

# Berkshire Settlement At-A-Glance



## WHO IS COVERED?

Individual REALTORS and their brokerages in good standing on August 17, 2024 with 2022 total transaction volume for residential home sales below \$2 billion are covered by the settlement, provided they comply with practice changes.



## PRACTICE CHANGES BY AUGUST 17

➔ In full: [Facts.Realtor](https://facts.realtor)

- ✓ Discuss and secure compensation outside of the MLS.
- ✓ Use forms that clearly state compensation is negotiable and not set by law.
- ✓ Only accept compensation as agreed upon in the contract with your client.
- ✓ Clearly explain your services and compensation with all clients.
- ✓ Enter into a written agreement with the buyer prior to touring a home.
- ✓ Share all listings that meet your buyers' criteria, regardless of compensation.



## IMPORTANT BERKSHIRE DATES:

- **July 17** - Final Board approval and upload contracts to all forms platforms.
- **July 24** - Designated Broker Zoom on Wednesday July 24th @ 9a.m.
- **July 24** - Release a video for brokers to share with their agents.
- **July 24** - Leadership shares Lender/Lawyer update.
- **July 31** - REALTOR Check-in Zoom on contracts, regulations, Q&A @ 9 a.m.
- **August 8th** - FlexMLS removes compensation from the Berkshire MLS.
- **August 17th** - Deadline to make all practice changes.
- **Unknown** - Forms providers have varying time frames for implementation.  
\*If there are lags in forms availability, the Board will have an alternative plan.



## 7 NEW CONTRACT UPDATES:

### Addendum with new, mandated disclosures for existing contracts

1. Additional Disclosure for Existing Exclusive Right to Buy
2. Additional Disclosure for Existing Exclusive Right to Sell

### Update & Rename Representation Agreements

3. Buyer-Broker Representation Agreement
4. Seller-Broker Representation Agreement

### Replace compensation addendums with updated purchase agreements

5. Purchase and Sale
6. Purchase and Sale Land

### Update to enable attorneys and lenders to write closing disclosures and checks.

7. Uniform Compensation Statement

LEARN  
KNOW  
EVALUATE  
COOPERATE  
PLAN  
THRIVE  
SHARE  
ENGAGE  
EXCEL



## Berkshire County, MA Settlement Details

You have new obligations to be protected by the NAR class action settlement, and so do we, as the MLS! It's been a busy few months here (wild understatement), but this document contains the final documents and rules that await your attention. Our obligations as an MLS owned by a REALTOR Association and affiliated with NAR drove the contract changes, system changes and practice changes shared here.

Thank you to the staff and volunteer leadership who debated, discussed, listened, read and researched so much over the past few months to make the best decisions we could make with the information at hand. We especially thank Board President Nick Geranios and MLS President Paula McLean for their tireless work.

### 10 Marketplace Changes MUST Occur by August 17th:

#### 1. No offers of compensation in MLS.

MLSs must eliminate any requirements that brokers or sellers make offers of compensation through the MLS and prohibit the same. The MLS will eliminate all broker compensation fields and prohibit sharing offers via any other fields in the MLS system on August 8<sup>th</sup>, 2024. We have updated our rules to include this restriction.

**Note: Off MLS offers permitted.** The above changes do not prevent offers of compensation made from listing brokers to buyer brokers outside of the MLS. Lots more on that later in this document.

#### 2. No off-MLS facilitated offers.

MLSs can't do an end run around these rules or help you violate them either. We can still provide data feeds to participants and third parties, so long as all agree not to use feeds to establish a platform for offers of compensation from multiple brokers. Brokers may still display their own offers, if any, on their own website.

**Note: New Data Feed Agreements:** If you have a website that uses our MLS data, we will be submitting a new or amended data licensing agreement that complies with the terms of the settlement. You can either agree that you won't use the data as restricted by the terms of the settlement, or you can terminate the feed. Expect that within the next month.

### 3. Mandated Buyer broker agreements.

MLSs must require all participants working with a buyer to have a written agreement before touring a listing. That agreement must describe the broker's compensation, the amount must be objectively ascertainable and not open-ended, and the broker may not receive compensation from any source that exceeds the amount in the agreement.

**Note: This is not for listing brokers. This is for agents working for buyers.** The premise is this – if you're working with a buyer and expect to get paid for that work, you need to lay out the terms and services that you will provide, the duration of that commitment and agreement to a fixed compensation rate for your services.

**Note: Contract Triggers:** Simply marketing your services or speaking to a buyer about creating a relationship does not trigger the need for an agreement. But, as soon as you begin to work with a buyer and provide any brokerage services, as outlined in the FAQs, that triggers the need for an agreement. There is a whole section of the [NAR FAQs](#) on this topic. The “working with” language is intended for those providing brokerage services to a buyer—such as:

- identifying potential properties
  - arranging for the buyer to tour a property
  - performing or facilitating negotiations on behalf of the buyer
  - presenting offers by the buyer
  - counseling on financing and the home buying process
  - or other services you provide for the buyer
- 
- **Note For listing agents,** speaking with a buyer at an open house or showing an unrepresented buyer a house that you have listed is NOT considered working with the buyer. You are working only as an agent of the seller with an unrepresented buyer customer. You complete the agency disclosure form to indicate you are a seller's agent, explain the buyer's right to representation but do not have to provide a contract since your client service promises and payments of compensation are covered in the Exclusive Right to Sell agreement with your client, the seller.
  - **Note: Dual agents** DO work with both the buyer (and the seller) and a contract would be required.

#### 4. No advertising services as free.

MLSs must prohibit participants and subscribers from representing their services are free.

**Note: Your services aren't free, they always financially impact the transaction.**

That's why our REALTOR Code of Ethics changed a while ago to reflect this as well. No news here, you are worth every penny, don't diminish that.

#### 5. Participant disclosure regarding offers.

MLSs must require participants to disclose to sellers and obtain seller approval for any payment or offer, if any, the listing broker or seller makes to another broker, agent, or representative (e.g., attorney) working with a buyer.

**Note: Sure thing.** You've always done this, and now the Exclusive Right to Sell makes it crystal clear how the seller directs their agent to make offers of compensation, if any, with clear disclosures that even broker-to-broker compensation is negotiable and determined by the seller. Other agreements can be taken up in the Purchase and Sale but of course all alternatives should be discussed during the listing stage, so the seller knows what to expect and how to properly price and market from the beginning.

#### 6. Participant disclosure regarding commissions.

MLSs must require participants to disclose to sellers and buyers that commissions are not set by law and are fully negotiable in listing, buyer broker and in pre-closing agreements and documents, if any (unless it's a government specified form).

**Note: All of our agreements now have this displayed as a big, red statement.** We thought the blank lines for compensation were a give-a-way that it was always negotiable but now there can be no question.

#### 7. No filtering.

MLSs must prohibit participants and subscribers from filtering out listings based on the existence or level of compensation offered to the broker assisting the buyer.

**Note: All Listings, Despite Conversations:** The settlement says the MLS must stop agents from filtering listings, so we will add this to the list of things we will monitor and enforce. You should ALWAYS expose your buyers to all the listings on the market that match their criteria. ALWAYS. How the offer plays out down the road is one of many

financial considerations in offer negotiations. No one can tell in advance what negotiations will secure a winning deal. You are your buyer's professional representative – you'll tell them everything you know about the listing, make sure they are fully informed about any research and market knowledge you can share, and help them develop strategies that align with their financial interests and desires.

## 8. Educational materials.

MLSs must provide settlement educational materials. (How could we not?!?!) Video, Virtual, Paper and Online, we are doing it all. We will discuss the topics featured here and take questions at the scheduled education zoom sessions this month, and add more if needed. Plus, there is this giant compendium on all things related to Berkshire settlement compliance!

- For [Berkshire REALTOR Broker-Owners](#) Wednesday, July 24, @ 9 a.m.
- For [Affiliates](#) Wednesday, July 24<sup>th</sup> by invitation. Click if you need a link.
- For [Berkshire REALTORS](#) Wednesday, July 31<sup>st</sup> @ 9 a.m.
- Video: Coming Super Soon!

## 9. Concessions in MLS permitted.

Sellers may offer buyer concessions on the MLS (e.g., for buyer closing costs), so long as they are not limited or stated for cooperating broker compensation. **MLS's don't have to create new fields or make rules for this.**

- **Berkshire MLS Rules?** Buyers have always been able to ask the seller to pay closing cost credits as part of their transition. Now, Sellers can direct their broker to offer their home for sale with closing cost credits, if desired. In MLS, we have chosen not to add a field for concessions because it isn't binding. Sellers may offer buyer incentives like CLOSING COST CREDITS, only as long as they are not limited, and NOT directed for the use of compensation payments. The buyer can use concessions, according to their loan restrictions, to pay for any of their closing fees. Any concession, just like now, would have to be stated and agreed upon in the final Purchase agreement or addendum.

## 10. Cooperation.

MLSs must agree to cooperate with plaintiffs by providing non-attorney-client privileged information. Fun!

So here we are, and this is what we have done to comply and ensure you do too:

## Contract Changes Are Here!

As promised, we have approved local contract changes to help Berkshire REALTORS comply with settlement requirements. The changes aren't as significant as you would fear – we had very transparent agreements to begin with, but certainly a tweaking was needed. While all practices changes must be made by August 17<sup>th</sup>, you can begin anytime making professional changes to assist your clients. Seek your broker's direction on all matters. **(all contract are at the end!)**

### **Forms Providers:**

We have submitted the new versions to the following forms providers: Remine, Dotloop, and Ziplogix. It's up to the provider's schedule when updates will go live. These forms are accessible in Remine right now and available to all Berkshire REALTOR members through a direct link in the MLS. This link checks your membership and automatically gives access when appropriate. Do you use a different forms provider? [Please reach out](#). Do you like these forms but aren't a Berkshire REALTOR? [Linda is happy to share the benefits of secondary membership!](#)

**IMPORTANT FORMS NOTE:** If you use Dotloop or Ziplogix you need to manually update any templates you might have with the new forms. You will not get a notice to do so! We will keep reminding you, but make sure you add this to your to do list.

### **Berkshire Standard Contract Changes Overview**

- **Additional Disclosure for Existing Exclusive Right to Buy** – If you were an early adopter and have been getting buyer clients to sign the standard Berkshire County Exclusive Right to Buy agreement, this addendum ensures you comply with the settlement. There is no need to get a new contract signed after August 17<sup>th</sup> if you are using this addendum. This addendum is not needed if you sign a new 'Buyer-Broker Representation Agreement' released 7/24 moving forward.
- **Additional Disclosure for Existing Exclusive Right to Sell** – If you have existing seller clients that signed a standard Berkshire County Exclusive Right to Sell agreement before 7/24 without the 'ALL COMPENSATION IS NEGOTIABLE' statements included, this addendum complies with the settlement. If you get this addendum signed, then you do not need to get a new contract signed after August 17<sup>th</sup> to comply. This addendum is not needed if your clients sign a new 'Exclusive Right to Sell Agreement' dated 7/24 or later moving forward.



## Update & Rename Representation Agreements

- **Exclusive Right to Sell Agreement** – This agreement has been updated to include the required disclosures and to ensure that the seller is making a fully informed decision about whether or not your brokerage is allowed to offer cooperating brokers compensation outside of the MLS. Please note that this is an OFFER only and is not binding until agreed upon by the parties in writing.
- **Buyer-Broker Representation Agreement** – This agreement has been renamed to better reflect the intent of the contract. This agreement has been updated to include the required disclosures and to ensure that the buyer is making a fully informed decision on how their agent will get paid and provide direction for how the broker will secure payment.
  - Side note: Let's be clear that this is an agreement between YOUR BROKERAGE and YOUR CLIENT. If a listing broker requests to see a copy of your Buyer agreement, start with no - but open a dialogue on why they feel they need to see a copy of it. It is the MLS's job to enforce the regulation that a buyer agreement be executed before a showing, not a competing firm. Also, this has confidential information, like your agreed upon commission and brokerage strategy for assisting buyers. You wouldn't share a copy of your Exclusive Right to Sell Agreement, consider this as the same type of private client document. Regardless, only your broker should decide about sharing any document outside of the firm. While we say you can share an agency disclosure as a courtesy, sharing a buyer agreement is NOT recommended.

## Replace compensation addendums with updated purchase agreements

- **Purchase and Sale Agreement** – This has been updated to reflect the new need for compensation to be clearly shown as a part of the offer and acceptance, so that all parties have a clear understanding of the financial impact of the agreement. Please note that while making changes, the board approved a reorganization of terms to flow better with like provisions grouped together. (all environmental, all legal) etc. This is just for ease of use when working through the terms with your clients. For those who had the paragraph numbers memorized, time for an update! Please note that during the review process, legal counsel noted that having a third "other" option for possession is needed when a multiple unit dwelling.

- **Purchase and Sale Land** – This mirrors the Residential Purchase & Sale agreement. Please note that during the review process, legal counsel noted that there were a few terms that should have been in the agreement for “Closing” requirements.

#### **Update to enable attorneys and lenders to write closing disclosures and checks.**

- **Compensation Statement for Closing Disclosure** – We have restructured the uniform compensation statement to match the Purchase and Sale agreement. This is done to assist our legal and lending community in preparing for the closing disclosure and understanding who and how checks need to be paid at the closing table.

Note that this summary does not apply to MAR form changes or Brokerage specific forms)

## **Future of Forms:**

Here’s the thing – we have looked at so many other agreements, sat in legal meetings, contract meetings, been part of national, local and state conversations on the nuances of the settlement going forward. We worked with our own local counsel, MAR state counsel and hired a national law firm. This allows us to help you comply with the settlement while ensuring transparency and understanding by a consumer.

**And here is one thing we all agree upon:** We also all agree that there will be changes ahead. We are all doing our best to develop simple, clear paths to compliance but know that there are other legal actions, other discussions with the Department of Justice, and quite frankly, when all of you start using these revised forms, hiccups or better practice suggestions. When all is said and done, expect change!

**Sharing Good Info:** We love your input. But, rather than you forwarding a document or newsletter to [Sandy@BerkshireRealtors.org](mailto:Sandy@BerkshireRealtors.org), please give me a heads-up on what you want us to make note of in the forward – “love paragraph 2”, “look at how they are handling XYZ”, “Can I use this form here?”. That really helps us sort through all the docs and feedback we get daily. Thanks!

**You’ve got this! We will work together to make sure you have resources to serve your clients well.**



## Where and how can compensation be negotiated:

- **Not in MLS:** First, and most importantly, compensation offers CANNOT be made / accepted in the MLS or using an MLS data feed. Anywhere OUTSIDE of the MLS is fine.

In Practice: Can someone call/ text/email and ask if there is any listing broker compensation being offered to buyer agents or facilitators? Sure. Can a listing broker send an email to other agents in your market place with this information? Sure, but NOT using the MLS email broadcast system! Can you post it on your website as long as it's not appearing with the MLS data feed of listings? Sure. Can a buyer ask about it at an open house? Sure. Can you put it on social media? Sure (but SHOULD you, might be a better question). Talk to your broker, talk to your seller and develop a strategy that will make transparency about compensation clear without the MLS displaying it everywhere for you.

- **Listing Broker Paying Ok:** Listing brokers can still offer to pay cooperating brokers from a portion of their compensation IF THE SELLER GIVES YOU PERMISSION TO DO SO. Therefore, this is an important discussion to have when negotiating the Exclusive Right to Sell agreement and remains part of the term of this agreement.

In Practice: Check out the Exclusive Right to Sell – you will find the language right there as it has always been, but super clear so the seller can have a strategic conversation with you about their options, the current market dynamic and your professional experience. Note: The Department of Justice doesn't love this, but it is legal, and the settlement expressly allows this practice to continue.

- **Seller Paying for Buyer ok:** If sellers don't agree to a listing broker offering of compensation from their portion of the selling fee, make sure they understand it could be a term in buyer offers since many buyers need this payment come from transaction proceeds. This has been specifically allowed by the major mortgage providers as of right now. Discuss with your seller all of the terms that will make the sale a success for them and how they can calculate and compare offers accordingly.

In Practice: Compensation is just one term that has a financial impact on the seller's net. Going in with a failing septic or setting initially high or low listing prices has an effect too. Your sellers need your expertise to help them realize their home selling goals, while presenting the property as best as possible. Advise them of the options, your professional expertise and let them decide.

How does the Buyer / Seller agree? Sellers can, upon receipt of a Purchase and Sale, decide if THEY will pay a cooperating broker compensation, at the request of the buyer. The seller will negotiate this item just like any other term of the purchase agreement. Therefore, it's important for the seller to consider this knowing what has already been promised in the Exclusive Right to Sell agreement. It is equally important for the buyer to consider this knowing what has already been agreed to in their Buyer-Broker Representation agreement. A fully-informed client means you're doing your job well.

- **Buyers Paying their Own Agent is Ok:** Buyers have always been able to hire and pay their own agent. It does present a challenge for many buyers who have to meet down payment requirements to come up with an additional payment separate from the transaction.

In Practice: One of the new terms of the Buyer Agreement is where the buyer can elect for their broker to try to get paid elsewhere first, or they can just agree to pay them directly. The Buyer makes the determination on how their agent should pursue compensation. Give them the information when executing a buyer's agreement so that they can make a fully informed decision during the offer stage.

- **Agreement in Writing:** Without a binding offer of compensation in the MLS going forward, compensation needs to be negotiated and secured appropriately, in writing, by the parties.

In Practice: The new Purchase and Sale Agreement can now be used to present a full picture of all the financial terms of the agreement with transparency and a written contractual agreement by all parties. Remember a fully informed client, both buyer and seller, is the ultimate goal.

## Other Contracts:

Some brokers have adopted their own agreements or prefer different forms, so always defer and check the agreements your broker want you to be using. MAR has also updated their forms and they have also sent revisions to forms providers. Remember that they deal with markets that primarily start with an Offer to Purchase and lead to an attorney drafted Purchase Agreement, unlike our direct route. Given the changes make sure you learn when and how these forms can be used by the MAR legal hotline or your own counsel. That said, they took input from REALTORS across the state so you're welcome to use them as well. MAR forms include:

- [Contract to Purchase Real Estate \(#501\)](#)
- [Standard Purchase & Sale Agreement \(#503\)](#)
- [Exclusive Buyer Agency Agreement \(#701\)](#)

- [Addendum – Broker Offer of Compensation \(#709\)](#)
- [Exclusive Right to Sell Listing Agreement \(#709\)](#)
- [Disclosure – Existing Exclusive Buyer Agency Agreement](#)
- [Disclosure – Existing Exclusive Right to Sell Listing Agreement](#)

## Other housekeeping items:

**Bye Bye Message Board:** We are removing the message board. While only randomly used, this was old technology and is no longer a forum we can maintain. Therefore, it will be removed from the MLS database.

**Word Usage:** The staff, with guidelines from the MLS board, have created word usage limitations in open MLS fields to avoid accidental mistakes. We do have fines if you intentionally try to communicate about compensation in the MLS, but know that this is a new world – so after August 8<sup>th</sup> we will be restricting words like “commission”, “compensation” in open text fields in the MLS to help members avoid an error. We are asked to add and subtract words based on our experience. For example, we had the word “fee” as restricted but low and behold there is a lot of talk about condo fees or HOA fees in Additional Disclosures. Remember – everything is a work in progress, it will take all of us to make this transition go smoothly! There will be pop-up boxes with a clarification about what word is an issue and we can solve it from there!

**Again with the Deadlines:** August 8<sup>th</sup> is the date change in our MLS when compensation is removed. Compliance with all regulations (like buyer agreements, rule compliance) remains August 17<sup>th</sup>. You might hear this a few thousand times more between now and then.

**Enforcement** – Our rules have clear methods of fines, hearings and enforcement options. That said, this is a learning process for us and know that we will better define issues as we actually get into the new way of doing business. We are in ‘learning mode’ just like you. We do know that at this time, there is not a plan to require copies of Buyer Agreements when listings are pended. We have been asked that a bunch. BUT, we could ask for agreements to resolve a complaint, in the “request for documentation” ability we have. We will proceed carefully and re-examine enforcement as we go. We also expect a lot of feedback from our members about experiences and concerns and will use that to help drive any changes to keep the market moving smoothly in the Berkshires.



**Other MLS Membership:** We are in a unique situation with many MLS types directly surrounding the Berkshire marketplace and we have been asked multiple times about compliance and liability if a brokerage or REALTOR chooses to participate in an MLS that has not signed onto the national settlement. And, in Massachusetts, there is an entirely different class-action settlement pending with MLSPin, that does not have the same terms and is not part of the national settlement. The guidance for agents is singular – talk to your broker. They should have policies and provisions in place for how your brokerage operates in all markets they hold membership. From a legal standpoint, all are encouraged to seek legal counsel to determine the level of risk for future litigation if you choose to practice in manners that are not covered by the NAR settlement. For example, a brokerage that is a REALTOR member, who is seeking class action protection under the NAR settlement will need to comply with the NAR settlement rules – regardless of whatever marketing choices they make to advertise listings.

## The Hammer:

We have updated all of our policies, regulations and bylaws as mandated by the National Association of REALTORS to ensure all of the 10 settlement obligations are in alignment with our governing documents. The most notable changes, other than those stated above, are the addition of three new fines, shown on the next page. We also struck the fairly recent change of assisting with compensation payments where there are no disputes in place but no check was forthcoming. Bummer but we are totally hands off on any matters of compensation, except in the offering of mediation and arbitration through the Board of REALTORS as usual.

For policy wonks, do you love the redline version or Bylaws, regulations or policies? You've come to the right place. Here are links to all of the updated Governing Documents, with indications of what has changed.

- [Board of REALTOR Bylaws](#)
- [MLS Bylaws](#)
- [MLS Rules and Regulations](#)
- [MLS Policy](#)

Type	Policy Violation	Fine
Buyer Agreements	Failure to secure Buyer Agreement with buyer prior to showing listed property	<ul style="list-style-type: none"> <li>• \$500, First Offense</li> <li>• Second offenses will be assessed after a hearing with the MLS Board, the Participant, and the offending user; per Section 7 of the Rules and Regulations which could result in a minimum fine of \$5,000 up to a maximum of \$15,000 and/or suspension from MLS for a minimum of 30 days and up to a maximum of one year)</li> <li>• Subsequent offenses are handled according to Section 7 of the Rules and Regulations.</li> </ul>
Settlement Compliance	Inserting compensation, bonuses and/or making any reference on method of obtaining commission into any field or document in the MLS database accessible to other members.	<ul style="list-style-type: none"> <li>• \$500, First Offense</li> <li>• Second offenses will be assessed after a hearing with the MLS Board, the Participant, and the offending user; per Section 7 of the Rules and Regulations which could result in a minimum fine of \$5,000 up to a maximum of \$15,000 and/or suspension from MLS for a minimum of 30 days and up to a maximum of one year)</li> <li>• Subsequent offenses are handled according to Section 7 of the Rules and Regulations.</li> </ul>
Use of MLS data for compensation purposes.	Electronic Display of Berkshire MLS Data comingled with any compensation offers or transmission of MLS data without authority or authorization.	<ul style="list-style-type: none"> <li>• ALL Offenses include termination of Participant’s MLS service and data feeds for up to three years, also, refer to Subscriber Agreement violation penalties.</li> <li>• Subsequent Offenses Termination of Participant’s MLS service up to 3 years*</li> </ul>

## NAR Resources

We cannot state enough how comprehensive and readable the NAR Settlement Resources at [Facts.Realtor](#) are laid out for all, REALTORS, Brokers and MLSs.

In fact, we also love the Window to the Law [video series](#) as well. Click the logo below to be taken directly to the lawyer videos on many of the topics covered here.



## MAR Legal Hotline

While the MAR Legal Hotline works with their own agreements, the MAR attorneys can assist all members with questions about the settlement, current state and federal laws and regulations, permissible business practices, and important court rulings affecting real estate professionals in Massachusetts. Members are encouraged to seek independent legal counsel to assist with specific situations.

### To Access the Legal Hotline:

- Call [1-800-370-LEGAL \(5342\)](tel:1-800-370-LEGAL) or send an e-mail to [legalhotline@marealtor.com](mailto:legalhotline@marealtor.com)
- The hotline is open Monday – Friday, 9:00 AM to 4:00 PM

Please note that legal resources are available to MAR members as a benefit of membership.

## Berkshire Board of REALTORS

We hope it goes without saying that your local Board of REALTORS and your local MLS are here for you during the transition, still visiting offices to discuss your specific questions and welcome feedback, market intel and anything you wish to share. Send to: Sandy Carroll, CEO, 413-442-8049 and [Sandy@BerkshireRealtors.org](mailto:Sandy@BerkshireRealtors.org). I will be sharing information with staff, compiling for Leadership considerations, tagging for the Contract & Forms Committee or whoever else needs to know! We are in this together and encourage you to reach out to your broker – and your broker to us... it helps to make sure everyone is in the loop!



**BERKSHIRE COUNTY BOARD OF REALTORS®, INC.  
ADDENDUM of ADDITIONAL DISCLOSURES TO  
EXISTING EXCLUSIVE RIGHT TO BUY AGREEMENT**

**PARTIES:** Buyer(s) Name(s) \_\_\_\_\_ (“BUYER”)  
Mailing Address: \_\_\_\_\_  
Broker / Corporation \_\_\_\_\_ (“BROKER”)

**BROKER COMPENSATION IS FULLY  
NEGOTIABLE AND NOT SET BY LAW.**

Please note that the BROKER may not receive compensation from any source that EXCEEDS the broker’s fee specified in the Buyer Representation Agreement, as previously agreed.

On \_\_\_\_\_ date I, \_\_\_\_\_ BROKER  
for the buyer, have provided this disclosure notice to supplement the existing Exclusive Right to Buy  
Contract executed on \_\_\_\_\_ between the parties shown above.

BUYER: _____	DATE _____	AUTHORIZED BROKER _____	DATE _____
BUYER: _____	DATE _____	For: _____	BROKERAGE NAME _____



**BERKSHIRE COUNTY BOARD OF REALTORS®, INC.  
ADDENDUM of ADDITIONAL DISCLOSURES TO  
EXISTING EXCLUSIVE RIGHT TO SELL AGREEMENT**

**PARTIES:** Seller(s) Name(s) \_\_\_\_\_ (“SELLER”)  
Mailing Address: \_\_\_\_\_  
Broker / Corporation \_\_\_\_\_ (“BROKER”)

**BROKER COMPENSATION IS FULLY NEGOTIABLE  
AND NOT SET BY LAW.**

The Exclusive Right to Sell Agreement executed on \_\_\_\_\_ between SELLER and BROKER instructed the listing BROKER to make an offer of cooperative compensation to buyer’s brokers or facilitators in the sale of the above-named property. This disclosure notice is to make it clear that this offer will be conveyed, as instructed by the seller in the Exclusive Right to Sell agreement, in conversation and agreements made outside of an MLS.

I, \_\_\_\_\_ AGENT for the seller, have provided this disclosure notice to supplement the existing Exclusive Right to Sell Agreement between the parties shown above on \_\_\_\_\_ date.

_____ <b>SELLER:</b>	_____ <b>DATE</b>	_____ <b>AUTHORIZED BROKER</b>	_____ <b>DATE</b>
_____ <b>SELLER:</b>	_____ <b>DATE</b>	<b>For:</b> _____ <b>BROKERAGE NAME</b>	



**BERKSHIRE COUNTY BOARD OF REALTORS®, INC.  
COMPENSATION STATEMENT FOR CLOSING DISCLOSURE**

Property Address: \_\_\_\_\_ Closing Date \_\_\_\_\_  
 Seller(s) Name(s) \_\_\_\_\_  
 Buyer(s) Name(s) \_\_\_\_\_  
 Seller's Broker / Corp \_\_\_\_\_ License # \_\_\_\_\_  
 Buyer's Broker / Corp. \_\_\_\_\_ License # \_\_\_\_\_

**Fund Allocation:**

Purchase Price:	\$
Less Closing Cost Credits:	\$
<b>Purchase Price Balance:</b>	<b>\$</b>
<b>BROKER COMPENSATION WAS FULLY NEGOTIATED AND NOT SET BY LAW.</b>	
Compensation Owed to Seller's Broker, per seller agreement	\$
<input type="checkbox"/> Of this, Buyer's broker compensation will be paid by the SELLER'S broker on behalf of the SELLER per the purchase agreement or addendum.	\$
Seller Expenses Paid by Seller's Broker, if any:	
	+ \$
	+ \$
	+ \$
Less Deposits Held in Escrow:	- \$
<b>Final Balance Due to Seller's Broker</b>	<b>\$</b>
Seller Broker's Commission Check Written To:	

Alternatively:

<input type="checkbox"/> BUYER's broker compensation to be paid directly out of the purchase funds by the SELLER at the time of transfer of title.	\$
Buyer Broker's Commission Check Written To:	

Balance of Escrow Returned to Seller(s):  check mailed or  check delivered at closing.

Balance of Escrow Check Written To: \_\_\_\_\_

Notes: \_\_\_\_\_



**BERKSHIRE COUNTY BOARD OF REALTORS®, INC.**  
**BUYER / BROKER REPRESENTATION AGREEMENT**

▶ **1. PARTIES:** Buyer(s) Name(s) \_\_\_\_\_ (“BUYER”)  
Mailing Address: \_\_\_\_\_  
Broker / Corporation \_\_\_\_\_ (“BROKER”)

▶ **2. EXCLUSIVE RIGHT TO BUY:** BUYER grants to BROKER the exclusive right to locate or procure real property acceptable for purchase/rental by BUYER in \_\_\_\_\_ (*identify geographic area*) for the period to begin on the date of the buyer’s signature and end on \_\_\_/\_\_\_/\_\_\_, unless extended in writing by all parties to this agreement. BUYER agrees to refer each potentially acceptable property to BROKER during the term of this Contract and agrees to notify all other real estate agents who communicate with BUYER of BROKER’S exclusive relationship with BUYER. BUYER shall have sole authority to decide whether or not a property is acceptable for purchase.

▶ **3. LICENSEE-CONSUMER RELATIONSHIP DISCLOSURE:** BUYER acknowledges that they have been provided with a completed copy of the ‘Massachusetts Mandatory Licensee-Consumer Relationship Disclosure’ form. BUYER further acknowledges that BROKER represents the BUYER as a Buyer’s Agent. If the BROKER represents a SELLER of a property the buyer is interested in as a Seller’s Agent, the BUYER authorizes the BROKER may  **Serve as a Disclosed Dual Agent** /  **Appoint Designated Agent(s)**. The applicable ‘Consent Addendum’ attached is incorporated herein by reference.

BUYER understands that BROKER, or any agent associated with BROKER, may represent other buyers, and agrees that it will not constitute a breach of duty for the BUYER’s agent to introduce another prospective buyer to a property in which BUYER may be interested or to assist another buyer with a purchase. BROKER shall maintain confidentiality of material information for each buyer.

- 4. BROKER’S DUTIES and SERVICES:** BROKER agrees to:
- a) Use reasonable efforts to locate a property for BUYER;
  - b) Provide the BUYER with any requested market data to assist in the determination of offering amount;
  - c) Arrange showings, give advice on practices and procedures, arrange inspections requested by the BUYER and coordinate activities throughout the process;
  - d) Negotiate terms and conditions of a contract acceptable to the BUYER, which may consist of an offer, purchase and sale agreement, option, deed, exchange agreement, lease or similar instrument;
  - e) Present all written offers forthwith to the listing broker or seller. BUYER is advised that sellers or sellers’ representatives are not required to treat the existence, terms or conditions of an offer as confidential, unless a confidentiality agreement has been made with the seller before submission of an offer;
  - f) Disclose any known material facts that might influence a buyer’s decision to purchase a property pursuant to Massachusetts Consumer Protection Act, Chapter 93A;
  - g) Adhere to state and federal Fair Housing laws in the search for real property
  - h) Preserve confidential material and financial information received from the BUYER;

- 5. BUYER’S DUTIES:** BUYER agrees to:
- a) Work exclusively with BROKER in the geographic area identified during the term of this Contract to locate property for purchase/rent.
  - b) Cooperate with BROKER by providing appropriate personal and financial information.
  - c) Provide any lender’s notice of pre-qualification or pre-approval to BROKER within seven (7) days of receipt.
  - d) Inform BROKER of any interest in the purchase/rental of real property of which BUYER previously learned.
  - e) BROKER shall make appointments to view property, or BUYER will get advance approval from the BROKER to make their own appointment to view property.
  - f) Advise all other brokers of BUYER’S relationship with BROKER, including at open houses.



**6. REPRESENTATIONS:** BUYER represents that BUYER is not subject to any agreement with any other broker in the geographic areas identified in paragraph 2, including any protection period.

BUYER agrees that BROKER'S services do not constitute a guarantee or warranty concerning any property. BUYER agrees that BROKER has not been retained as an attorney, inspector, home inspector, pest/termite inspector, septic inspector, surveyor or to determine the condition of the real property and has not been retained to provide legal advice, to perform a title search or to act as a mortgage broker. BROKER recommends that an attorney and other professionals be hired for such services as BUYER deems appropriate.

BUYER understands that BUYER has the duty to exercise due diligence for BUYER'S own protection, including the duty to investigate any information of importance to the BUYER. BUYER agrees that BROKER shall have no duty to disclose any condition outside the boundaries of the property being considered.

**7. DISCLOSURE OF IDENTITY/OTHER BROKERS/OTHER POTENTIAL BUYERS:** BROKER is authorized to disclose BUYER'S identity. BROKER is authorized to cooperate with and pay other brokers in connection with the performance of services.

**BROKER COMPENSATION IS FULLY NEGOTIABLE AND NOT SET BY LAW.**

▶ **8. BROKER'S FEE:** BUYER agrees to pay BROKER (select one or more):

(a) **Compensation:** The parties agree that a fee equal to  % of the purchase price, OR  \$ \_\_\_\_\_ fixed dollar amount. \_\_\_\_\_ shall be due BROKER upon successful completion of this Contract or in the event that, within \_\_\_\_\_ days following the term of this Contract, BUYER or any person acting on behalf of BUYER purchases, rents or otherwise acquires an interest in real property about which BUYER becomes aware during the term of this Contract, including any extension.

The BUYER directs BROKER to first seek compensation from  the listing broker and/or  from the seller in a transaction agreement. If obtained, such amount shall be credited to the amount of the Compensation. If such fee cannot be obtained in whole or in part from the transaction, BUYER agrees to pay BROKER the compensation at the time for closing of the transaction. The transaction agreement may consist of an accepted offer, purchase and sale agreement, option, deed, exchange agreement, lease or similar instrument. The BROKER shall be entitled to Compensation in the event of any default by BUYER.

(b) **Retainer:** BUYER shall pay BROKER a retainer in the amount of \_\_\_\_\_ upon signing this Contract as compensation for professional services. Such retainer is non-refundable and  shall /  shall not be credited against any Compensation.

(c) **Hourly:** BUYER shall pay BROKER at the rate of \$ \_\_\_\_\_ per hour for time expended by BROKER pursuant to this Contract. Bills shall be due and payable upon receipt by BUYER.

(d) **Other:** \_\_\_\_\_

**BROKER MAY NOT RECEIVE COMPENSATION FROM ANY SOURCE THAT EXCEEDS THE BROKER'S FEE SPECIFIED IN SECTION 8.**

**9. PROTECTION PERIOD:** BUYER shall not be obligated, however, to pay such compensation, if a valid buyer representation agreement is entered after the expiration of this agreement and during the term of the protection period defined in paragraph 8a, with another licensed real estate BROKER and a sale, rental, transfer or exchange of a property.

**10. NON-DISCRIMINATION:** BROKER will search for real property without reference to any person's race, sex, age, marital status, religious creed, color, national origin, physical or mental handicap, and without reference to whether a person intends to occupy the property with one or more minor children or is a recipient of public assistance.







**BERKSHIRE COUNTY BOARD OF REALTORS®, INC.**  
**EXCLUSIVE RIGHT TO SELL AGREEMENT**

1. **PARTIES.** Seller(s) Name(s) \_\_\_\_\_ ("SELLER")  
Mailing Address: \_\_\_\_\_  
Broker / Corporation: \_\_\_\_\_ ("BROKER")  
Property Address: \_\_\_\_\_ ("Property")

2. **LISTING TERMS:** SELLER hereby gives and grants to BROKER, a member of Multiple Listing Service (MLS) of the Berkshire County Board of REALTORS®, Inc., the exclusive right to list and sell the above mentioned Property for the period to begin on the date of the SELLER signature and end on \_\_\_ / \_\_\_ / \_\_\_, unless extended in writing by all parties involved. The list price for the Property shall be \$ \_\_\_\_\_ or at such other price, terms and considerations to which SELLER may agree.

3. **LICENSEE-CONSUMER RELATIONSHIP:** SELLER acknowledges that they have been provided with a completed copy of the 'Massachusetts Mandatory Licensee-Consumer Relationship Disclosure' form. SELLER further acknowledges that the BROKER represents the SELLER as a Seller's Agent. If the BROKER represents a buyer who is interested in the Property, the BROKER may:  **Serve as a Disclosed Dual Agent** /  **Appoint Designated Agent(s)**. The applicable 'Consent Addendum' attached is incorporated herein by reference.

SELLER acknowledges that it shall not constitute a violation of any duty owed to SELLER by the BROKER, or by any agent associated with the BROKER, to advise a prospective buyer of the availability of a competing property or to assist a buyer with the purchase of another property.

4. **BROKER'S DUTIES:**

- a) **LISTING DATA:** BROKER shall prepare a detailed property description, advertise and market the Property as BROKER shall deem appropriate.
- b) **MLS:** BROKER shall submit this listing to the MLS within two (2) business days from the SELLER's signature.
- c) **EFFORTS:** BROKER shall use best efforts to secure a purchaser for the Property.
- d) **FAIR HOUSING:** BROKER shall market the Property in compliance with all Massachusetts and Federal fair housing laws and present the Property equally and without regard to any person's race, sex, age, marital status, religious creed, color, national origin, physical or mental handicap, family status, ancestry, genetic information, veteran status, gender identity, use of public assistance or any other protected class.

**BROKER COMPENSATION IS FULLY NEGOTIABLE AND NOT SET BY LAW.**

5. **COMPENSATION:** If within the term of this Agreement or any extension, the Property is sold or the BROKER procures a buyer who is ready, willing and able to buy at a price and on the terms set forth herein or on such other price and terms as the SELLER may agree, the BROKER shall be due a professional fee for services rendered of  \_\_\_% of the purchase price OR  \$ \_\_\_\_\_ fixed dollar amount. Said fee shall be based on a Purchase and Sale Agreement purchase price less any closing cost credits paid by SELLER to Buyer, if any. Fees shall be paid at the time of closing and may be deducted from the amounts held by BROKER as escrow agent.

Further, from the professional fees shown above, SELLER authorizes BROKER to offer the following compensation to cooperating brokers, if applicable:  Buyer agents: \_\_\_%,  Facilitators: \_\_\_%.  Other offers of cooperation and/or compensation outlined in par 13. In the event that SELLER negotiates with a buyer to pay compensation to a cooperating broker that exceeds the offer made by the BROKER herewith, SELLER shall be obligated to pay the difference.

6. **SELLER'S DUTIES:**

- a) **ACCESS:** SELLER hereby agrees to permit the BROKER access to the Property to photograph, video, install a lawn sign and to show the Property within and without, at reasonable times.
- b) **INQUIRIES:** SELLER agrees to direct all inquiries to the BROKER and shall not list the Property with any other BROKER during the period this contract is in force. Seller represents that at the present time, no other BROKER has a listing of the Property, no other BROKER has been requested or authorized to sell and any previous listing agreement has expired or been terminated.
- c) **DISCLOSURES:** SELLER agrees to complete, sign and return all legally required disclosures within two (2) business days of signing this agreement. SELLER authorizes BROKER to disclose to prospective buyers all information about



the Property provided to the BROKER by the seller, all of which the SELLER represents to be accurate. SELLER acknowledges that the BROKER must disclose to any prospective purchaser or include in published listing data, all information which the BROKER may obtain or discover regarding the Property as required by law.

- d) **USE OF LISTING DATA:** SELLER grants BROKER non-exclusive, royalty free, license to use all photographs, images, videos, drawings, written narratives, pricing information, and any copyrightable elements relating to the Property, ("Listing Data") provided by the SELLER for marketing efforts. SELLER represents ownership of any Listing Data provided to the BROKER and agrees to indemnify and hold BROKER harmless from any and all claims arising from use of the Listing Data. SELLER acknowledges that any Listing Data created by BROKER is owned by the BROKER and SELLER has no right, title or interest in any such content and cannot be used by a third party without the BROKER's written consent. Listing Data may be used for the marketing of the property as deemed appropriate by the BROKER.

## 7. FINANCIAL MATTERS:

- a) **WRITTEN OFFERS:** BROKER shall submit for the SELLER's consideration all written offers. SELLER agrees that once he/she has entered into a Purchase and Sale Agreement with a buyer and during the pendency of said agreement, BROKER shall have no obligation to continue to market or show the Property.
- b) **PROSPECT NOTICE:** SELLER authorizes the BROKER to disclose to prospective buyers whether an offer has been submitted on the Property and whether an offer is from a buyer introduced to the Property by the listing agent, by another licensee associated with the BROKER, or by a cooperating broker. Disclosure of the price and other terms of any offer shall remain confidential until closing, unless authorized by the SELLER in writing.
- c) **DEPOSIT MONIES:** The BROKER is authorized to accept an earnest money deposit on the SELLER's behalf. SELLER authorizes the BROKER to deduct the compensation at the closing from the initial deposit or any subsequent deposit. This contract shall be deemed an order for the payment of such compensation by any person in possession of such deposit(s). In the event the Buyer defaults and the SELLER is entitled to retain said deposit, the BROKER shall be entitled to retain one-half (1/2) of the Seller's retained damages, up to an amount not exceeding the full brokerage fee due, in payment of services, advertising, and other expenses.

## 8. PROPERTY REPRESENTATIONS:

- a) **LEAD LAW:** For premises built before 1978, SELLER agrees to complete the "Massachusetts Department of Public Health Property Transfer Lead Paint Notification" Certification. SELLER acknowledges that the Massachusetts Code of Regulations 40 CMR 745.113(a) mandates that all prospective purchasers be provided this notification form prior to signing a purchase and sale agreement or a lease with an option to purchase. Prospective purchasers have a legal right to a minimum of 10 days to have a lead inspection or risk assessment if desired, except in cases of foreclosure sales. SELLER acknowledges that failure to meet these requirements may result in civil penalties up to \$10,000, possible criminal sanctions, and liability for resulting damages.
- b) **RIGHT TO FARM:** SELLER acknowledges that the property  **is** /  **is not** located in a community that has adopted a Right to Farm bylaw and will comply with any disclosure notification requirements as may be required prior to the sale, purchase, exchange or occupancy of such real property.
- c) **BETTERMENT ASSESSMENTS:** SELLER represents that the property  **is** /  **is not** subject to a betterment assessment. If the property 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 property subject to, and assumes the payment of the betterment assessment.
- d) **PERMITS:** SELLER agrees to obtain all necessary permits required by Massachusetts General Law 148 Sections 26F and F1/2 prior to the time of sale or transfer, including approved Smoke and Carbon Monoxide permits and wood, gas, coal, pellet stove or outdoor wood burning furnace permit(s), if applicable.
- e) **SEWAGE DISPOSAL / TITLE 5:** The SELLER represents that the Property  **is** /  **is not** connected to a municipal sewer system. If the Property is served by a septic or other private waste disposal system, SELLER represents that said system is located entirely within the boundaries of the Property, to the best of their knowledge. The SELLER acknowledges their ultimate responsibility to make certain that the system complies with Title 5, pursuant to the State Environmental Code (310 CMR 15.301).
- f) **ENCUMBRANCES:** The SELLER represents that the sale of the property  **is** /  **is not** subject to buyer assumption of third-party contractual obligation(s), such as equipment rental agreements.
- g) **SURVEILLANCE:** The SELLER acknowledges that Massachusetts General Laws Ch. 272, § 99 prohibits the use of any device that streams or records audio without a clear notice/consent of the individuals being recorded in advance of the recording. Seller hereby discloses that their home or property  **does** /  **does not** have any surveillance equipment. Further, SELLER will notify the BROKER of a change in the surveillance status prior to any showing. To ensure compliance with the law, BROKER will post conspicuous notice and indicate the presence of surveillance in the MLS if so equipped before showings to all prospective purchasers and agents.



**9. PROTECTION PERIOD:** If the Property is sold, rented, transferred or exchanged by SELLER within \_\_\_\_\_ days after the expiration of this contract (the "Protection Period") to any person or entity to whom the Property had been presented or shown during the term of this contract, by any person or entity whatsoever, SELLER agrees to pay the BROKER the same compensation as if such sale had been made during the term of the contract. SELLER shall not be obligated, however, to pay such compensation, if a valid listing agreement is entered into during the term of the Protection Period with another licensed real estate BROKER and a sale, rental, transfer or exchange of the Property is made during the term of the Protection Period, unless SELLER has entered into a written Right of First Refusal or Option Agreement as defined in Paragraph 11 and the property is sold to said Party, in which case SELLER shall compensate the BROKER as provided in Paragraph 11.

**10. RETAINER:** To defray the out-of-pocket costs incurred by BROKER in preparing a brochure, advertising and other marketing activities, SELLER agrees to pay BROKER a non-refundable marketing payment of \_\_\_\_\_. If BROKER becomes entitled to any brokerage fee under this contract, the non-refundable marketing payment will be credited against such brokerage fee, to a maximum of one-half percent credit of total compensation percentage.

**11. OPTIONS/LEASES:** If SELLER grants a right of first refusal or option to purchase the Property, SELLER shall pay BROKER \_\_\_\_\_% of the sale price upon the sale of the Property. If SELLER executes a lease of the Property, SELLER shall pay BROKER annually, in advance, \_\_\_\_\_% of the total annual rental payments to be collected by SELLER, each year, for a period not to exceed \_\_\_\_ years.

**12. BINDING CONTRACT:** This contract shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, executors, personal representatives, legatees, successors, and assigns (collectively "successors"); provided, however, that BROKER shall not assign this contract without SELLER'S prior written consent. SELLER(s) represent possession of 100% ownership right, title and interest in the Property.

- a) **EXTENSIONS:** In the event this Contract is renewed or extended, all of the terms and conditions applicable during the initial term of the contract shall apply with equal force and effect during such renewal or extension, except as otherwise agreed in writing.
- b) **MODIFICATION:** No modification, amendment or deletion affecting this contract shall be effective unless in writing and signed by all parties.
- c) **COLLECTION OF FEES:** If SELLER breaches this contract and suit is brought by BROKER to recover fees and a judgment is awarded in favor of BROKER, BROKER shall be entitled to recover from SELLER all expenses, including reasonable attorneys' fees, incurred as a result of SELLER'S breach. SELLER and BROKER agree that any dispute or claim arising out of or relating to this Agreement shall be submitted to mediation in accordance with the Rules and Procedures of the Homesellers / Homebuyers Dispute Resolution System ("DRS").
- d) **WITHDRAWAL FROM THE MARKET:** In the event SELLER withdraws the Property from the market, SELLER agrees to give BROKER immediate written notice of such withdrawal. With such notice, SELLER agrees to pay BROKER \_\_\_\_\_% of the listed price to defray BROKER effort and marketing costs associated with subject listing. Furthermore, the SELLER acknowledges that withdrawing the property from the market does not constitute a termination of this contract and all provisions shall continue for the duration of the contract as set forth in paragraph 2, including the agreement by SELLER to pay the BROKER the compensation stated in paragraph 5 if the SELLER signs an agreement for the sale of the Property prior to the expiration period of this contract, which includes the Protection Period as described in paragraph 9.
- e) **COUNTERPARTS:** This contract may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. Electronically signed and delivered documents and signatures carry the same weight and legal effect as traditional paper documents and handwritten signatures and shall create a valid and binding obligation of the party(s) executing (or on whose behalf such signature is executed).

**13. ADDITIONAL TERMS:**  See attached addendum(s), incorporated here by reference.

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**14. THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK LEGAL COUNSEL.** SELLER has read this Contract and hereby acknowledges receipt of a copy of same.

SELLER: \_\_\_\_\_ DATE \_\_\_\_\_

AUTHORIZED BROKER \_\_\_\_\_ DATE \_\_\_\_\_

SELLER: \_\_\_\_\_ DATE \_\_\_\_\_

For: \_\_\_\_\_  
LICENSED BROKER / NAME



**BERKSHIRE COUNTY BOARD OF REALTORS® , INC.  
PURCHASE AND SALE AGREEMENT**

▶ **1. PARTIES:**

	<b>SELLER(S)</b>	<b>BUYER(S)</b>
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 property located at \_\_\_\_\_ as more particularly described in a deed dated \_\_\_\_\_ and recorded in the \_\_\_\_\_ Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, or Land Court Certificate # \_\_\_\_\_ Assessor's Map # \_\_\_\_\_ Section # \_\_\_\_\_ Lot # \_\_\_\_\_ (the "Property").

▶ **3. PURCHASE PRICE:** For the Property, BUYER shall pay the "Purchase Price" sum of \_\_\_\_\_ \$ of which an initial deposit to bind the agreement shall be paid in the amount of \_\_\_\_\_ \$  and delivered herewith to the Escrow Agent named below, or;  shall be delivered to the Escrow Agent no more than \_\_\_ days from acceptance and on \_\_\_\_\_ date, an additional deposit in the amount of \_\_\_\_\_ \$ will be paid, resulting in a balance to be paid in the amount of \_\_\_\_\_ \$ in wired funds, or by certified / bank check at the Closing.

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

**IMPORTANT NOTICE: Never trust wiring instructions sent via email. Always independently confirm wiring instructions in person or via a telephone call to a trusted and verified phone number. Never wire money without double-checking that the wiring instructions are correct.**

▶ **4. 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 Property is located, as specified by the BUYER. Should the BUYER wish to specify a location outside of the county in which the property is located, the BUYER shall assume all costs associated with actual electronic and overnight mail delivery of documents.

▶ **5. CONTINGENCY TERMS:** The following terms and dates apply to paragraphs 6, 7 8, and 9 as the case may be:

- 5.1 Mortgage: Amt: \_\_\_\_\_ Rate: \_\_\_\_\_ Type:  Fixed  Variable Pts: \_\_\_\_\_ Yrs: \_\_\_\_\_
- 5.1a  No mortgage / cash offer, paragraph 6 not applicable
- 5.2 Mortgage Application Date: \_\_\_\_\_
- 5.3 Inspection Contingency Date: \_\_\_\_\_
- 5.4 Insurance Contingency Date: \_\_\_\_\_
- 5.5 Mortgage Contingency Date: \_\_\_\_\_
- 5.6 Septic System Inspection Date: (if applicable) \_\_\_\_\_

**6. MORTGAGE CONTINGENCY:** The BUYER's obligations hereunder 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. Should the BUYER be unable to obtain such a commitment letter despite diligent efforts, BUYER may cancel this Agreement by submitting a written cancellation notice and a copy of the mortgage denial letter to the Listing Broker or Seller's Attorney, no later than 5:00 p.m. on the applicable Contingency Date indicated in paragraph 5, 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 application by the Mortgage Application Date shall be a waiver of the BUYER's right to cancel under this Paragraph.

**7. INSPECTION CONTINGENCY:** The BUYER and BUYER's consultants shall have the right of access to the Property for the purpose of conducting a home inspection, at reasonable times, upon twenty-four (24) hours advance notice to the SELLER's Agent. Inspections may, at BUYER's option and expense, include but are not limited to: inspections for structural and mechanical matters, pests, including wood-boring insects, lead paint, mold, asbestos, radon gas, other hazardous substances, underground tanks, septic system, sewage disposal, well water, wetlands and environmental conditions and building code compliance. Should BUYER receive an unsatisfactory inspection, 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. In consideration of BUYER's right to inspect and terminate, BUYER acknowledges that by accepting the deed BUYER accepts the condition of the Premises and releases the SELLER, SELLER's Agency and BUYER's Agents, from any and all liability relating to any defects in the Premises including, without limitation, water seepage from any source.

**8. LEAD LAW.** Pursuant to 40 CMR 745.113(a), for premises built before 1978, BUYER acknowledges receipt of the "Department of Public Health Property Transfer Notification" attached to this agreement, regarding the Lead Law. BUYER acknowledges verbal notification of the possible presence of lead hazards and the provisions of the Federal and Massachusetts Lead Laws and regulations, including a ten (10) day right to inspect for dangerous levels of lead. Occupancy of premises containing dangerous levels of lead by a child under six years of age is prohibited, subject to exceptions permitted by law. BUYER further acknowledges that neither the SELLER nor any real estate agent has made any representation, express or implied, regarding the absence of lead paint or compliance with any lead law, except as set forth in writing. BUYER assumes full responsibility for compliance with all laws relating to lead paint removal, if required by law, and related matters (in particular, without limitation, Mass. G.L., c.111, 197), and BUYER assumes full responsibility for all tests, lead paint removal and other costs of compliance.

Should BUYER receive an unsatisfactory lead inspection, 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 or twelve (12) days after execution of this agreement, whichever is later, whereupon all obligations of the parties shall cease, and BUYER's deposits shall be promptly returned in full.

**9. INSURANCE CONTINGENCY:** The BUYER's obligations hereunder are contingent upon the BUYER's satisfaction with the insurability of the property. BUYER should consult with their lender and insurance carrier to determine the insurance coverage required for the Property and the premiums for such insurance coverage. BUYER's mortgage lender may require the purchase of additional flood insurance if they determine the property is located in Special Flood Hazard Area (SFHA). Past coverage or premiums paid by the SELLER are not an indication of the BUYER's insurance obligations for the property. The requirements and cost of homeowner and flood insurance include, but are not limited to, property attributes, risk ratings, applicant's credit rating and policy limits and must be individually determined by the insurance carrier. Should the BUYER be unable to obtain a satisfactory insurance binder despite diligent efforts, BUYER may cancel this Agreement by submitting a written cancellation notice and a copy of proof of insurance application to the Listing Broker or Seller's Attorney, no later than 5:00 p.m. on the Insurance Contingency Date indicated in paragraph 5, 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 give such written notice shall be a waiver of the BUYER's right to cancel under this Paragraph.

▶ **10. SEWAGE DISPOSAL / SEPTIC SYSTEM:** SELLER represents that the Property is served by a  **municipal sewer system** /  **septic system** /  **other system as outlined in par 35**. If a septic system is present, the SELLER represents that it  **is** /  **is not** located entirely within the boundaries of the Property, to the best of their knowledge. Further, on or before the Septic System Inspection Date as defined in paragraph 5.6, the SELLER shall provide the BUYER with a Septic System Inspection Report (the "Report") issued less than two (2) years prior to the time of the indicated closing date or less than three (3) years if accompanied by system pumping records that show at least annual pumping during that time. Should the Report indicate that the system is a "failed system" as defined by Title 5 of the State Environmental Code (310 CMR 15.301), the BUYER may, within three (3) days of receipt of Report, cancel this Agreement, and all deposits shall be returned to the BUYER.

▶ **11. STORAGE TANKS:** The SELLER hereby discloses that to the best of SELLER's knowledge, there are  **underground oil** /  **underground propane** /  **aboveground oil** /  **aboveground propane** /  **other as outlined in par 35** /  **no** storage tank(s) within the boundaries of the Property. Further, the SELLER discloses that any underground tanks  **have** /  **have not** been used within the past six (6) months and/or any aboveground tanks  **have** /  **have not** been used within the past twenty-four (24) months exclusively for the

storage of fuel for consumption of the Property and to the best of the SELLER'S knowledge there has been no release or leakage of oil from such tank(s). BUYER acknowledges that the Massachusetts Board of Fire Prevention has issued regulations found in [527 CMR 9.00] that govern the maintenance, repair, and removal of storage tanks used to contain fuel.

▶ **12. WATER:** SELLER represents that the property is serviced by a  **municipal water system** /  **private water company** /  **well** /  **other as outlined in par 35**. If a well is present, SELLER represents that it  **is** /  **is not** located entirely within the boundaries of the Property and  **does** /  **does not** contain defects known to SELLER. BUYER acknowledges that the local Board of Health may adopt regulations that establish criteria for private well siting, construction, water quality and quantity.

▶ **13. SURVEY:** SELLER represents that  **new** /  **no new** boundaries are being created by the sale of the Property. If new boundaries are being created, SELLER shall deliver to BUYER at the Closing a survey of the Property, in recordable form. The SELLER shall pay for the preparation and recording of the survey, unless otherwise provided herein.

▶ **14. BETTERMENT ASSESSMENTS:** SELLER represents that the Property  **is** /  **is not** subject to a betterment assessment. If the Property is subject to a betterment assessment, the  **SELLER agrees to pay the total outstanding betterment assessment at the closing** /  **BUYER agrees to purchase the Property subject to, and assumes the payment of the betterment assessment.**

**15. FIXTURES:** Included in this sale as part of the Property, unless expressly excluded, are the usual fixtures owned by the SELLER and used in connection therewith including but not limited to, if any, furnaces, heaters, oil and gas burners and fixtures appurtenant thereto, built-in ranges, dishwashers and disposals, hot water heaters (if not rented), mantels, electric and other lighting fixtures, chandeliers, venetian blinds and window shades, attached mirrors, automatic door openers (with remote controls), installed air conditioners, wall brackets and hangers, built-in bookcases and shelving, all installed stair carpeting and wall to wall carpeting, drapery rods, curtain rods, plumbing and electrical covers, screens, screen doors, storm and other detached windows and doors, blinds, awnings, bathroom fixtures, towel bars, medicine cabinets, radio and television antennas, satellite dishes, television mounting hardware, fences, gates, hardy shrubs, and fire and security systems.

- Appliances Included: \_\_\_\_\_
- Fixtures Excluded: \_\_\_\_\_
- SELLER represents the following items are not owned:  **Propane Tank** /  **Hot Water Heater** /  **Water Treatment System** /  **Security System** /  **Solar Panels** /  **Other as outlined in par 35**. BUYER  **does** /  **does not** agree to assume the rental agreements for: \_\_\_\_\_.

▶ **16. POSSESSION:** Full possession  **free of all** /  **subject to existing** tenants and occupants shall be delivered at the Closing Date, **OR**  **as described in the incorporated addendum**. The Property shall be free of encroachments burdening the Property and of improvements that encroach on adjoining Property, including but not limited to buildings, septic systems, wells and driveways, and has sufficient legal access to a public way.

▶ **17. TITLE:** The Property 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 Property 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, health, rent control, and condominium conversion laws, if any, applicable as of the date of this Agreement, provided that as of the Closing Date, the Property may be used as of right for single family residential use or, if the Property is/is not a single family residence, the Property may be used as of right for \_\_\_\_\_
- c) Existing rights, if any, in party or partition walls; and
- d) Utility easements in the adjoining ways.

**18. ADJUSTMENTS:** Current real estate taxes, water rates, sewer use charges and fuel are to be apportioned as of the Closing Date. Rents are to be apportioned only for the month in which the closing occurs and only when collected by either party. Unpaid rents due SELLER from months prior to the month of the Closing Date, shall be the responsibility of the SELLER to collect. 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 rate tax 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. SELLER or SELLER's attorney shall transmit to Buyer's Attorney, at least ten (10) days prior to the closing date, all mortgage and lien payoffs, municipal apportionments, state conveyance tax, and any other expenses required to be disclosed on the Closing Disclosure. Failure to transmit the expenses defined herein shall constitute SELLER's acceptance of Buyer's Attorney's calculations, performed using all reasonable and obtainable information. Such calculation shall be final and binding upon the parties.

**19. 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.

► **20. COOPERATIVE AGENT COMPENSATION:** Upon transfer of title and SELLER'S receipt of payment of the full purchase price, the BUYER'S broker named below shall be due compensation of  \_\_\_\_\_ % of the purchase price, OR  \$ \_\_\_\_\_ fixed dollar amount, on behalf of the BUYER, less any closing cost credits as indicated on the Closing Disclosure paid by the SELLER on behalf of the BUYER, if any. The compensation stated in this Agreement supersedes any other prior offers of compensation made by SELLER'S BROKER, whether written or oral. SELLER and BUYER agree:

**BROKER COMPENSATION IS FULLY NEGOTIABLE AND NOT SET BY LAW.**

- OPTION A** BUYER's broker compensation shall be paid by the SELLER'S broker on behalf of the SELLER.
- OPTION B** BUYER's broker compensation shall be paid directly out of the purchase funds by the SELLER at the time of transfer of title.
- OPTION C** There is no compensation due to be paid to a BUYER's broker as part of this contract.

**21. EXTENSION:** If, after a reasonable and diligent effort, SELLER is unable to deliver marketable and insurable title as defined in paragraph 17 or convey title of the Property as required hereunder, upon notice by either party, prior to the Closing Date, this Agreement shall be automatically extended for 30 days from the closing date (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 Property 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 Property does not conform to 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.

**22. 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.

**23. CONDITION OF PROPERTY AT CLOSING:** Upon delivery of the Deed, the Property and all appliances therein and utilities serving the same shall be in their present condition, reasonable use and wear of same excepted. The Property is to be left broom clean and all personal property and rubbish removed. With respect thereto, BUYER shall have the right to walk-through the Property within twenty-four hours prior to the closing and if the sale is completed subsequent to said walk-through or if the walk-through is waived by BUYER, the foregoing condition of the Property shall, as between the BUYER and SELLER and their representatives (if applicable), be conclusively presumed to be acceptable to BUYER regardless of condition.

**24. 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

**25. RISK OF LOSS-INSURANCE AND DAMAGE PRIOR TO CLOSING:** Prior to the delivery of the Deed, the risk of loss shall be on the SELLER. SELLER shall continue to carry the fire and extended coverage insurance presently maintained on the buildings on the Property.

- 26. CLOSING:** Simultaneously with the delivery of the deed, SELLER shall execute and deliver:
- a) Smoke & Carbon Monoxide Detector Certificate of Compliance;
  - b) Wood, Gas, Coal or Pellet Stove and/or Outdoor Wood Burning Furnace permit(s), where applicable
  - c) Affidavits and indemnities with respect to parties in possession and mechanic's liens to induce BUYER's title insurance company to issue lender's and owner's policies of title insurance without exception for those matters;
  - d) A bill of sale for all personal property included as part of the sale, if requested by the BUYER.
  - e) FNMA Vendor's affidavit FNMA 1099;
  - f) 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");
  - g) 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.

**27. 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 PROPERTY '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 Property made either by the SELLER or the SELLERs 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 Property 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 Property being conveyed for BUYER'S intended purposes, disclosed or undisclosed.

**28. 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.

**29. 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.

**30. TERMINATION:** In the event the BUYER terminates this Contract in accordance with the provisions herein relating to "Mortgage / Insurance Contingency," "Risk of Loss Insurance," "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.

▶ **31. 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.

**32. 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 Property 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.

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

**34. DISCLOSURES:** BUYER acknowledges that they have been provided with a completed  'Mandatory Licensee-Consumer Relationship' form  Lead Paint Property Transfer Notification Certification (for residences built before 1978);  Home Inspectors Facts for Consumers brochure, prepared by the Office of Consumer Affairs.  Right to Farm disclosure (if applicable).

▶ **35. SPECIAL CONDITIONS / ADDENDA:**  See attached addendum(s), incorporated here by reference.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

▶ **36. TERMINATION OF OFFER:** This offer is subject to SELLER(s) execution and delivery of this agreement to BUYER by (time) \_\_\_\_\_  a.m. /  p.m. and (date) \_\_\_\_\_, after which time this offer is void and terminated, and deposit paid by BUYER shall be returned.

**37. TIME:** Time is of the essence of all provisions of this agreement, unless otherwise specified elsewhere in this agreement. Any reference to "days" shall mean calendar days and is not intended to mean only business days.

**38. COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission, e-mail delivery of a ".pdf" format data file, or through a secure electronic signature service, such signatures shall create a valid and binding obligation of the party(s) executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or electronic signature page were an original thereof.

**39. THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK LEGAL COUNSEL:** Executed under seal by the Parties hereto as of the latter of all dates set forth below, and incorporating all provisions on pages 1 through 6, together with referenced additions, if any.

▶ _____	_____	_____	_____
<b>SELLER:</b>	<b>DATE</b>	<b>BUYER:</b>	<b>DATE</b>
_____	_____	_____	_____
<b>SELLER:</b>	<b>DATE</b>	<b>BUYER:</b>	<b>DATE</b>
_____	_____	_____	_____
<b>SELLER's Attorney's Name</b>		<b>BUYER's Attorney's Name</b>	
_____	_____	_____	_____
<b>SELLER's Real Estate Agent Name</b>	<b>License #</b>	<b>BUYER's Real Estate Agent Name</b>	<b>License #</b>
_____	_____	_____	_____
<b>SELLER's Real Estate Broker / Corp.</b>	<b>License #</b>	<b>BUYER's Real Estate Broker / Corp.</b>	<b>License #</b>

-----SELLER'S ACKNOWLEDGEMENT AND REJECTION OF OFFER -----

By signing below, SELLER(S) acknowledge receipt, review and rejection of the offer presented by Seller's Agent.

▶ \_\_\_\_\_  
**SELLER:**

**DATE / TIME**

\_\_\_\_\_  
**SELLER:**

**DATE / TIME**

DRAFT

**BERKSHIRE COUNTY BOARD OF REALTORS®, INC.  
PURCHASE AND SALE AGREEMENT - LAND**

▶ **1. PARTIES:**

	<b>SELLER(S)</b>	<b>BUYER(S)</b>
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 to bind the agreement shall be paid in the amount of \_\_\_\_\_ \$  and delivered herewith to the Escrow Agent named below; or  to be delivered to the Escrow Agent no more than \_\_\_ days from acceptance 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, 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.

**IMPORTANT NOTICE: Never trust wiring instructions sent via email. Always independently confirm wiring instructions in person or via a telephone call to a trusted and verified phone number. Never wire money without double-checking that the wiring instructions are correct.**

▶ **4. 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. Should the BUYER wish to specify a location outside of the county in which the property is located, the BUYER shall assume all costs associated with actual electronic and overnight mail delivery of documents.

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

5.1 Mortgage: Amt: \_\_\_\_\_ Rate: \_\_\_\_\_ Type:  Fixed  Variable Pts: \_\_\_\_\_ Yrs: \_\_\_\_\_  
5.1a  Cash offer, paragraph 6 not applicable

5.2 Mortgage Application Date: \_\_\_\_\_

5.3 Inspection Contingency Date: \_\_\_\_\_

5.4 Insurance Contingency Date: \_\_\_\_\_

5.5 Mortgage Contingency Date: \_\_\_\_\_

5.6 Septic System Inspection Date: (if applicable) \_\_\_\_\_

**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. 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 applicable Contingency Date indicated in paragraph 5, 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 and BUYER's consultants shall have the right of access to the Property for the purpose of conducting inspections, at reasonable times, upon twenty-four (24) hours advance notice to the SELLER's Agent. Inspections may, at BUYER's option and expense, include but are not limited to: underground tanks, septic system, well water, wetlands, and environmental conditions. Should BUYER receive an unsatisfactory inspection, 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. 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 currently served by a municipal sewer system  **on the Parcel**  **may be available in the street**  **not available**. Alternatively, there is present a  **septic system** /  **other system as outlined in par 30**. Any municipal fees or charges connected to bring sewer system service to the property shall be borne by the buyer, unless otherwise negotiated. If the premise is not served by a municipal sewer system, the sale  **is** /  **is not** 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 Sewage / Water Inspection Date, as defined in paragraph 5.6.
- ▶ **9. SEWAGE DISPOSAL / SEPTIC SYSTEM:** SELLER represents that the Property is served by a  **municipal sewer system** /  **septic system** /  **other system as outlined in par 35**. If a septic system is present, the SELLER represents that it  **is** /  **is not** located entirely within the boundaries of the Property, to the best of their knowledge. Further, on or before the Septic System Inspection Date as defined in paragraph 5.6, the SELLER shall provide the BUYER with a Septic System Inspection Report (the "Report") issued less than two (2) years prior to the time of the indicated closing date or less than three (3) years if accompanied by system pumping records that show at least annual pumping during that time. Should the Report indicate that the system is a "failed system" as defined by Title 5 of the State Environmental Code (310 CMR 15.301), the BUYER may, within three (3) days of receipt of Report, cancel this Agreement, and all deposits shall be returned to the BUYER.
- ▶ **10 WATER:** SELLER represents that the Parcel is currently served by a municipal water system  **on the Parcel**  **may be available in the street**  **not available**. 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. Any fees or charges connected to bring water service to the property shall be borne by the buyer, unless otherwise negotiated.
- ▶ **11. 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.
- ▶ **12. 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.

**13. 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. SELLER or SELLER's attorney shall transmit to Buyer's Attorney, at least ten (10) days prior to the closing date, all mortgage and lien payoffs, municipal apportionments, state conveyance tax, and any other expenses required to be disclosed on the Closing Disclosure. Failure to transmit the expenses defined herein shall constitute SELLER's acceptance of Buyer's Attorney's calculations, performed using all reasonable and obtainable information. Such calculation shall be final and binding upon the parties.



- ▶ **14. BETTERMENT ASSESSMENTS:** SELLER represents that the Parcel  is /  is not subject to a betterment assessment. If the Parcel is subject to a betterment assessment,  **SELLER agrees to pay the total outstanding betterment assessment at the closing** /  **BUYER agrees to purchase the Property subject to, and assumes the payment of the betterment assessment.**
- ▶ **15. COOPERATIVE AGENT COMPENSATION:** Upon transfer of title and SELLER'S receipt of payment of the full purchase price, the BUYER'S broker named below shall be due compensation of  \_\_\_\_\_ % of the purchase price, OR  \$ \_\_\_\_\_ fixed dollar amount, on behalf of the BUYER, less any closing cost credits as indicated on the Closing Disclosure paid by the SELLER on behalf of the BUYER, if any. The compensation stated in this Agreement supersedes any other prior offers of compensation made by SELLER or SELLER'S BROKER, whether written or oral. SELLER and BUYER agree:

**BROKER COMPENSATION IS FULLY NEGOTIABLE AND NOT SET BY LAW.**

- OPTION A** BUYER's broker compensation shall be paid by the SELLER'S broker on behalf of the SELLER.
- OPTION B** BUYER's broker compensation shall be paid directly out of the purchase funds by the SELLER at the time of transfer of title.
- OPTION C** There is no compensation due to be paid to the BUYER's broker as part of this contract.

- ▶ **15. 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.

**16. 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.

**17. EXTENSION** If, after a reasonable and diligent effort, SELLER is unable to deliver marketable and insurable title as defined in paragraph 15 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 to 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.

**18. 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.

**19. 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.

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

- a) Affidavits and indemnities with respect to parties in possession and mechanic's liens to induce BUYER's title insurance company to issue lender's and owner's policies of title insurance without exception for those matters; (PerMike, dropped from P&S Land somehow)
- b) A bill of sale for all personal property included as part of the sale, if requested by the BUYER.
- c) FNMA Vendor's affidavit FNMA 1099;
- d) 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");
- e) 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.

**21. 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.

- ▶ **22. UNDERGROUND STORAGE TANKS:** The SELLER hereby discloses that to the best of SELLER'S knowledge, there are  **underground oil** /  **underground propane** /  **aboveground oil** /  **aboveground propane** /  **other as outlined in par 30** /  **no** storage tank(s) within the boundaries of the Property. Further, the SELLER discloses that any underground tanks  **have** /  **have not** been used within the past six (6) months and/or any aboveground tanks  **have** /  **have not** been used within the past twenty-four (24) months exclusively for the storage of fuel for consumption and to the best of the SELLER'S knowledge there has been no release or leakage of oil from such tank(s). BUYER acknowledges that the Massachusetts Board of Fire Prevention has issued regulations found in [527 CMR 9.00] that govern the maintenance, repair, and removal of storage tanks used to contain fuel.

**23. 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.

**24. 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.

**25. TERMINATION:** In the event the BUYER terminates this Contract in accordance with the provisions herein relating to "Mortgage Contingency / Insurance Contingency," "Inspection Contingency," "Sewage/Water 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.

- ▶ **26. 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.



**27. 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.

**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.

▶ **30. SPECIAL CONDITIONS / ADDENDA:** Land Rider with additional terms  is /  is not attached.

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▶ **31. TERMINATION OF OFFER:** This offer is subject to SELLER(s) execution and delivery of this agreement to BUYER by (time) \_\_\_\_\_  a.m. /  p.m. and (date) \_\_\_\_\_, after which time this offer is void and terminated, and deposit paid by BUYER shall be returned.

**32. TIME:** Time is of the essence of all provisions of this agreement, unless otherwise specified elsewhere in this agreement. Any reference to "days" shall mean calendar days and is not intended to mean only business days.

**33. COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission, e-mail delivery of a ".pdf" format data file, or through a secure electronic signature service, such signatures shall create a valid and binding obligation of the party(s) executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or electronic signature page were an original thereof.

**34. THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK LEGAL COUNSEL:** Executed under seal by the Parties hereto as of the latter of all dates set forth below, and incorporating all provisions on pages 1 through 5, together with referenced additions, if any.

▶ _____	SELLER:	DATE	_____	BUYER:	DATE
_____	SELLER:	DATE	_____	BUYER:	DATE
_____	SELLER's Attorney's Name		_____	BUYER's Attorney's Name	
_____	SELLER's Real Estate Agent Name	License #	_____	BUYER's Real Estate Agent Name	License #
_____	SELLER's Real Estate Broker/Corp.	License #	_____	BUYER's Real Estate Broker/Corp.	License #



-----SELLER'S ACKNOWLEDGEMENT AND REJECTION OF OFFER -----

By signing below, SELLER(S) acknowledges receipt, review and rejection of the offer presented by Seller's Agent.

▶ \_\_\_\_\_  
SELLER: DATE / TIME

\_\_\_\_\_  
SELLER: DATE / TIME

DRAFT