third parties or which may be removed by such parties under the terms of their leases (collectively, the "Personal Property"), and expressly excluding personal property, trade fixtures and equipment used by Seller in its business operations and the property described on Exhibit 1.1.6. The Personal Property to be conveyed is subject to depletions, replacements and additions in the ordinary course of Seller's business;

1.1.7 The leases, licenses or occupancy agreements in effect on the date of this Agreement, including, without limitation, those which are identified on the Schedule of Leases attached hereto as Exhibit 1.1.7, and any new leases entered into pursuant to Section 4.4, which as of the Closing (hereinafter defined) affect all or any portion of the Land or the Improvements (collectively, the "Leases"), and any Security Deposits (hereinafter defined) actually held by Seller with respect to any such Leases;

1.1.8 Subject to Sections 3.3 and 4.3 below, all Contracts (hereinafter defined) having terms which extend beyond midnight of the day preceding the Date of Closing (hereinafter defined);

1.1.9 Assignable warranties and guaranties issued in connection with the Improvements or the Personal Property which remain in effect as of the Closing;

1.1.10 All transferable consents, authorizations, variances or waivers, licenses, permits and approvals from any governmental or quasi-governmental agency, department, board, commission, bureau or other entity or instrumentality solely in respect of the Land or the Improvements which remain valid or in effect as of the Closing (collectively, the "Approvals"); and

1.1.11 The name _____ and variations thereon or derivations thereof, whether used alone or in combination with one or more other words and names, those trademarks, servicemarks, trade names, logos, designs, and all goodwill appurtenant thereto which are owned by Seller or any affiliate of Seller, all as set forth in the Trademark License Agreement substantially in the form attached hereto as Exhibit 1.1.11 (the "Naming Agreement").

1.2 "As-Is" Purchase.

(a) The Property is being sold in an "AS IS, WHERE IS" condition and "WITH ALL FAULTS". Except for Seller's Warranties (as defined in Section 5.9), no representations or warranties, express, implied or arising by operation of law, have been made or are made and no responsibility has been or is assumed by Seller or by any partner, officer, person, firm, agent, attorney, or representative acting or purporting to act on behalf of Seller as to the condition or repair of the Property or the value, expense of operation, or income potential thereof or as to any other fact or condition which has or might affect the Property or the condition, repair, value, expense of operation or income potential of the Property or any portion thereof. The parties agree that all understandings and agreements heretofore made between them or their respective agents or representatives are merged in this Agreement and the Exhibits hereto annexed, which, along with any confidentiality agreements or access agreements that have been or may be entered into between the parties, alone fully and

completely express their agreement, and that this Agreement has been entered into after full investigation, or with the parties satisfied with the opportunity afforded for investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in this Agreement or the Exhibits annexed hereto. Seller makes no representations or warranties as to whether the Property contains asbestos or any hazardous materials or harmful or toxic substances, or pertaining to the extent, location or nature of same, if any. Further, to the extent that Seller has provided to Purchaser access or use of a physical or electronic data room or internet site (any such form of access or use referred to as "Data Room") or information from any inspection, engineering or environmental reports concerning asbestos or any hazardous materials or harmful or toxic substances, Seller makes no representations or warranties with respect to the accuracy or completeness, methodology of preparation or otherwise concerning the contents of such Data Room or reports. Purchaser acknowledges that Seller has requested that Purchaser inspect the Property fully and carefully and investigate all matters relevant thereto and that Purchaser rely solely upon the results of Purchaser's own inspections or other information obtained or otherwise available to Purchaser, rather than any information that may have been provided by Seller to Purchaser. Purchaser expressly understands and acknowledges that it is possible that unknown liabilities may exist with respect to the Property and Purchaser explicitly took that possibility into account in determining and agreeing to the Purchase Price.

(b) Purchaser waives and releases Seller from any present or future claims arising from or relating to the presence or alleged presence of asbestos or any hazardous materials or harmful or toxic substances in, on, under or about the Property, prior to, on or after the date hereof, including without limitation any claims under or on account of (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as the same may have been or may be amended from time to time, and similar state statutes, and any regulations promulgated thereunder, (ii) any other federal, state or local law, ordinance, rule or regulation, now or hereafter in effect, that deals with or otherwise in any manner relates to, environmental matters of any kind, (iii) this Agreement, or (iv) the common law. The terms and provisions of this paragraph shall survive Closing hereunder or termination of this Agreement. Purchaser and its successors and assigns covenant and agree to defend, indemnify and hold harmless Seller from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, relating to any asbestos and hazardous materials or harmful or toxic substances heretofore or hereafter in, at, about or under the Property.

1.3 Agreement to Convey. Seller agrees to convey, and Purchaser agrees to accept, on the Date of Closing: (a) title to the Real Property by _____ statutory quitclaim deed, in the condition described in Section 1.2, above, and subject to the "Permitted Exceptions" described in Section 3.4 hereof; and (b) title to the Personal Property, by Bill of Sale (hereinafter defined), without warranty as to the title or the condition of such personalty.

2. Price and Payment.

2.1. Purchase Price. The purchase price for the Property (the "Purchase Price") is _____ U.S. Dollars (\$_____). The Purchase Price shall be allocated as follows: **[Land, Building, Garage, Easement Agreement]**: \$_____; Personal Property:

\$_____; and intangibles, including without limitation, naming rights pursuant to the Naming Agreement: \$_____.

2.2 Payment. Payment of the Purchase Price (and the Deposit (hereinafter defined) required to be made pursuant to this Section) is to be made by Purchaser wiring immediately available funds to such bank account(s) as Seller may designate, as follows:

2.2.1(a) Purchaser has made an earnest money deposit of _____ Dollars (\$_____) [5% of Purchase Price] (the "Deposit") prior to or contemporaneously with the execution of this Agreement.

(b) The Deposit will be placed with, and held in escrow by, _____ (the "Title Company") in an interest-bearing account at a mutually acceptable banking institution. Any interest earned by the Deposit shall be considered as part of the Deposit and shall be paid to or on behalf of the party hereto which is entitled to receipt of the Deposit pursuant to the terms of this Agreement. **[Interest shall be credited toward the Purchase Price.]**

[Alternate 2.2.1 As a deposit, Purchaser has delivered Letter of Credit Number _____ issued by _____ in the amount of _____ Dollars (\$_____) to _____ (the "Title Company") to be held by the Title Company subject to the terms of this Agreement (the "Letter of Credit"). The Letter of Credit is also referred to herein as the Deposit.]

2.2.2 At Closing, Purchaser shall pay to Seller **[the balance of -- remove if Letter of Credit used]** the Purchase Price, [in the amount of _____ Dollars (\$____)] subject to adjustment for the prorations as provided for in Section 6 below. Simultaneously with the payment by Purchaser of the balance of the Purchase Price, the Title Company shall pay the Deposit to Seller, if in cash, by wiring immediately available funds to such bank account(s) as Seller may designate in sufficient time to be received by Seller on or before 2:00 p.m. Eastern Standard Time (E.S.T.) on the Date of Closing. If the Deposit is by Letter of Credit, the Letter of Credit shall be returned to Purchaser upon payment by Purchaser of the Purchase Price and consummation of the Closing.

2.3 Closing. Payment of the Purchase Price and the closing hereunder (the "Closing") will take place on _____, 200__ (the "Date of Closing") at the offices of the Title Company in Boston, Massachusetts, or, at Seller's option, at the offices of Seller's attorneys at 10:00 a.m. E.S.T. or at such other time and place as may be agreed upon in writing by Seller and Purchaser. **[Closing could be accomplished by sending documents and money to Title Company in advance.]**

3. Inspections and Approvals.

3.1 Access.

3.1.1 Purchaser has entered into an Access Agreement dated _____, 200__ ("Access Agreement"). Subject to the terms of the Access Agreement, Seller has allowed Purchaser or Purchaser's agents or representatives access to the Real Property for purposes of physical inspection of the Real Property and review of the Contracts, the Leases, Seller's books