
AGREEMENT OF PURCHASE AND SALE

ROMAN CATHOLIC BISHOP OF FALL RIVER, A CORPORATION SOLE
AS SELLER

AND

CMK DEVELOPMENT PARTNERS LLC

AS PURCHASER

SEPTEMBER 8, 2020
Date: ~~July~~ _____, 2020





AGREEMENT OF PURCHASE AND SALE

SEPTEMBER

THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement") is made and entered into as of the 8TH day of ~~July~~ ^{SEPTEMBER}, 2020, (the "Effective Date") by and between ROMAN CATHOLIC BISHOP OF FALL RIVER, A CORPORATION SOLE, established and maintained as a religious corporation pursuant to Chapter 506 of Massachusetts Acts of 1897, maintaining an address at 47 Underwood Street, Fall River, Massachusetts 02722, (the "Seller"); and CMK DEVELOPMENT PARTNERS LLC, a Massachusetts limited liability company with an address of 97 Libbey Industrial Parkway, Weymouth, Massachusetts 01970 (the "Buyer", or "Purchaser"); and MURPHY HESSE TOOMEY & LEHANE, LLP 300 Crown Colony Drive, Suite 410, Quincy, Massachusetts 02169, as escrow agent (the "Escrow Agent").

In consideration of the mutual promises, covenants and agreements hereinafter set forth and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

ARTICLE I.

SALE OF PROPERTY

1.1 **Sale of Property.** Seller hereby agrees to sell, assign and convey to Purchaser and Purchaser agrees to purchase from Seller, all of Seller's right, title and interest in and to, the following:

1.1.1 **Land and Improvements.** A portion of the parcel of real property, known and numbered 123 North Street, a/k/a 563 County Street, New Bedford, Massachusetts (the "Land"). For legal description, see Deed on record at Book 254, Page 514 at Bristol County (Southern District) Registry of Deeds. It is understood between the parties that simultaneously with the execution of this agreement, the Seller has engaged an engineering firm to subdivide the Land for delivery to Buyer, a portion of which subdivided land is included in the description of the aforementioned Deed.

1.1.2 **Property.** All rights, privileges and easements appurtenant to Seller's interest in the Land, if any, including, without limitation, all of Seller's right, title and interest, if any, in and to all mineral and water rights and all easements, licenses, covenants and other rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land (the Land and all such easements and appurtenances are sometimes collectively referred to herein as the "Property" or the "Premises"). It is hereby acknowledged by the parties that Seller shall not convey to Purchaser any (a) claims relating to any real property tax refunds or rebates, and/or (b) existing insurance claims, all of which claims shall be reserved by Seller.





ARTICLE II.

PURCHASE PRICE

2.1 **Purchase Price.** The purchase price for the Property is Three Hundred Thousand Dollars (\$300,000) (the "**Purchase Price**"). The Purchase Price, as adjusted by all prorations as provided for herein, shall be paid to Seller by Purchaser at Closing, by wire transfer of immediately available federal funds.

ARTICLE III.

DEPOSITS AND ESCROW AGENT

3.1 **Deposit.** Within one (1) business day following the Effective Date and as a condition precedent to the formation of this Agreement, Purchaser shall deposit Twenty-Five Thousand Dollars (\$25,000) (the "**Deposit**") with Murphy Hesse Toomey & Lehane, LLP 300 Crown Colony Drive, Suite 410 Quincy, Massachusetts 02169 Attention: Peter T. McNulty, Esquire (the "**Escrow Agent**"), in immediately available federal funds, the receipt of which shall be acknowledged by Escrow Agent's execution of this Agreement. If Purchaser shall fail to deposit the Deposit within the time periods provided for above, Seller may at any time, terminate this Agreement, in which case any Deposit paid shall be returned to Purchaser with accrued interest and this Agreement shall be null and void ab initio and in such event Escrow Agent shall immediately deliver to Seller all copies of this Agreement in its possession, and thereafter neither party shall have any further rights or obligations to the other hereunder, except for the Surviving Termination Obligations (as hereinafter defined).

3.2 **Application Upon Default.** If the Closing occurs, the Deposit shall be paid to Seller and credited against the Purchase Price at Closing. If the Closing does not occur, the Deposit shall be held and delivered as hereinafter provided.

3.3 **Interest Bearing.** The Deposit shall (a) be held in an interest-bearing escrow account by Escrow Agent in an institution selected by Seller, and (b) include any interest earned thereon.

3.4 **Escrow Agent.** Escrow Agent is executing this Agreement to acknowledge Escrow Agent's responsibilities and rights hereunder. Any amendment to this Agreement which alters Escrow Agent's responsibilities and/or rights hereunder not executed by Escrow Agent shall be effective as to the parties thereto, but shall not be binding upon Escrow Agent. Escrow Agent shall accept the Deposit with the understanding of the parties that Escrow Agent is not a party to this Agreement except to the extent of its specific responsibilities and rights hereunder, and does not assume or have any liability for the performance or non-performance of Purchaser or Seller hereunder. Additional provisions with respect to the Escrow Agent are set forth in Article XVI.

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ARTICLE IV.

CLOSING, PRORATIONS AND CLOSING COSTS

4.1 **Closing.** The consummation of the transaction contemplated hereby will take place at the office of the Escrow Agent in Quincy, Massachusetts via an escrow closing on or before December 15, 2020 (or such earlier or later date as determined by other provisions of this Agreement (the "**Closing Date**"). Purchaser shall have the right to accelerate the closing date upon seven (7) days prior written notice to Seller. At the Closing Date, the Property shall be in the same condition it is on the date of the expiration of the "Inspection Period" set forth in Section 5.1, below, subject to any changes in same which have been effected in connection with work or activity by the Purchaser. If the Seller is unable, as of the Closing Date, to convey the Property as required, the Seller shall use reasonable efforts to remedy the offending condition (to the extent of no more than \$5,000.00, excluding the removal of mortgage liens and other consensual liens) and the Closing shall be postponed for a period not to exceed thirty (30) calendar days. If, after such extension, the Seller (having used such reasonable efforts) is still unable to deliver the Property, as required herein, the Purchaser shall have the option, on or before the end of such extension period, to (a) terminate the Agreement and have the Deposit returned by the Escrow Agent to the Purchaser or (b) complete the transaction and acquire the Property. The "**Closing**" shall be deemed to have occurred when the closing agent selected by the lender for the Purchaser (the "**Closing Agent**") has been instructed by both parties to record the Deed. Time is hereby made of the essence.

4.2 **Prorations.** All matters involving pro-rations or adjustments to be made in connection with Closing and not specifically provided for in some other provision of this Agreement shall be adjusted in accordance with this Section 4.2. Except as otherwise set forth herein, all items to be prorated pursuant to this Section 4.2 shall be prorated as of midnight of the day immediately preceding the Closing Date, with Purchaser to be treated as the owner of the Property, for purposes of prorations of income and expenses, on and after the Closing Date. The provisions of this Section 4.2 shall survive the Closing.

4.2.1 **Taxes.** Real estate and personal property taxes and special assessments, if any, shall be prorated as of the Closing Date. Seller shall pay all real estate and personal property taxes and special assessments payable during the calendar year of the Closing and attributable to the Property to, but not including, the Closing Date. If the real estate and/or personal property tax rate and assessments have not been set for the taxes and assessments payable during the year in which the Closing occurs, then the proration of such taxes shall be based upon the rate and assessments for the preceding tax year and such proration shall be adjusted in cash between Seller and Purchaser upon presentation of written evidence that the actual taxes paid for the year in which the Closing occurs, differ from the amounts used in the Closing. All taxes imposed due to a change of use of the Property after the Closing Date shall be paid by the Purchaser. If any taxes which have been apportioned shall subsequently be reduced by abatement, the amount of such abatement, less the cost of obtaining the same shall be prorated as of the Closing Date. Real Estate taxes shall be apportioned on the basis of the proportion of the land area of the Property to the total area of the tax lot(s), and on the value attributed by the City of New Bedford to land. At closing the parties shall enter into a Tax Agreement in commercially customary form pursuant to which they shall each agree to pay taxes as aforesaid



until the Property is assessed as a separate tax lot, a copy of which shall be prepared by Purchaser and delivered to Seller no later than ten (10) days prior to the expiration of the Inspection Period for Seller's review and approval.

4.2.2 **Insurance.** There shall be no proration of Seller's insurance premiums or assignment of Seller's insurance policies. Purchaser shall be obligated (at its own election) to obtain any insurance coverage deemed necessary or appropriate by Purchaser.

4.2.3 **Utilities.** There shall be no proration of utilities.

4.3 **Closing.** Seller shall pay (a) the fees of any counsel representing Seller in connection with this transaction; (b) all State, County and local transfer taxes and fees payable upon the transfer of the Property; and (c) one-half (1/2) of the escrow fee charged by Escrow Agent, if any. Purchaser shall pay (i) the fees of any counsel representing Purchaser in connection with this transaction; (ii) the cost of the title premium and any extended coverage, including any endorsements requested by Purchaser, to the Title Policy; (iii) the cost of the Survey; (iv) the fees for recording the Deed conveying the Real Property to Purchaser; and (v) one-half (1/2) of the escrow fee charged by Escrow Agent. Any other costs or expenses incident to this transaction and the closing thereof not expressly provided for herein shall be allocated between and paid by the parties in accordance with custom and practice in Plymouth County, Massachusetts.

ARTICLE V.

PURCHASER'S RIGHT OF INSPECTION; INSPECTION PERIOD, ENVIRONMENTAL REPORT

5.1 **Right to Evaluate.** From the Effective Date until 5:00 p.m. (local time at the Property) on the date that is forty-five (45) day(s) following the Effective Date (the "**Inspection Period**"), Purchaser and its agents shall have the right during business hours (with reasonable advance notice to Seller), at Purchaser's sole cost and expense and at Purchaser's and its agents' sole risk, to perform inspections of the Property and to perform such other analyses, inquiries and investigations as Purchaser shall deem necessary or appropriate, including, without limitations, obtaining an Environmental Report (the "**Environmental Report**") at Purchaser's sole cost & expense; provided, however, that in no event shall (a) such inspections disrupt or disturb the on-going operation of the Property or the rights of the Seller to conduct its normal religious and social activities, or (b) Purchaser or its agents or representatives conduct any physical testing, drilling, boring, sampling or removal of, on or through the surface of the Property (or any part or portion thereof), including, without limitation, any ground borings or invasive testing of the Improvements (collectively, "**Physical Testing**"), without Seller's prior written consent, which consent may be given or withheld in Seller's sole and absolute discretion. In the event Purchaser desires to conduct Physical Testing of the Property, then Purchaser shall submit to Seller, for Seller's approval, a written detailed description of the scope and extent of the proposed Physical Testing, which approval may be given or withheld in Seller's sole and absolute discretion. If, within 72 hours of receipt of Purchaser's written notice Seller does not approve the Physical Testing or if within said 72 hour period, approves only a portion thereof, Purchaser may, at its option, by sending written notice to Seller, elect to, either (i) terminate this

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Agreement or (ii) conduct during the Inspection Period that portion of the Physical Testing approved by Seller, if any, or if Seller disapproves the entire proposed Physical Testing, affirmatively agree to forego any Physical Testing of the Property. In the event Purchaser terminates this Agreement as aforesaid, the Deposit shall be immediately refunded to Purchaser and this Agreement shall terminate and be of no further force and effect other than the Surviving Termination Obligations. In no event shall Seller be obligated as a condition of this transaction to perform or pay for any environmental remediation of the Property recommended by any Physical Testing. After making such inspections, Purchaser agrees to promptly restore the Property to its condition prior to such inspections to the extent reasonably practicable (which obligation shall survive the Closing or any termination of this Agreement). Prior to Purchaser entering the Property to conduct the inspections described above, Purchaser shall (i) obtain and maintain, at Purchaser's sole cost and expense, and shall deliver to Seller evidence of, the following insurance coverage, and shall cause each of its agents and contractors to obtain and maintain, and deliver to Seller evidence of, the following insurance coverage: commercial liability insurance, from an insurer reasonably acceptable to Seller, in the amount of One Million and No/100 Dollars (\$1,000,000.00) combined single limit for personal injury and property damage per occurrence together with umbrella coverage of at least Two Million and No/100 Dollars (\$2,000,000.00), such policy to name Seller as an additional insured party, which insurance shall provide coverage against any claim for personal liability or property damage caused by Purchaser or its agents, employees or contractors in connection with such inspections and (ii) furnish to the Seller, evidence of Workman's Compensation Coverage so-called, for the Purchaser, to the extent the Purchaser is conducting tests and entering the Property, or for any and all contractors and/or subagents conducting such tests and entering the Property. Seller shall have the right, in its discretion, to accompany Purchaser and/or its agents during any inspection.

5.2 **Inspection Obligations and Indemnity.** Purchaser and its contractors shall: (a) not disturb the operations of the Seller while conducting inspections or interfere with the Seller's use of the Property; (b) not damage any part of the Property; (c) not injure or otherwise cause bodily harm to Seller, its agents, contractors and employees; (d) promptly pay when due the costs of all investigations and examinations done with regard to the Property; (e) not permit any liens to attach to the Property by reason of the exercise of its rights hereunder; (f) restore the surface of the Property to the condition in which the same was found before any such inspections were undertaken to the extent reasonably practicable; and (g) not reveal or disclose any information obtained during the Inspection Period concerning the Property to anyone outside Purchaser's organization other than its agents, consultants and representatives (provided, however, that nothing contained herein shall preclude or limit Purchaser from revealing or disclosing any information otherwise deemed confidential under this section in connection with the Purchaser's enforcement of its rights following a disagreement hereunder or in response to lawful process or subpoena or other valid or enforceable order of a court of competent jurisdiction or any filings with governmental authorities required by reason of the transactions provided for herein). Purchaser shall, at its sole cost and expense, comply with all applicable federal, state and local laws, statutes, rules, regulations, ordinances or policies in conducting its inspection of the Property and Physical Testing. Purchaser shall, and does hereby agree to indemnify, defend and hold the Seller, its partners, agents and their respective successors and assigns, harmless from and against any and all claims, demands, suits, obligations, payments,

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damages, losses, penalties, liabilities, costs and expenses (including but not limited to attorneys' fees) to the extent arising out of Purchaser's or Purchaser's agents' actions taken in, on or about the Property in the exercise of the inspection right granted pursuant to Section 5.1, including, Purchaser's obligations pursuant to this Section 5.2, but expressly excluding any claims or other matters arising out of the discovery of any hazardous or toxic materials. This Section 5.2 shall survive the Closing and/or any termination of this Agreement.

5.3 **Independent Examination.** Purchaser hereby acknowledges that, except as provided in Section 7.1, Purchaser is relying upon its own independent examination of the Property and all matters relating thereto and not upon any documents or statements of Seller or of any officer, director, employee, agent, broker, manager or attorney of Seller with respect to acquiring the Property. Seller shall not, except as otherwise expressly provided in Section 7.1, be deemed to have represented or warranted the completeness or accuracy of any studies, investigations and reports heretofore or hereafter furnished to Purchaser. The provisions of this Section 5.3 shall survive Closing and/or termination of this Agreement.

5.4 **Termination Right.** In the event that Purchaser determines, in Purchaser's sole and absolute discretion, that it does not desire, for any or no reason, to acquire the Property, including without limitation, the dissatisfaction, as determined by the Purchase or Purchaser's attorney, with the results of the Environmental Report; Purchaser shall provide written notice to Seller before the end of the Inspection Period, and, subject to the Surviving Termination Obligations, this Agreement shall terminate, the Deposit shall be delivered to Purchaser and thereupon neither party shall have any further rights or obligations to the other hereunder. If Purchaser shall fail to timely notify Seller in writing of its election to terminate this Agreement on or before the expiration of the Inspection Period, time being of the essence, the termination right described in this Section 5.4 shall be immediately null and void and of no further force or effect. Purchaser's failure to provide such notice on or before the end of the Inspection Period shall constitute Purchaser's waiver of the herein-described termination right described in this Section 5.4. Notwithstanding any provision of this Agreement, this is an "all or none" transaction and Purchaser has no right to terminate this Agreement as to any part of the Property.

5.5 **Copies of Reports.** As additional consideration for the transaction contemplated herein, in the event this Agreement is terminated for any reason other than Seller's default, Purchaser agrees that it will provide to Seller, within five (5) days following a written request therefor, copies of any and all third (3rd) party reports or studies relating to the Property obtained by Purchaser, including but not limited to those involving environmental matters without representation or warranty of any kind or right to rely thereon. Notwithstanding any provision of this Agreement, no termination of this Agreement shall terminate Purchaser's obligations pursuant to the foregoing sentence, until three (3) months after such termination.

ARTICLE VI

TITLE

Prior to the expiration of the Inspection Period, Purchaser shall obtain, at its own cost and expense, a title insurance commitment (the "Commitment") for an Owner's Policy of Title Insurance from a title insurance company of Purchaser's choice ("Title Company") covering the Property, together with a copy of all instruments reflected as exceptions set forth therein, and a current ALTA Survey of the Property ("Survey"). Purchaser shall notify Seller no later than five (5) days prior to the expiration of the Inspection Period in writing of any title exceptions, exclusions from coverage or other matters identified in the Commitment or any matters identified on the Survey which Purchaser disapproves (the "Title Objections"). In the event Purchaser shall so notify Seller of any Title Objections, Seller shall have the right, but not the obligation, to cure such objection(s) in its sole and absolute discretion. Within three (3) days after receipt of Purchaser's notice of objection(s), Seller shall notify Purchaser in writing whether Seller elects to attempt to cure such objection(s). Failure of Seller to give such notice within said five (5) day period shall be deemed an election by Seller not to cure such objection(s). If Seller elects not to cure any objection(s) specified in Purchaser's notice, Purchaser shall have the following options to be given by written notice to the Seller by the end of the Inspection Period: (i) to accept a conveyance of the Property subject to the Permitted Exceptions, specifically including any matter objected to by Purchaser which Seller is unwilling or unable to cure (which such matter(s) shall thereafter be deemed to be a Permitted Exception), without reduction of the Purchase Price, or (ii) to terminate this Agreement by sending written notice thereof to Seller within five (5) Business Days of Seller's election or deemed election not to cure, and upon delivery of such notice of termination, this Agreement shall terminate and the Deposit shall be returned to Purchaser, and thereafter neither party hereto shall have any further rights, obligations or liabilities hereunder except for the Surviving Termination Obligations, as hereinafter defined. Any exception, exclusion from coverage or other matter shown in the Commitment as of the end of the Inspection Period, any matters caused by Purchaser or its activities on the Property or other matters approved by Purchaser in writing shall constitute a "Permitted Exception" hereunder. Purchaser and Seller hereby agree that (i) all non-delinquent property taxes as of the Closing, (ii) all matters created by or on behalf of Purchaser, including, without limitation, any documents or instruments to be recorded as part of any financing for the acquisition of the Property by Purchaser and (iii) the exceptions to title identified on Exhibit B attached hereto, shall constitute Permitted Exceptions. Without Seller's prior written consent, which may be granted or withheld in seller's sole and absolute discretion, or except as specifically approved in accordance with the provision of Section 16.20, Purchaser shall not make any application to any governmental agency for any permit, approval, license or other entitlement for the Property or the use or development thereof.

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ARTICLE VII.

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE SELLER

7.1 **Seller's Representations.** Seller represents and warrants that the following matters are true and correct as of the Effective Date and the Closing Date.

7.2 **Legal Status.** Seller is a corporation sole, so-called, pursuant to Chapter 506 of the Massachusetts Acts of 1897, and, to the extent necessary, is qualified to conduct business in the jurisdiction in which the Property is located.

7.3 **Canonical Approvals.** This Agreement and the obligations of the Roman Catholic Bishop of Fall River, A Corporation Sole, hereunder are expressly contingent upon the obtaining of prior written permission for this conveyance from the College of Consultors of the Diocese of Fall River and the Diocese of Fall River Finance Council, in accordance with the Canon Code Law of the Roman Catholic Church (the "**Canonical Approvals**"). Notwithstanding any provisions hereof to the contrary, if Seller has not delivered written evidence to Purchaser that all Canonical Approvals have been obtained on or before **October 30, 2020** then Purchaser shall have the right to terminate this Agreement, in which event, subject to the Surviving Termination Obligations, this Agreement shall terminate, and the Deposit should be delivered to Purchaser.

7.4 **Authority.** It is agreed and understood by and between the parties hereto that neither this Agreement nor any of its terms, covenants or conditions shall be binding upon the Roman Catholic Bishop of Fall River, A Corporation Sole, or the Purchaser, until the same is executed by the Roman Catholic Bishop of Fall River. Any and all representations, whether oral or written, made by or prepared by any agent, employee or attorney for the Roman Catholic Bishop of Fall River, A Corporation Sole, shall not be binding upon the Roman Catholic Bishop of Fall River, A Corporation Sole, until and unless this Agreement is executed by the Roman Catholic Bishop of Fall River. If executed by the Roman Catholic Bishop of Fall River, this Agreement shall constitute the entire understanding between the parties and may only be amended or modified by a writing executed and delivered by the Roman Catholic Bishop of Fall River and the Purchaser. At such time as they are executed by the Roman Bishop of Fall River, but not before that time, all documents to be executed by Seller which are to be delivered at Closing, will, at the time of Closing, (a) be duly authorized, executed and delivered by Seller, (b) be legal, valid and binding obligations of Seller, and (c) not violate, to the best of Seller's knowledge, any provision of any agreement or judicial order to which Seller is a party or to which Seller is subject.

7.5 **Litigation.** To Seller's knowledge, no action, suit or other proceeding (including, but not limited to, any condemnation action) is pending or has been threatened in writing that concerns or involves the Property.

7.6 **Other Sales Agreements.** Seller has not entered into any other contract to sell the Property or any part thereof which is currently in effect.

7.7 **Options or Rights of First Refusal.** To Seller's knowledge, no option, right of first refusal, right of first offer or right or first opportunity to any party to acquire title to the Property or any portion thereof exist.

7.8 **No Violation of Agreements.** To Seller's knowledge, the execution and delivery of this Agreement by Seller and the consummation by Seller of the transactions contemplated hereby will not violate any agreement to which Seller is a party or to Seller's knowledge is binding on Seller.

7.9 **Leases.** To Seller's knowledge, there are no tenants or other parties with rights of possession of any portion of the Property.

7.10 **No Violations of Law.** To Seller's knowledge, Seller has not received written notice from any governmental authority or other person regarding, and Seller has no knowledge with respect to, the violation of any law or ordinance regulating use of the Property.

7.11 **Purchaser's and Seller's Knowledge.** For purposes of this Agreement and any document delivered at Closing, whenever the phrases "to Seller's actual knowledge," "to Purchaser's actual knowledge", the "knowledge" of Seller, or the "knowledge" of Purchaser, or words of similar import are used, they shall be deemed to refer to the current, actual, conscious knowledge only, and not any implied, imputed or constructive knowledge, without any independent investigation having been made or any implied duty to investigate.

7.13 **Change in Representation/Waiver.** Notwithstanding anything to the contrary contained herein, each party acknowledges that it shall not be entitled to rely on any representation or warranty made by the other party in this Article VII to the extent, prior to or at Closing, the other party shall have or obtain knowledge of facts contradictory to such representation or warranty; provided, however, if either party determines prior to Closing that there is a material breach of any of the representations and warranties made by the other party, then the other party may, at its option, by sending written notice of its election either (a) terminate this Agreement, or (b) waive such breach and proceed to Closing with no adjustment in the Purchase Price and neither party shall have any further liability as to such matter thereafter, except for liens resulting from Seller's acts. In the event Purchaser terminates this Agreement for the reasons set forth above, the Deposit shall be immediately refunded to Purchaser and neither Purchaser nor Seller shall thereafter have any other rights or remedies hereunder other than the Surviving Termination Obligations. In furtherance thereof, Seller shall have no liability with respect to any of the foregoing representations and warranties or any representations and warranties made in any other document executed and delivered by Seller to Purchaser to the extent that, prior to Closing, Purchaser discovers or learns of facts (from whatever source, including, without limitation as a result of Purchaser's due diligence investigations and inspections of the Property, or disclosure by Seller or Seller's agents and employees) that contradicts any such representations and warranties, or renders any such representations and warranties untrue or incorrect, and Purchaser nevertheless consummates the transaction contemplated by this Agreement.

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ARTICLE VIII

REPRESENTATIONS AND WARRANTIES OF PURCHASER

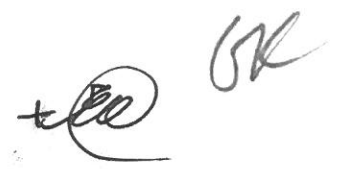
8.1 Purchaser represents and warrants to Seller that the following matters are true and correct as of the Effective Date and the Closing Date.

8.2 **Authority.** Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts and to the extent necessary, is qualified to conduct business in the State in which the Property is located. This Agreement has been duly authorized, executed and delivered by Purchaser, is the legal, valid and binding obligation of Purchaser, and does not violate any provision of any agreement or judicial order to which Purchaser is a party or to which Purchaser is subject. All documents to be executed by Purchaser which are to be delivered at Closing, at the time of Closing will be duly authorized, executed and delivered by Purchaser, at the time of Closing will be legal, valid and binding obligations of Purchaser, and at the time of Closing will not, to the best of Purchaser's knowledge, violate any provision of any agreement or judicial order to which Purchaser is a party or to which Purchaser is subject.

8.3 **ERISA Compliance.** Purchaser is not (a) a "plan" nor a plan "fiduciary" nor an entity holding "plan assets" (as those terms are defined under the Employee Retirement Income Security Act of 1974, as amended, and its applicable regulations as issued by the Department of Labor and the Internal Revenue Service, "ERISA") nor an entity whose assets are deemed to be plan assets under ERISA, Purchaser is acquiring the Property for Purchaser's own personal account and the Property shall not constitute plan assets subject to ERISA upon conveyance of the Property by Seller and the closing of this Agreement between Purchaser and Seller. Seller shall not have any obligation to close the transaction contemplated by this Agreement if the transaction for any reason constitutes a prohibited transaction under ERISA or if Purchaser's representation is found to be false or misleading in any respect. The foregoing representation and warranty shall survive the Closing.

8.4 **OFAC.** Neither Purchaser nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the OFAC (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

8.5 **Purchaser's Acknowledgment.** Purchaser acknowledges and agrees that, except as expressly provided in Section 7.1 of this Agreement, Seller has not made, does not make and specifically disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (a) the nature, quality or condition of the Property, including, without limitation, the water, soil and geology, (b) the income to be derived from the Property, (c) the suitability of the Property for any and all activities and uses which

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Purchaser may conduct thereon, (d) the compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body, including, without limitation, the Americans with Disabilities Act and any rules and regulations promulgated thereunder or in connection therewith, (e) the habitability, merchantability or fitness for a particular purpose of the Property, or (f) any other matter with respect to the Property, and except as expressly set forth in Article VII of this Agreement, specifically that Seller has not made, does not make and specifically disclaims any representations regarding solid waste, as defined by the U.S. Environmental Protection Agency regulations at 40 C.F.R., Part 261, or the disposal or existence, in or on the Property, of any hazardous substance or hazardous waste, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and other applicable state laws, and regulations promulgated thereunder. Purchaser further acknowledges and agrees that, except as expressly provided in Section 7.1, having been given the opportunity to inspect the Property, Purchaser is relying solely on its own investigation of the Property and not on any information provided or to be provided by Seller. Purchaser further acknowledges and agrees that, except as expressly set forth in Section 7.1, any information provided or to be provided with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information. **Purchaser further acknowledges and agrees that, except as expressly provided in Section 7.1 of this Agreement, and as a material inducement to the execution and delivery of this Agreement by Seller, the sale of the Property as provided for herein is made on an "AS IS, WHERE IS" CONDITION AND BASIS "WITH ALL FAULTS, AS OF THE END OF PURCHASER'S INSPECTION PERIOD."** Purchaser acknowledges, represents and warrants that Purchaser is not in a significantly disparate bargaining position with respect to Seller in connection with the transaction contemplated by this Agreement; that Purchaser freely and fairly agreed to this acknowledgment as part of the negotiations for the transaction contemplated by this Agreement; and was advised by sophisticated real estate counsel with respect to the transaction contemplated by this Agreement. The provisions of this Section 8.2 shall survive the Closing.

8.6 Purchaser's Release. Purchaser on behalf of itself and its successors and assigns waives its right to recover from, and forever releases and discharges, Seller, each of Seller's respective trustees, employees and agents of each of them, and their respective heirs, successors, personal representatives and assigns from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) the physical condition of the Property, (ii) the condition of title to the Property, (iii) the presence on, under or about the Property of any mold or hazardous or regulated substance, (iv) the Property's compliance with any applicable federal, state or local law, rule or regulation, or (v) any other aspect of the Property; provided, however, the foregoing release does not release Seller for liability for any breach of the representations and warranties of Seller set forth in Section 7.1 of this Agreement. The release set forth in this Section 8.3 includes claims of which Purchaser is presently unaware or which Purchaser does not presently suspect to exist which, if known by Purchaser, would materially affect Purchaser's release to Seller; provided, however, the foregoing release does not release Seller for liability for any breach of the representations and warranties of Seller set forth in Section 7.1 of this Agreement. The foregoing release does not release Seller from liability to any third party, and in the event of any

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claim, suit or action by any third party against Purchaser as to any event or state of facts occurring or existing prior to Closing, such release does not prevent the interpleading of Seller into any litigation, as to such third party claim, suit or action. The terms and provisions of this Section 8.3 shall survive Closing and/or termination of this Agreement.

ARTICLE IX

USE RESTRICTIONS

9.1 **Use Restrictions in Deed to Purchaser.** It is expressly agreed between the parties, and the Purchaser is entering into this Agreement with full acceptance, and knowledge of, certain restrictions, which Purchaser agrees not only for itself but for its successors and assigns in title. In consideration of the Seller's entering into this Agreement for the Purchase Price, the Purchaser covenants and agrees that it shall not use the Property for: (a) a church chapel or other house of religious worship; (b) an abortion clinic; (c) the operations of professional counseling services which advocate abortion or euthanasia; or (d) the operations of any embryonic stem cell research facility or services implementing embryonic stem cell research (the "**Use Restrictions**"). The Use Restrictions shall expire upon the ninetieth (90th) year from the date of the recording of the Deed. The land known as 123 North Street, New Bedford, Massachusetts, is benefited under the provisions of Massachusetts General Laws, Chapter 184, Section 27 (the "**Benefited Parcel**") [a further description of the Benefited Parcel will be provided in the Deed]. The Purchaser acknowledges that these Use Restrictions are imposed for the benefit of the Seller, and are of actual and substantial benefit to the Seller.

9.2 **Enforceability of the Use Restrictions; Breach by the Purchaser.** Purchaser, on behalf of itself and its successors and assigns, waives any and all claims and defense as to the enforceability of the Use Restrictions, as they have been set forth herein, in accordance with their terms. The Purchase acknowledges and agrees, on behalf of itself, and its assigns and successors in title that the Seller will from time to time record notices of extensions of the Use Restrictions as such notices and extensions are provided for in Massachusetts General Laws, Chapter 184, Sections 27 and 29. In the event of a breach of the Use Restrictions at any time during the duration of same, as set forth herein, the Seller, and its successors in title, or otherwise, may seek specific performance of the Use Restrictions in a Court of Law having jurisdiction over the matter and obtain from the Purchaser or its successors in title, all costs and expenses, including attorney's fees, incurred in the enforcement of defense of the Use Restrictions, and any other damages (excluding any consequential, indirect or punitive damages) suffered by the Seller arising or resulting from a breach of the Use Restrictions. In no event shall the Purchaser, or any successor or assign of the Purchaser, be responsible for a breach of the Use Restrictions occurring outside of Purchaser's (or such successor's or assign's, respectively) term of ownership of the Property. The Purchaser and the Seller hereby agree that the terms and conditions set forth in this Article IX are the primary terms and conditions of the Use Restrictions, and shall be included in the Deed delivered at Closing, in a form mutually acceptable to the Purchase and the Seller.

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9.3 It is understood and agreed by the parties hereto that any use of the Property which in any way includes "euthanasia", in any form, shall be in direct contravention of the terms and conditions of this Agreement and what would be deemed acceptable "Purchaser's Intended Uses". Such activities are in violation of Catholic principles as articulated by the Holy See and his Excellency, the Bishop of Fall River. Accordingly, the Purchaser understands, and agrees, that should any such violation be alleged, the Purchaser will submit to equity jurisdiction in the Bristol County, Massachusetts Superior Court for injunctive relief and damages, without any right to question such actions to enforce this restriction.

9.4 The terms and conditions of this Article IX shall survive the delivery of the Deed.

ARTICLE X

CLOSING CONDITIONS.

10.1 **Conditions to Obligations of Seller.** The obligations of Seller under this Agreement to sell the Property and consummate the other transactions contemplated hereby shall be subject to the satisfaction of the following conditions on or before the Closing Date except to the extent that any of such conditions may be waived by Seller in writing at Closing.

10.2 **Representations, Warranties and Covenants of Purchaser.** All representations and warranties of Purchaser in this Agreement shall be true and correct in all material respects as of the Closing Date, with the same force and effect as if such representations and warranties were made anew as of the Closing Date. Any changes to such representations disclosed by Purchaser shall be acceptable to Seller, and Purchaser shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by Purchaser prior to the Closing Date.

10.3 **Conditions to Obligations of Purchaser.** The obligations of Purchaser under this Agreement to purchase the Property and consummate the other transactions contemplated hereby shall be subject to the satisfaction of the following conditions on or before the Closing Date, except as otherwise provided below or to the extent that any of such conditions may be waived by Purchaser in writing at Closing.

10.4 **Representations, Warranties and Covenants of Seller.** All representations and warranties of Seller in this Agreement shall be true and correct in all material respects as of the Closing Date, with the same force and effect as if such representations and warranties were made anew as of the Closing Date. Any changes to such representations disclosed by Seller shall be acceptable to Purchaser, and Seller shall have performed and complied in all material respects with all covenants and agreement required by this Agreement to be performed or complied with by Seller prior to the Closing Date.

10.5 **Possession of the Property.** Delivery by Seller of possession of the Property and delivery of the Deed, each subject to the Permitted Exceptions.

10.6 **Title.** A final examination of the title to the Property shall disclose no title exceptions except for the Permitted Exceptions, if any.



10.7 **Delivery of Closing Documents.** Seller shall have delivered each of the Closing Documents required to be delivered under Section 11.2 of this Agreement.

10.8 **Condition of Property.** The Property shall be in the same physical condition as it now is, reasonable wear and tear excepted.

10.9 **Permits, Approvals.** The Purchaser shall have obtained the Permits, Approvals described in Section 16.20, hereto.

ARTICLE XI

CLOSING

11.1 **Purchaser's Closing Obligations.** Purchaser, at its sole cost and expense, shall deliver or cause to be delivered to Seller at closing the following:

11.1.1 The Purchase Price, after all adjustments are made at the Closing as herein provided, by wire transfer or other immediately available federal funds, which amount shall be received in escrow by First American Title Insurance Company at or before 12:00 p.m. (local time at the Property).

11.1.2 Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transactions which are the subject of this Agreement, including, without limitation, any certificate of value or similar instrument required under applicable law.

11.2 **Seller's Closing Obligations.** Seller, at its sole cost and expense, shall deliver or cause to be delivered to Purchaser the following:

11.2.1 Massachusetts Quitclaim Deed (the "**Deed**"), in the form attached hereto as Exhibit

11.2.2 A certificate substantially in the form attached hereto as Exhibit ("**Non-foreign Entity Certification**") certifying that the Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

11.2.3 Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transactions which are the subject of this Agreement including any parties in possession/mechanics liens affidavit, settlement statement, a bring down certificate with respect to Seller's representations and warranties and a partial release (or payoff letter) from Seller's current mortgagee to enable the Title Company to issue the Title Policy without exception for Seller's current mortgage on the Property.

If any condition set forth herein is not fully satisfied on or before the Closing Date, Seller may elect to attempt to satisfy or cure any such condition, and if Seller so elects, Seller shall have a period not exceeding the earlier of: (i) thirty (30) days after the Closing Date, or (ii) the last day of Purchaser's financing commitment, to satisfy such condition, and the Closing Date shall be extended accordingly.

ARTICLE XII

RISK OF LOSS

12.1 **Condemnation.** If, prior to the Closing Date, all or any portion of the Property is taken by condemnation or eminent domain, or is the subject of a pending taking which has not been consummated, Seller shall notify Purchaser of such fact promptly after Seller obtains knowledge thereof. If such condemnation is "**Material**" (as hereinafter defined), Purchaser shall have the option to terminate this Agreement upon notice to Seller given not later than five (5) days after receipt of Seller's notice, or the Closing Date, whichever is earlier. If this Agreement is terminated, the Deposit shall be returned to Purchaser and thereafter neither Seller nor Purchaser shall have any further rights or obligations to the other hereunder except with respect to the Surviving Termination Obligations. If this Agreement is not terminated, (a) Seller shall assign, without recourse, and turn over to Purchaser all condemnation proceeds (or, if such have not been awarded, all of its right, title and interest therein) payable with respect to such condemnation, and (b) the parties shall proceed to Closing pursuant to the terms hereof without abatement of the Purchase Price.

12.2 **Condemnation Not Material.** If the condemnation is not Material, then the Closing shall occur without abatement of the Purchase Price and Seller shall assign, without recourse, all awards or any rights to collect awards to Purchaser on the Closing Date.

12.3 **Materiality.** Intentionally omitted.

ARTICLE XIII

DEFAULT

13.1 **Default by Seller.** If Purchaser shall have fulfilled all of its material obligations under this Agreement in the time and manner specified herein and the Closing and the transactions contemplated hereunder do not occur as provided herein by reason of the default of Seller and such breach is not cured within ten (10) days from notice thereof from Purchaser, Purchaser may elect, as the sole and exclusive remedy of Purchaser, to (a) terminate this Agreement and receive the Deposit from the Escrow Agent, and in such event Seller shall not have any liability whatsoever to Purchaser hereunder other than with respect to the Surviving Termination Obligations, or (b) enforce specific performance of Seller's obligation to convey the Property, without adjustment to, or credit against, the Purchase Price. Purchaser shall be deemed to have elected to terminate this Agreement (as provided in subsection (a) above) if Purchaser fails to deliver to Seller written notice of its intent to file a cause of action for specific performance against Seller on or before sixty (60) days after the originally scheduled Closing Date (as the same may be extended as set forth herein), or having given Seller notice, fails to file a lawsuit asserting such cause of action within one year after the originally scheduled Closing Date (as the same may be extended as set forth herein). Notwithstanding the foregoing, nothing contained herein shall limit Purchaser's remedies, at law or in equity, as to the Surviving Termination Obligations.

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13.2 **Default by Purchaser.** In the event the closing and the transactions contemplated hereby do not occur as provided herein by reason of any default of Purchaser, Purchaser and Seller agree it would be impractical and extremely difficult to fix the damages which Seller may suffer. Therefore, Purchaser and Seller hereby agree a reasonable estimate of the total net detriment seller would suffer in the event purchaser defaults and fails to complete the purchase of the property is and shall be, as Seller's sole and exclusive remedy (whether at law or in equity), a sum equal to the deposit actually made. Upon such default by Purchaser, Seller shall have the right to receive the deposit from the escrow agent as its sole and exclusive remedy and thereupon this agreement shall be terminated and neither Seller nor Purchaser shall have any further rights or obligations hereunder except with respect to the Surviving Termination Obligations. Notwithstanding the foregoing, nothing contained herein shall limit Seller's remedies at law or in equity as to the Surviving Termination Obligations.

ARTICLE XIV

BROKERS

14.1 **Brokers.** Purchaser and Seller each represents and warrants to the other that it has not dealt with any person or entity entitled to a brokerage commission, finder's fee or other compensation with respect to the transaction contemplated hereby, other than David Raymondo, Anchor Realty ("**Broker**"). Any commission due Broker shall be paid by Seller as provided in a separate agreement between Seller and Broker, and Seller shall obtain and provide to Purchaser a receipt from such Broker at Closing. Purchaser hereby agrees to indemnify, defend, and hold Seller harmless from and against any losses, damages, costs and expenses (including, but not limited to, attorneys' fees and costs) incurred by Seller by reason of any breach or inaccuracy of the Purchaser's (or its nominee's) representations and warranties contained in this Article XIV. Seller hereby agrees to indemnify, defend, and hold Purchaser harmless from and against any losses, damages, costs and expenses (including, but not limited to, attorneys' fees and costs) incurred by Purchaser by reason of any breach or inaccuracy of Seller's representations and warranties contained in this Article XIV. Seller and Purchaser agree that it is their specific intent that no broker shall be a party to or a third party beneficiary of this Agreement or the Deposit, that no broker shall have any rights or cause of action hereunder, and further that the consent of a broker shall not be necessary to any agreement, amendment, or document with respect to the transaction contemplated by this Agreement. The provisions of this Article XIV shall survive the Closing .

ARTICLE XV

CONFIDENTIALITY

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15.1 **Confidentiality.** Purchaser expressly acknowledges and agrees that the transactions contemplated by this Agreement and the documents delivered in connection therewith are not otherwise known by or readily available to the public and the terms and conditions concerning the same but not the fact of the negotiation or of the transactions shall be held in the strictest confidence by Purchaser and shall not be disclosed by Purchaser except to its legal counsel, lenders, investors, surveyor, title company, broker, accountants, consultants, officers, partners, directors and shareholders (the “**Authorized Representatives**”), and except and only to the extent that such disclosure may be necessary for its performance hereunder, said performance including, but not limited to, Purchaser’s applications and submissions to various public boards, agencies and other governmental agencies for the “Permits” (defined in Section 16.20, below) and related publications, meetings, hearings, and the like, necessary for the Purchaser to obtain approval for Purchaser’s Intended Uses of the Property. Purchaser agrees that it shall instruct (and will be responsible for the compliance of) each of its Authorized Representatives to maintain the confidentiality of such information and at the request of Seller, to promptly inform Seller of the identity of each such Authorized Representative. Purchaser further acknowledges and agrees that, unless and until the Closing occurs, all information and materials obtained by Purchaser in connection with the Property that are not otherwise known by or readily available to the public will not be disclosed by Purchaser to any third persons (other than to its Authorized Representatives) without the prior written consent of Seller. If the transaction contemplated by this Agreement does not occur for any reason whatsoever, Purchaser shall promptly return to Seller, and shall instruct its Authorized Representatives to return to Seller, all copies and originals of all documents and information provided to Purchaser. Nothing contained in this Section 15.1 shall preclude or limit either party from disclosing or accessing any information otherwise deemed confidential under this Section 15.1 in connection with the party’s enforcement of its rights following a disagreement hereunder or in response to lawful process or subpoena or other valid or enforceable order of a court of competent jurisdiction or any filings with Authorities required by reason of the transactions provided for herein. Notwithstanding the above provisions of this Section 15.1, and in accordance with Section 1.6011-4(b)(3)(iii) of the Treasury Regulations, each party to this Agreement (and each employee, representative, or other agent of each party) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure, for federal tax purposes, of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to such tax treatment and tax structure. The provisions of this Section 15.1 shall survive any termination of this Agreement.

15.2 **Post Closing Publication.** Notwithstanding the foregoing, following Closing, Purchaser and Seller shall each have the right to announce the sale and acquisition of the Property in newspapers and real estate trade publications (including “tombstones”) publicizing the purchase. The provisions of this Section 15.2 shall survive Closing and/or any termination of this Agreement.

ARTICLE XVI

MISCELLANEOUS

16.1 **Notices.** Any and all notices, requests, demands or other communications hereunder shall be deemed to have been duly given if in writing and if transmitted by hand

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delivery with receipt therefor, by facsimile delivery or other electronic signature (it being agreed that facsimile or other electronic signature shall have the same force and effect as an original signature) by overnight courier, or by registered or certified mail, return receipt requested, first class postage prepaid addressed as follows (or to such new address as the addressee of such a communication may have notified the sender thereof) (the date of such notice shall be the date of actual delivery to the recipient thereof or refusal of delivery):

To Purchaser: Gerard Kavanaugh
CMK Development Partners, LLC
97 Libbey Industrial Parkway, Suite 304
Weymouth, MA 02189

With a copy to: William K. Brown, Esquire
William Kevin Brown Law Offices
74 Pleasant Street, #2
South Weymouth, MA 02190
Telephone No.: 781-331-9299
Email: wkbrown@wkbrownlaw.com

To Seller: Michael W. Carroll, General Counsel & Chief Legal Officer
Roman Catholic Bishop of Fall River
A Corporation Sole
450 Highland Avenue
Fall River, Massachusetts 02722
Telephone No.: 508-617-5307
Facsimile No.:
Email: mcarroll@dioc-fr.org

With a copy to: Peter T. McNulty, Esq.
Murphy Hesse Toomey & Lehane, LLP
300 Crown Colony Drive, Suite 410
Quincy, Massachusetts 02169
Telephone No.: 617-479-5000
Facsimile No.: 617-479-6469
Email: pmcnulty@mhtl.com

To Escrow Agent: Peter T. McNulty, Esq.
Murphy Hesse Toomey & Lehane, LLP
300 Crown Colony Drive, Suite 410
Quincy, Massachusetts 02169
Telephone No.: 617-479-5000
Facsimile No.: 617-479-6469
Email: pmcnulty@mhtl.com

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16.2 **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal, substantive laws in which the Property is located, without regard to the conflict of laws principles thereof.

16.3 **Headings.** The captions and headings herein are for convenience and reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

16.4 **Effective Date.** This Agreement shall be effective as of the later of: (i) July 30, 2020, or (ii) three (3) "Business Days" (as defined below) after all parties have executed this Agreement in multiple counterparts, and each party has received at least two (2) original, executed counterparts of this Agreement.

16.5 **Business Days.** If any date herein set forth for the performance of any obligations of Seller or Purchaser or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next Business Day following such Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any state or Federal holiday for which financial institutions or post offices are generally closed in the state where the Property is located. "Business Day" shall mean any day that the Bristol County South District Registry of Deeds is open for business to the general public.

16.6 **Counterpart Copies.** This Agreement may be executed in two or more counterpart copies, all of which counterparts shall have the same force and effect as if all parties hereto had executed a single copy of this Agreement.

16.7 **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

16.8 **Assignment.** Purchaser shall not have the right to assign the Agreement without Seller's prior written consent, which consent may be given or withheld in Seller's sole and absolute discretion. The respective obligations of Seller and Purchaser under this Section 16.8 shall survive the Closing and shall not be merged therein. Whenever reference is made in this Agreement to Seller or Purchaser, such reference shall include the successors and assigns of such party under this Agreement. Notwithstanding the foregoing, Purchaser may require that the Deed to be delivered at the Closing in connection with this transaction, shall be delivered to a nominee designated by the Purchaser by written notice to the Seller at least ten (10) business days before the Deed is to be delivered herein. Anything herein to the contrary notwithstanding, no requested assignment of the Deed shall be permitted and enforceable without the Purchaser presenting a statement at the time of such written notice, under the pains and penalties of perjury, that the nominee to whom the Deed is to be assigned has a complete congruency with the Purchaser, in terms of ownership composition and rights.

16.9 **Interpretation.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Seller and Purchaser have contributed substantially and materially to the preparation of this Agreement.

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16.10 **Entire Agreement.** This Agreement and the Exhibits attached hereto contain the final and entire agreement between the parties hereto with respect to the sale and purchase of the Property and are intended to be an integration of all prior negotiations and understandings. Purchaser, Seller and their agents shall not be bound by any terms, conditions, statements, warranties or representations, oral or written, not contained herein. No change or modifications to this Agreement shall be valid unless the same is in writing and signed by the parties hereto. Each party reserves the right to waive any of the terms or conditions of this Agreement which are for their respective benefit and to consummate the transaction contemplated by this Agreement in accordance with the terms and conditions of this Agreement which have not been so waived. Any such waiver must be in writing signed by the party for whose benefit the provision is being waived

16.11 **Severability.** If any one or more of the provisions hereof shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

16.12 **Survival.** Except as otherwise specifically provided for herein or in any closing document (collectively, the "**Surviving Termination Obligations**"), the provisions of this Agreement shall not survive after the conveyance of title and payment of the Purchase Price but shall be merged therein.

16.13 **Exhibits and Schedules.** All exhibits and schedules attached hereto are incorporated herein by reference.

16.14 **Time.** Time is of the essence in the performance of each of the parties' respective obligations contained herein.

16.15 **Limitation of Liability.** The obligations of Seller are binding only on Seller's interest in the Property and the proceeds thereof and shall not be personally binding upon, nor shall any resort be had to, any other assets of Seller nor the private properties of any of the partners, officers, directors, shareholders or beneficiaries of Seller, or of any partners, officers, directors, shareholders or beneficiaries of any partners of Seller, or of any of Seller's employees or agents. All documents executed by Seller and/or Purchaser shall be deemed to contain (even if not expressly stated) the foregoing exculpation. The obligations of the Purchaser shall not be personally binding upon, nor shall any resort be had to, the private properties of any of the partners, officers, shareholders or beneficiaries of the Purchaser or any of Purchaser's employees or agents. The provisions of this Section 16.15 shall survive the Closing and/or any termination of this Agreement.

16.16 **Prevailing Party.** Should either party employ an attorney to enforce any of the provisions hereof, (whether before or after Closing, and including any claims or actions involving amounts held in escrow), the non-prevailing party in any final judgment agrees to pay the other party's reasonable expenses, including reasonable attorneys' fees and expenses in or out of litigation and, if in litigation, trial, appellate, bankruptcy or other proceedings, expended

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or incurred in connection therewith, as determined by a court of competent jurisdiction. The provisions of this Section 16.16 shall survive Closing and/or any termination of this Agreement.

16.17 **Escrow Agreement.**

16.17.1 **Instructions.** Purchaser and Seller each shall promptly deposit a copy of this Agreement executed by such party (or either of them shall deposit a copy executed by both Purchaser and Seller) with Escrow Agent, and, upon receipt of the Deposit from Purchaser, Escrow Agent shall immediately execute this Agreement where provided below. This Agreement, together with such further instructions, if any, as the parties shall provide to Escrow Agent by written agreement, shall constitute the escrow instructions. If any requirements relating to the duties or obligations of Escrow Agent hereunder are not acceptable to Escrow Agent, or if Escrow Agent requires additional instructions, the parties hereto agree to make such deletions, substitutions and additions hereto as counsel for Purchaser and Seller shall mutually approve, which additional instructions shall not substantially alter the terms of this Agreement unless otherwise expressly agreed to by Seller and Purchaser.

16.17.2 **Real Estate Reporting Person.** Escrow Agent is hereby designated the "real estate reporting person" for purposes of Section 6045 of Title 26 of the United States Code and Treasury Regulation 1.6045-4 and any instructions or settlement statement prepared by Escrow Agent shall so provide. Upon the consummation of the transaction contemplated by this Agreement, Escrow Agent shall file Form 1099 information return and send the statement to Seller as required under the aforementioned statute and regulation. Seller and Purchaser shall reasonably cooperate with Escrow Agent in connection with Escrow Agent's duties as real estate reporting person.

16.17.3 **Liability of Escrow Agent.** The parties acknowledge that the Escrow Agent shall be conclusively entitled to rely, except as hereinafter set forth, upon a certificate from Purchaser or Seller as to how the Deposit (which, for purposes of this Section shall be deemed to also include any other escrowed funds held by the Escrow Agent pursuant to this Agreement) should be disbursed. Any notice sent by Seller or Purchaser (the "**Notifying Party**") to the Escrow Agent shall be sent simultaneously to the other noticed parties pursuant to Section 16.1 herein (the "**Notice Parties**"). If the Notice Parties do not object to the Notifying Party's notice to the Escrow Agent within ten (10) days after the Notice Parties' receipt of the Notifying Party's certificate to the Escrow Agent, the Escrow Agent shall be able to rely on the same. If the Notice Parties send, within such ten (10) days, written notice to the Escrow Agent disputing the Notifying Party's certificate, a dispute shall exist and the Escrow Agent shall hold the Deposit as hereinafter provided. The parties hereto hereby acknowledge that Escrow Agent shall have no liability to any party on account of Escrow Agent's failure to disburse the Deposit if a dispute shall have arisen with respect to the propriety of such disbursement and, in the event of any dispute as to who is entitled to receive the Deposit, disburse them in accordance with the final order of a court of competent jurisdiction, or to deposit or interplead such funds into a court of competent jurisdiction pending a final decision of such controversy. The parties hereto further agree that Escrow Agent shall not be liable for failure to any depository and shall not be otherwise liable except in the event of Escrow Agent's gross negligence or willful misconduct. The Escrow Agent shall be reimbursed on an equal basis by Purchaser and Seller for any reasonable expenses incurred by the Escrow Agent arising from a dispute with respect to the

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Deposit. The obligations of Seller with respect to the Escrow Agent are intended to be binding only on Seller and Seller's assets and shall not be personally binding upon, nor shall any resort be had to, the private properties of any of the partners, officers, directors, shareholders or beneficiaries of Seller, or of any partners, officers, directors, shareholders or beneficiaries of any partners of Seller, or of any of Seller's employees or agents. The provisions of this Section 16.17 shall survive the Closing and/or any termination of this Agreement.

16.18 **No Recording.** Neither this Agreement nor any memorandum hereof shall be recorded or filed in any public land or other public records of any jurisdiction, by either party and any attempt to do so shall, at the election of the other party constitute a breach of this Agreement.

16.19 **Financing Contingency.** INTENTIONALLY OMITTED

16.20 **Unjust Enrichment Covenant.** A covenant (the "Unjust Enrichment Covenant") will be placed in the Deed from the Seller to the Purchaser (the "Grantee") including all terms set forth in this Paragraph 16.20. Such covenant shall contain substantially the following: "The Grantee agrees, on behalf of itself, its assigns and its successors in title that if the Grantee, its assigns, and its successors in title make an arms-length fair market conveyance of the Property in its entirety within five (5) years of the date of the recording of the Deed from the Seller, to the Grantee, the Grantee, its assigns and its successors in title shall pay the Seller as follows:

Fifty (50%) of the difference between the consideration paid by the Purchaser to the Seller for the Property, and any increased sale price of the subsequent initial arms-length fair market conveyance, less (i) the actual documented acquisition, development and disposition costs, including, without limitation, development fees, carry costs, financing costs and interest incurred by the Purchaser, its assigns, or its successors in title for permits and improvements made to the Property by the Purchaser or its assigns or its successors in title and less (ii) a profit of twenty(20%) percent of all such acquisition and development costs incurred in acquiring and developing the Property (collectively, the "Off-Set Amounts"); If such initial arms-length fair market value sale occurs after the date of the first anniversary of the date of the recording of the Deed, the aforementioned percentage will be reduced to Forty (40%) per cent; If such initial arms-length fair market value sale occurs after the date of the second anniversary of the date of the recording of the Deed, the aforementioned percentage will be reduced to Thirty (30%) per cent; If such initial arms-length fair market value sale occurs after the date of the third anniversary of the date of the recording of the Deed, the aforementioned percentage will be reduced to Twenty (20%) per cent; and If such initial arms-length fair market value sale occurs after the date of the fourth anniversary of the date of the recording of the Deed, the aforementioned percentage will be reduced to Ten (10%) per cent."

The Unjust Enrichment Covenant will expire upon the earlier the fifth anniversary of the date of the recording of the Deed from the Seller to the Purchaser. Payment shall be made by the Purchaser, its assigns, or its successors in title, at the closing of the initial arms-length fair market value conveyance of the entire Property or at each initial arms-length fair market value conveyance of any portion of the Property. Upon payment of the aforementioned sum in the instance of the first arms-length conveyance of the entire Property, or sums in each instance of the first arms-length fair market conveyance of a portion of the Property (or residential or

+  GK

commercial condominium unit) upon request, the Seller shall issue a release of this Covenant to the Purchaser or its assigns or its successor in title as it pertains to the Property or a portion of the Property. If the Purchaser, its assigns or its successors in title conveys a portion or portions of the Property during the initial five-year period, the aforementioned payment (s) will be made on the same percentage basis, based upon (i) a fair allocation of the Purchase Price based on the relative value of such portion(s) sold to the entire Property, and (ii) a fair allocation of the Off-Set Amounts based upon the relative acquisition, development and disposition costs attributable to such portion(s) sold to the entire Property.

Anything herein to the contrary notwithstanding, the Unjust Enrichment Covenant shall terminate following any foreclosure sale with respect to any mortgage, deed of trust or other security interest held by an unrelated third party, institutional lender on or in the Property, or following such conveyance in lieu of foreclosure of such security interest.

16.21 **Marketing of Property.** Unless and until the obligations of Purchaser and Seller to proceed to Closing pursuant to this Agreement are duly terminated pursuant to the terms hereof, Seller shall not enter into any negotiations, understandings or agreements with any party other than Purchaser relating to the sale, transfer or other disposition of the Property or any portion thereof, and Seller shall not market or offer the Property or any portion thereof for sale to any other party.

16.22 **Certificate of Vote.** Upon the "Closing", At closing, Seller shall provide Purchaser with a Certificate of Seller's Secretary, or General Counsel, confirming that the appropriate Canonical Approvals for the sale of the Property, on the terms set forth herein, have been obtained. The Seller shall also provide a current Certificate of Legal Existence for Seller issued by the Massachusetts Secretary of State

16.23 **REBA Standards.** Any matter or practice arising under or relating to this Agreement which is the subject of a title standard or practice standard of the Real Estate Bar Association for Massachusetts shall be governed by said standard to the extent applicable.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal on the date set forth above.

SELLER:

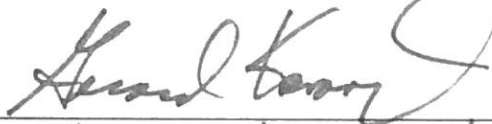
ROMAN CATHOLIC BISHOP OF FALL RIVER, a
Corporation Sole

By: 
Name: Edgar M. da Cunha
Title: Bishop

FEIN NO.: _____

PURCHASER:

CMK DEVELOPMENT PARTNERS LLC

By: 
Name: GERARD KAVANAGH
Title: CEO

FEIN NO.: 83-452-8776



ESCROW AGENT JOINDER

Escrow Agent hereby executes this Agreement for the sole purpose of acknowledging receipt of the Deposit and its responsibilities hereunder and to evidence its consent to serve as Escrow Agent in accordance with the terms of this Agreement.

ESCROW AGENT:

MURPHY HESSE TOOMEY & LEHANE, LLP

By: _____

Name: Peter T. McNulty, Esquire

Title: Attorney

Date:

Two handwritten signatures in black ink, one appearing to be 'P. McNulty' and the other 'GL'.

LIST OF EXHIBITS

EXHIBITS

- | | | |
|-----------|---|--|
| Exhibit A | - | Sketch Plan |
| Exhibit B | - | Legal Description |
| Exhibit C | - | Timetable for Obtaining Permits |
| Exhibit D | - | Property Information |
| Exhibit E | - | Form of Quitclaim Deed |
| Exhibit F | - | Form of Non-Foreign Entity Certificate |
| Exhibit G | - | List of Environmental Information |

EXHIBIT A
SKETCH PLAN

INTENTIONALLY OMITTED

EXHIBIT A – Page 1 of 1

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EXHIBIT B
LEGAL DESCRIPTION

EXHIBIT B – Page 1 of 1

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EXHIBIT C
TIMETABLE FOR OBTAINING PERMITS

INTENTIONALLY OMITTED

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EXHIBIT D
PROPERTY INFORMATION

EXHIBIT D – Page 1 of 1

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EXHIBIT E
FORM OF QUITCLAIM DEED

EXHIBIT E – Page 1 of 1

 GK

EXHIBIT F

FORM OF NON-FOREIGN ENTITY CERTIFICATE

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by Roman Catholic Bishop of Fall River ("**Transferor**"), the undersigned hereby certifies on behalf of Transferor:

Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

Transferor's U.S. employer identification number is _____;

Transferor is not a disregarded entity as defined in §1.1445-2(b)(2)(iii), and

Transferor's office address is:

47 Underwood Street
Fall River, MA 02722

Transferor understands that this certification may be disclosed to the Internal Revenue Service and that any false statement made within this certification could be punished by fine, imprisonment, or both.

Under penalties of perjury the undersigned declares that he has examined this certification and that to the best of his knowledge and belief it is true, correct and complete, and the undersigned further declares that he has the authority to sign this document on behalf of the Transferor.

Dated: 9/28, 2020

TRANSFEROR:

SELLER:

ROMAN CATHOLIC BISHOP OF FALL RIVER, a
CORPORATION SOLE


Name: Most Rev. Edgar M. da Cunha
Title: Bishop

EXHIBIT F – Page 2 of 2





EXHIBIT G
LIST OF ENVIRONMENTAL INFORMATION

PJMP&S

EXHIBIT G – Page 1 of 1

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