

---

### **3. EVIDENCE OF RIGHT, TITLE AND INTEREST**

As noted on the survey, the hotel will be located on a proposed lot to be split from the larger existing parcel, owned by North River IV, LLC. The Agreement of Purchase and Sale between North River IV, LLC and Fathom CC, LLC, which serves as evidence of right, title, and interest, has been attached to this Section.

#### **3.1 ATTACHMENTS**

- Agreement of Purchase and Sale, dated August 9, 2018, between North River IV, LLC and Fathom CC, LLC.

---

---

**EXECUTION VERSION**

AGREEMENT OF PURCHASE AND SALE

between

FATHOM CC, LLC

Buyer

And

NORTH RIVER IV, LLC

Seller

August 9, 2018

Center and Commercial Streets  
Portland Square  
Portland, Maine

---

---

## AGREEMENT OF PURCHASE AND SALE

BY THIS AGREEMENT OF PURCHASE AND SALE (the “Agreement”) entered into this 9<sup>th</sup> day of August, 2018 (“Effective Date”), NORTH RIVER IV, LLC, a Delaware limited liability company (hereinafter referred to as “Seller”), and FATHOM CC, LLC, a Delaware limited liability company (hereinafter referred to as “Buyer”), hereby agree as follows:

### ARTICLE I Terms and Definitions

Section 1.1. In addition to the other terms herein defined, the following terms shall have the meanings set forth in this Article I, unless the context otherwise requires:

Buyer’s Knowledge. Means the knowledge of James Brady based upon his historical knowledge of the Real Property and assuming a commercially reasonable level of inquiry.

Closing. The consummation of the purchase and sale of the Property pursuant to this Agreement.

Deed. As defined in Section 11.2.1(a).

Deposit. The cash deposits referred to in Article III.

Due Diligence Period. As defined in Section 6.4.

Execution Date. The date of this Agreement as hereinabove set forth.

Improvements. All improvements constructed on the Real Property.

Master Development. Means the Seller’s development of the area shown in the Plan attached as Exhibit C.

Property. The Real Property and Improvements.

Purchase Price. The Purchase Price to be paid by Buyer for the Property in the manner provided in this Agreement.

Real Property. The real property located at Commercial Street and Center Street, Portland, Maine, as more particularly described on Exhibit A attached hereto and by this reference made a part hereof, together with all strips and gores of land lying adjacent to such land and owned by Seller, and all rights, privileges, easements and appurtenances thereto. The Real Property description shall be finally determined by an ALTA survey commissioned by Buyer and the Real Property shall be conveyed using that survey description.

Preliminary Title Report. The commitment for issuance of an owner’s policy of title insurance issued by the Title Company.

Seller's Knowledge. Means the knowledge of Christopher Flagg, Christopher Pachios and Peter Pachios based upon their historical knowledge of the Real Property and assuming a commercially reasonable level of inquiry.

Title Company. A nationally recognized title insurance company to be selected by Buyer.

## ARTICLE II Purchase and Sale

Section 2.1. Purchase and Sale. Seller agrees to sell, contribute and convey to Buyer, and Buyer agrees to purchase from Seller, the Property, on all of the mutual terms, covenants and conditions hereinafter set forth.

## ARTICLE III Deposit

Section 3.1. Deposit. Upon execution hereof, Buyer shall deposit with Old Republic National Title Insurance Company (the "Escrow Agent") the sum of [REDACTED] Dollars [REDACTED] (the "Initial Deposit"). Upon completion of the Due Diligence period if Buyer has not otherwise terminated this Agreement in accordance with its terms, Buyer shall deposit with the Escrow Agent the additional sum of [REDACTED] Dollars [REDACTED] (the "Additional Deposit"). The Initial Deposit and the Additional Deposit are hereinafter collectively referred to as the "Deposit" and are to be held and applied as hereinafter set forth. The Deposit shall be held in an interest-bearing escrow account. All interest earned on the Deposit shall be credited to Buyer unless the purchase and sale of the Property is not consummated hereunder, in which case such interest shall be paid to the party entitled to receive the Deposit.

Section 3.2. Non-Refundable. Except as otherwise specifically set forth in this Agreement, the Deposit shall be non-refundable, and shall serve as Seller's liquidated damages in the event of a breach of this Agreement by Buyer pursuant to Article IV, or shall be applied against the Purchase Price pursuant to Article V.

Section 3.3. Termination. In the event Buyer elects to terminate this Agreement pursuant to Article VI, the Deposit shall be refunded to Buyer following receipt by Seller and Escrow Agent of Buyer's Termination Notice, as such term is defined in said Article.

Section 3.4. Liability of Escrow Agent. In the event of any disagreement between the parties, Escrow Agent shall be entitled to refuse to comply with any claims or demands by either party as long as such disagreement may continue, and in so refusing, shall make no delivery or other disposition of the Deposit. Escrow Agent shall not become liable in any way for such refusal, and Escrow Agent shall be entitled to continue to refrain from acting until (a) the rights of the parties shall have been finally adjudicated in a court of competent jurisdiction, or (b) all differences shall have been settled by agreement and Escrow Agent shall have been notified in writing of such agreement signed by both parties.

ARTICLE IV  
Damages

Section 4.1. Buyer's Default. In the event that this transaction does not close as a consequence of a default by Buyer, Seller shall retain the Deposit as liquidated damages. The parties hereby agree that if Buyer defaults, Seller's actual damages would be difficult or impossible to determine, and thus the amount of the Deposit is the best estimate of the damage Seller would suffer. Accordingly, the Deposit shall be the total amount that Seller is entitled to receive as liquidated damages.

Section 4.2. Seller's Default. In the event Seller fails to perform any obligation of Seller under this Agreement, including without limitation the obligation to convey good, clear record and marketable title to the Property to Buyer on the Closing Date, as hereinafter defined, in accordance with the provisions of this Agreement, and such failure shall remain uncured for a period of thirty (30) days following written notice thereof from Buyer to Seller (but no notice shall be required for Seller's failure to convey title as required hereunder on the Closing Date), then Buyer may (a) terminate this Agreement, in which event the Deposit together with all interest thereon shall be returned to Buyer, or (b) Buyer shall be entitled to pursue any other remedies available to Buyer at law or in equity, including the right to seek to enforce specific performance of Seller's obligations hereunder.

ARTICLE V  
Purchase Price

Section 5.1. Amount of Consideration. Buyer shall provide Seller consideration (the "Consideration") for the Property consisting of: (A) cash in the amount of [REDACTED] (the "Cash Portion"); (B) Class A Units in Buyer representing a capital contribution of [REDACTED] and (C) one (1) Class C Unit in Buyer (the Class A Units and Class C Unit are referred to collectively as the "Equity Portion").

Section 5.2. Manner of Payment. Buyer shall pay and provide the Consideration to Seller at the Closing as follows:

5.2.1. Deposit. Applying the Deposit against the Cash Portion of the Consideration; and

5.2.2. Cash Portion. Paying the balance of the Cash Portion of the Consideration, by wire transfer to an account to be designated by Seller (the "Cash Balance").

5.2.3. Equity Portion. Issuing the Equity Portion of the Consideration to Seller Purchase Price by entering into the Operating Agreement of Owner in the form attached hereto as Exhibit B (the "Ownership LLC Agreement").

Section 5.3. Treatment of Transaction. Buyer and Seller agree that the transactions contemplated hereby shall be deemed to consist of a sale of a portion of the Property in exchange for the Cash Portion of the Consideration and a contribution of the Property in exchange for the Equity Portion of the Consideration, all pursuant to Section 707(a)(2)(B) of the Internal Revenue

Code of 1986 and Treasury Regulations Section 1.707-3(a)(1). Buyer and Seller agree that the transactions contemplated hereby shall be reported for federal income tax purposes consistent with the preceding sentence.

ARTICLE VI  
Conditions Precedent to Closing

Section 6.1. Buyer's Conditions Precedent. Buyer's obligation to purchase the Property from Seller is subject to the following conditions precedent (the "Buyer's Conditions Precedent"):

6.1.1. Title. At the Closing, Seller shall sell, assign, convey, transfer and deliver the Property to the Buyer by good and sufficient Quitclaim Deed with Covenant in form acceptable to the Buyer (the "Deed"), and the Deed shall convey to the Buyer fee title consistent in all respects with the Title Commitment.

6.1.2. Condition of Improvements. The Improvements shall be substantially the same condition as the Improvements were in at the end of the Due Diligence Period, reasonable wear and tear excepted.

6.1.3. Seller's Representations and Warranties. Seller's representations and warranties set forth herein shall be true and correct in all material respects at and as of the Closing as though such representations and warranties were made at and as of such date.

6.1.4. Seller's Compliance. The Seller shall have in all respects performed and complied with all covenants, agreements and conditions required by this Agreement to be performed or complied with by them prior to or at the Closing.

6.1.5. Title Policy. The Buyer shall have obtained a title insurance policy with respect to the Property conforming in all respects to the Title Commitment.

6.1.6. Lease Termination. Delivery by Seller of evidence satisfactory to Buyer that all Leases of all or any portion of the Property have been terminated at or prior to Closing, at Seller's expense, and Tenants have no further right to occupancy or use of the Property thereunder.

6.1.7. Approvals. Buyer shall have received all Approvals for the Project in accordance with Section 6.5 hereof on a final, non-appealable basis (subject only to such terms and conditions as may be approved by Buyer, in its sole discretion), and all Approvals, as received, shall continue in full force and effect through the date of Closing, without any amendments, changes or additional conditions not approved by Buyer.

6.1.8. Consents and Approvals. The Seller shall have obtained all consents, approvals, authorizations, exemptions and waivers from governmental authorities and third parties, if any, as shall be necessary, in the Buyer's reasonable discretion, to effect the transactions contemplated hereby.

6.1.9. Parking Lease and Construction License. Buyer and Seller shall have executed and delivered the Parking Lease as described in Section 14.1 and the Construction License as described in Section 14.2.

6.1.10. No Material Adverse Changes. There shall have been no material adverse change since the date of this Agreement in the Property, except changes contemplated or required by this Agreement, including without limitation, any change in the title, physical condition, legal status, use or possession of the Property from the conclusion of the Due Diligence Period through the date of closing that would cause the Property to be unsuitable for development of the Project, as reasonably determined by Buyer.

6.1.11. No Legal Restraints or Litigation. No statute, rule, regulation or order of any court or administrative agency shall be in effect which restrains or prohibits the Seller from consummating the transactions contemplated hereby. In addition, no action, suit, or proceeding shall be pending before any court or quasi judicial or administrative agency of any federal, state, local, or foreign jurisdiction wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (a) prevent consummation of any of the transactions contemplated by this Agreement, or (b) result in a material adverse change in the Property or the ability to develop the Project at the Property.

Section 6.2. Failure of Buyer's Conditions Precedent. If, at the time of the Closing, any of the foregoing Buyer's Conditions Precedent have not been fulfilled, Buyer may, at its option, do either of the following:

6.2.1. Waive and Close. Waive such condition and close in accordance with this Agreement; or

6.2.2. Terminate. Terminate this Agreement by delivery of a written notice to Seller and to Escrow Agent ("Buyer's Termination Notice") and enforce any remedy afforded by Section 4.2; provided however that, if Buyer fails to deliver Buyer's Termination Notice to Seller at or prior to the Closing, the applicable condition or conditions shall be deemed waived by Buyer.

Section 6.3. Title Examination. From the date hereof through the date of expiration of the Due Diligence Period, as hereinafter defined (the "Title Inspection Period"), Buyer shall have the opportunity to review the commitment to insure title (the "Title Commitment"), any amendments thereto issued during the Title Inspection Period, the exceptions to title disclosed in the Title Commitment, all Survey Matters and all other aspects of Seller's title to the Property. The Title Commitment shall be for the benefit of the Buyer, at customary rates, in the ALTA form currently in use, subject only to the Permitted Encumbrances ( as defined below) and with such standard exceptions deleted standard endorsements included as Buyer may, in its sole discretion, require. On or before the date of the expiration of the Title Inspection Period (the "Title Notice Deadline"), Buyer shall notify Seller in writing of any defect in title to the Property, or any other matter which is indicated on the Title Commitment or any Survey Matter to which Buyer objects except for the following (collectively, the "Permitted Encumbrances"): (a) liens for real estate taxes not yet due and payable or for betterments assessed after the Execution Date, (b) other encumbrances which may be removed or satisfied by the payment of a

liquidated sum of money which Seller agrees to discharge at Closing to Buyer's satisfaction and (c) such easements, restrictions and reservations of record as are acceptable to Buyer, in its discretion. If Buyer does so notify Seller of a defect in title or other matter objectionable to Buyer prior to the Title Notice Deadline, Seller shall have ten (10) days in which to determine whether to cure the defect or other matter so objected to by Buyer and to notify Buyer of Seller's decision in this regard. If Seller does not respond within such time frame, Seller shall be deemed to have elected not to cure the defect or other matter. Seller, at its sole cost and expense, will have until thirty (30) days before the Closing to cure the title objections, other than the Monetary Liens (as herein defined), which (to the extent not previously removed) Seller shall remove or cure by payment of funds at Closing. Those defects that Seller gives notice will be cured on or before the Closing Date, along with discharge of Monetary Liens, are referred to herein as "Mandatory Cure Items." If Seller elects (or is deemed to elect) not to cure the defect or other matter so objected to by Buyer to the reasonable satisfaction of Buyer, Buyer shall have the right, by not later than the tenth (10th) day after the date of Seller's notice (or failure to provide notice) to either (a) waive such defect or other matter and take title to the Property without any adjustment in the Purchase Price, or (b) terminate this Agreement by giving written notice thereof to Seller. If Buyer timely gives such notice of termination, this Agreement shall terminate and the Deposit shall be returned to Buyer. If Buyer fails to give Seller a notice of termination, Buyer (a) shall no longer have a right to terminate this Agreement under this Section 6.1.1 and shall be bound to proceed to Closing and consummate the transaction contemplated hereby pursuant to the terms of this Agreement and (b) shall be deemed to have approved the state of title to the Property as it exists on the effective date of the Title Commitment, as last amended during the Title Inspection Period. Seller shall be responsible for discharging any mortgages or voluntary monetary liens (other than municipal liens not yet due and payable), including mechanics' liens for unpaid work at the Property performed on behalf of Seller, (collectively, "Monetary Liens") at or prior to Closing.

Section 6.4. Buyer's Due Diligence. Notwithstanding any other provision of this Agreement to the contrary, Buyer shall be entitled to undertake a thorough investigation of the Property, including without limitation such reviews, analyses and studies of the Property and the development of the Project at the Property, as Buyer may, in its sole discretion, determine to be necessary or appropriate, including without limiting the generality of the foregoing:

6.4.1. Inspection of physical condition.

6.4.2. Review of the Leases (copies of which shall be made available to Buyer promptly following the Effective Date).

6.4.3. Confirmation that the Property has all necessary zoning, including zoning board approvals of required variances and any other matters, required in order to develop the Project ("Zoning Confirmation");

6.4.4. A Phase I Environmental Site Assessment for the Property, together with any Phase II Environmental Site Assessments or other studies or analyses as may be required ("ESA").



6.4.5. An ALTA/ACSM Land Title Survey of the Property certified satisfactory to Buyer, in its sole opinion, sufficient in all respects to delete the standard survey exception from Buyer's title policy, and bearing a legal description, made by a licensed surveyor, and showing, among other things, the area, dimensions and location of the Property to the nearest monuments, streets, alleys on all sides, the topography, the location of all available utilities in adjoining streets, alleys, or property, the location of all recorded and apparent easements against or appurtenant to the Property, the location of all active and abandoned sewer and storm water lines on an as built basis, certifying the applicable zoning and flood zone classifications and not disclosing any condition rendering the Property unusable, in Buyer's sole opinion, for the Project (the "Survey").

6.4.6. A geotechnical report in form satisfactory to Buyer, boring, percolation and other soil tests and feasibility, demographic, traffic pattern, and other site assessment studies ("Site Studies") as required by Buyer.

6.4.7. Confirmation that all utilities, including without limitation, water, gas, electric power, telephone, cable and sanitary sewer, necessary or appropriate for development of the Project ("Utilities"), as determined by Buyer in its sole discretion, shall be located in the public way or ways adjacent to the Property ("Utility Confirmation") which confirmation may be in such form as Buyer may require.

In connection therewith, Buyer shall have access to the Property as required, and may conduct such tests, studies, surveys and inspections (expressly including boring, drilling and other subsurface exploration as Buyer may reasonably deem appropriate. In addition, Buyer shall be afforded full opportunity by Seller, without warranty or recourse, to examine all books and records which relate to the Property in the possession of Seller and/or Seller's agents or employees, including the reasonable right to make copies of such books and records. Such right shall extend to all operating books of account, environmental and engineering reports, surveys, title reports and insurance policies, Leases, rental applications and any other agreements, correspondence or other documents relating to the Leases, tenant files, rent rolls, operating statements, accounting support for bills, inventories of Personal Property, service contracts, management contracts, warranties, general ledgers, journals, vendor files, invoices, operating manuals, maintenance records, utility bills, marketing data (including brochures), historical occupancy reports and any summaries of such items but excluding Seller's internal memoranda, financial projections, budgets, appraisals, accounting and tax records, attorney work product, work protected by attorney-client privilege and similar proprietary or confidential information. Buyer shall take commercially-reasonable precautions to ensure that such materials and any information contained therein are disclosed only to such of Buyer's employees, agents, consultants, attorneys, investors and lenders as have need therefor, under conditions which will prohibit any further dissemination thereof not authorized by Seller. Buyer shall have the right to contact and communicate with such governmental officials regarding the Property and the project as Buyer may deem appropriate.

If Buyer, in Buyer's sole and absolute discretion, is not satisfied with the results of such investigation, Buyer may terminate this Agreement by giving Buyer's Termination Notice to Seller and Escrow Agent at any time during the period beginning on the Effective Date and continuing through the sixtieth (60<sup>th</sup>) day thereafter (the "Due Diligence Period"). Buyer shall

restore to its former condition any portion of the Property disturbed by any activity conducted hereunder, shall repair all damage to the Property caused thereby and shall indemnify and hold Seller harmless from and against any claims, losses, liabilities, costs or expenses (including without limitation reasonable attorneys' fees) asserted against or incurred by Seller in connection with any such activity, it being expressly understood and agreed that the foregoing provisions shall survive the Closing or the termination of this Agreement prior thereto.

Section 6.5. Permitting and Approvals. Notwithstanding any other provisions of this Agreement to the contrary, Buyer shall be entitled to apply for and obtain all necessary federal, state and local governmental permits, licenses and approvals of any type or nature required in connection with the development of as may be necessary for the development and construction of an approximately one hundred thirty (130) room hotel on the Property, which hotel may include up to fifteen (15) residential units (the "Project") at the Property, including without limiting the generality of the foregoing, all necessary site plan, and other governmental permits, licenses, and approvals, of any type and from any necessary public or governmental authority or other party for Buyer's development of the Project at the Property (collectively, the "Approvals").

6.5.1. If for any reason whatsoever all Approvals required for the development of the Project have not been obtained on a final, non-appealable basis (subject only to such terms and conditions as may be approved by Buyer, in its sole discretion) on or before the expiration of the period commencing on the expiration of the Due Diligence Period and terminating one hundred fifty (150) days thereafter (the "Entitlement Period") (as the same may be extended as provided below), then Buyer may, in its sole discretion, terminate this Agreement by giving Seller written notice thereof, in which event this Agreement shall terminate, the Deposit shall be returned to Buyer and the parties shall have no further obligations of any nature whatsoever hereunder. If Buyer fails to give Seller a notice of termination on or before the expiration of the Entitlement Period, then Buyer shall be deemed to have waived this condition and Buyer's right to terminate this Agreement for failure to satisfy this condition. Buyer shall have the right to purchase up to two 30-day extensions of the Entitlement Period provided the Buyer is pursuing the Approvals in good faith. Buyer shall notify the Seller of its exercise of each 30-day extension by written notice, together with the [REDACTED] to Seller provided on or before the expiration of the entitlement period (as extended). All payments made pursuant to this paragraph shall become and be considered part of the Deposit as defined in Section 3.1.

6.5.2. Buyer shall have the right to apply for and pursue the Approvals on a stand-alone basis, separate from any master plan permits or approvals required for Seller's Master Development, so long as such Approvals do not unreasonably interfere with Seller's Master Development.

6.5.3. Buyer shall be responsible, at its sole cost and expense, for production of all plans, specifications and other materials required in connection with application for and obtaining Approvals, and for preparing and submitting all necessary applications ("Project Plans"); provided, however, that Seller shall have the right to review the Project Plans, at Seller's expense, prior to submission for site plan approval from the City of Portland Planning Board ("Site Plan Approval"). Prior to submission of any application or other materials and all amendments thereto in connection with obtaining Site Plan Approval, Buyer shall submit draft

Project Plans to Seller for Seller's review and comment. Seller shall have the right to review and approve the Project Plans prior to submission for Site Plan Approval. Seller's approval shall not be unreasonably conditioned, delayed or withheld, provided, however, that Seller, in its sole and absolute discretion, may condition, delay or withhold approval if Seller determines that Buyer's activities, including but not limited to the Project as described on the Project Plans, will or may interfere with Seller's development plans on its adjacent land. Buyer and Seller agree to work together in a commercially reasonable manner to integrate the Project Plans and Seller's planning for the Master Development. Buyer and Seller shall keep Seller informed of the progress of the Approvals procurement process. Seller shall be a co-applicant to the extent required.

6.5.4. Notwithstanding the provisions of Section 6.5.1 above:

(a) The Entitlement Period shall be tolled for the duration of Seller's review of Buyer's application for Site Plan Approval and related materials, from the date of submission to the date of final approval of submission of the application for Site Plan Approval to the City of Portland Planning Board.

(b) Buyer and Seller shall exercise commercially reasonable efforts to obtain separate review of Buyer's Site Plan Approval and Seller's Master Development plan approvals; however, in the event the review and approval of Buyer's Site Plan Approval is integrated with, or becomes contingent upon, the Seller's Master Development plan approvals, then the Entitlement period shall be extended for the duration of the City of Portland Planning Board's review of the Seller's Master Development.

6.5.5. The parties hereto agree and recognize that the Property needs to be subdivided from a larger tract shown in Exhibit C (the "Lot") in a configuration to be acceptable to the Buyer. If the Lot is not approved for subdivision in a configuration reasonably acceptable to Buyer, then Buyer may terminate this Agreement by giving Seller written notice thereof on or before the expiration of the Entitlement Period, in which event the Deposit will be refunded to Buyer and this Agreement shall terminate and the parties shall have no further obligations of any nature whatsoever hereunder. If Buyer fails to give Seller a notice of termination on or before the expiration of the Entitlement Period, then Buyer shall be deemed to have waived this condition and Buyer's right to terminate this Agreement for failure to satisfy this condition.

Section 6.6. Utilities. To the extent of Seller's knowledge, without any duty of inquiry, Seller shall provide Buyer with specifications of all electric Utility service to the property, including but not limited to types, capacity, costs (payable by Buyer) (collectively, the "Costs") and location of interconnection. Buyer shall have until the end of the Due Diligence Period to evaluate whether such connections are suitable for Buyer. If not, Buyer shall give Seller notice of the same no later than the end of the Due Diligence Period. In the event improvement to electric Utility connections are required in connection with the Project in order to provide the Project with 3,000 amps at 120/208 service, then on or before the expiration of the Due Diligence Period, Buyer and Seller shall exercise good faith efforts to negotiate and enter into a mutually satisfactory agreement regarding the construction of such Improvements ("Utility Improvements") and allocation of any Costs associated therewith, taking into consideration the relative benefit derived by the Project and the Master Development from the Utility

Improvements; provided that the cost allocated to Buyer shall not exceed [REDACTED] [REDACTED] (“Utilities Agreement”). Failure to enter into a Utilities Agreement shall constitute a lack of Utility Confirmation under Section 6.4.7 hereof. The Utilities Agreement will contain the following provisions, among others, all as more particularly set forth therein:

(a) In the event the Seller does not complete Utilities Improvements as required in order to accommodate Buyer’s development schedule for the Project (as provided to Seller contemporaneously herewith), then Buyer shall have the right to complete the Utility Improvements, following written notice to Seller and an opportunity to cure, all as to be more particularly described in the Utilities Agreement.

(b) Seller shall reimburse Buyer for all Costs associated with Buyers construction of Utility Improvements in excess of [REDACTED], with such reimbursement obligation to be due and payable at the earlier of (i) such time as Seller has received site plan approval from the City of Portland Planning Board for the Master Development or (ii) six (6) months following completion of the Utility Improvements. All amounts advanced by Buyer in excess of [REDACTED] (“Reimbursable Utility Costs”) shall accrue interest at the rate of [REDACTED] per annum beginning on from the date of each advance until date of payment with interest payable monthly.

(c) Reimbursable Utility Costs shall include only costs paid to a third party on an arm’s length basis for development and construction/installation of Utility Improvements.

(d) Seller shall have the right to take over Buyer’s utility work upon reasonable advance notice at any point during the construction/installation process, provided adequate assurance of completion of the Utility Improvements in a timely manner is provided.

(e) Buyer will agree to provide Seller with notice of any communication with Central Maine Power Company regarding the design and scope of work, which may not be amended in any way without the prior written consent of Seller.

(f) In the event Seller completes the Utility Improvements and Buyer abandons the development of the Project, Buyer shall nevertheless be obligated to reimburse Seller for Buyer’s allocated of Costs associated therewith, up to the [REDACTED] limit specified above.

Section 6.7. Closing. Subject to satisfaction of the conditions set forth in in this Article VI and Section 15.5, the Closing shall occur on the date specified by Buyer at the not later than sixty (60) days following the Entitlement Period (“Closing Date”). Closing shall occur at the offices of Pierce Atwood LLP, 254 Commercial Street, Portland, Maine commencing at 10:00 a.m. local time on the Closing Date, or at such other date, time and location as Buyer and Seller may mutually agree.

Section 6.8. Effective Termination. If this Agreement is terminated pursuant to the provisions of this Article, all other obligations of the parties hereto shall cease and this Agreement shall be void and without recourse to the parties hereto, except as otherwise expressly set forth in Article IV and Section 6.2 hereof.

Section 6.9. Seller's Conditions Precedent. Seller's obligation to sell the Property to Buyer is subject to the following conditions precedent (the "Seller's Conditions Precedent"):

(a) Payment by Buyer of all sums due in accordance with this Agreement;

(b) As of the Closing Date, there shall be no pending court litigation of any kind whatsoever against or relating to the Property, which would prohibit or materially impair Seller's ability to close hereunder;

(c) All of the representations and warranties of Buyer shall be true and correct in all material respects as of the Closing, and Buyer shall deliver a separate certificate certifying to that effect; and

(d) Buyer shall have performed in all material respects each of its obligations under this Agreement to be performed at or prior to the Closing.

## ARTICLE VII Representations and Warranties

Section 7.1. Buyer's Representations and Warranties. Buyer hereby represents, warrants and covenants to Seller the following:

(a) Buyer is duly organized, validly existing and in good standing under the laws of the State of Delaware and is in good standing in the State of Maine. Buyer has the requisite right, power and authority to buy the Property from Seller as provided herein, and has taken all action necessary to authorize the execution, delivery and performance of this Agreement. Buyer has obtained all consents and approvals necessary for Buyer's execution, delivery and performance of this Agreement, and the performance by Buyer of Buyer's obligations hereunder will not constitute a default under the terms and provisions of any material agreement, document or instrument to which Buyer is a party or by which Buyer is bound.

(b) This Agreement constitutes the valid and binding obligation of Buyer, enforceable against Buyer in accordance with its respective terms, except to the extent that enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally.

(c) There is no suit or proceeding pending or, to Buyer's knowledge, threatened against or affecting Buyer that might affect or relate to this Agreement or the transactions contemplated hereby, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, or agency or other governmental instrumentality. No order, writ, injunction, subpoena or decree has been issued by or requested of any court or government agency which is reasonably likely to result in a material adverse change in the Property or the Buyer, or which could reasonably be expected to have a material adverse effect on the transactions contemplated by this Agreement.

(d) Buyer has engaged no broker or agent in connection with the sale. Buyer shall indemnify, defend and hold Seller harmless from and against any loss, damages, liabilities, costs or expenses, including without limitation attorneys' fees and court costs, resulting from any claim for a fee or commission by any other broker or finder with whom Buyer has dealt.

(e) Neither Buyer 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, nor will they become, a person or entity with whom United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated Nationals 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 and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

Section 7.2. Authority. Each party warrants and represents that this Agreement and all other documents delivered prior to or at the Closing (a) have been or shall be duly authorized and executed and delivered by such party; (b) are legal, valid, and binding obligations of such party; and (c) neither violate any provision of any agreement to which such party is a party, nor violate any charters, bylaws, operating agreements or other organizational documents of such party.

Section 7.3. Seller's Representations and Warranties. Seller hereby represents, warrants and covenants to Buyer the following:

(a) Seller is duly organized, validly existing and in good standing under the laws of the State of Delaware and is in good standing in the State of Maine. Seller has the requisite right, power and authority to sell and convey the Property to Buyer as provided herein, and has taken all action necessary to authorize the execution, delivery and performance of this Agreement. Seller has obtained all consents and approvals necessary for Seller's execution, delivery and performance of this Agreement, and the performance by Seller of Seller's obligations hereunder will not constitute a default under the terms and provisions of any material agreement, document or instrument to which Seller is a party or by which Seller is bound.

(b) This Agreement constitutes the valid and binding obligation of Seller, enforceable against Seller in accordance with its respective terms, except to the extent that enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally.

(c) Seller has not received any written or oral notice of any pending condemnation, expropriation, eminent domain or similar proceeding affecting all or any portion of the Property and has no knowledge that any such proceeding is contemplated.

(d) There are no leases, tenancy agreements, tenancies at will, parking space agreements and other contracts, agreements or occupancy arrangements, whether written or oral, affecting the Property or any portions thereof in effect with respect to any portion of the Property ("Leases").

(e) No written or oral notice has been given by the holder of any mortgage on the Property, any insurance company that has issued a policy with respect to the Property, or by any board of fire underwriters (or other body exercising similar functions) claiming any material defect or deficiency or requesting the performance of any material repairs, alterations or other work to the Property.

(f) There are no management, service, equipment, supply, maintenance or concession agreements with respect to or affecting all or any portion of the Property.

(g) Seller has paid or will pay in full prior to the Closing all outstanding bills and invoices for Utility charges, labor, goods, materials, and services of any kind relating to the Property incurred by or for the benefit of Seller.

(h) No work has been performed or is in progress at, and no materials have been furnished to, at the direction of or for the benefit of the Seller, the Property which, though not presently the subject of, might give rise to mechanic's, materialmen's or other liens against the Property or any portion thereof. If any lien for work performed or materials furnished prior to the Closing, in either case pursuant to a contract with Seller, is filed before or after the Closing, Seller shall promptly discharge such lien by filing the requisite bond or in any other manner allowed by applicable law. Seller will execute and deliver a standard form of Mechanic's Lien Affidavit for title insurance purposes.

(i) There is no suit or proceeding pending or to Seller's Knowledge, threatened against or affecting Seller or the Property that might affect or relate to this Agreement or the transactions contemplated hereby, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, or agency or other governmental instrumentality. No order, writ, injunction, subpoena or decree has been issued by or requested of any court or government agency which is reasonably likely to result in a material adverse change in the Property or the Seller, or which could reasonably be expected to have a material adverse effect on the transactions contemplated by this Agreement.

(j) Seller has received no written notice of any outstanding violation of any federal, state, county, or municipal laws, ordinances, orders, codes, rules, regulations, or requirements affecting all or any portion of the Property, including without limitation violations of the housing, building, safety, health, fire, or zoning ordinances, codes, and regulations of the municipality or county within which the Property is located, issued by any governmental or quasi-governmental authority.

(k) To Seller's Knowledge, Seller is not in violation or default under any agreement with any third party, or under any judgment, order, decree, rule or regulation of any court, arbitrator, administrative agency or other governmental authority to which it may be subject, which violation or default will, in any one case or in the aggregate, materially and adversely affect the ownership or operation of the Property or Seller's ability to consummate the transactions contemplated hereby. To Seller's Knowledge, there are no material violations of laws, regulations, permits or approvals affecting or pertaining to the Property. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not (i) violate any law or any order of any court or governmental

authority with proper jurisdiction; (ii) result in a breach or default under any provision of the organizational documents of Seller; or (iii) require any consent, or approval or vote of any third person that, as of the Closing Date, has not been given or taken, and does not remain effective.

(l) As used herein, “Environmental Laws” shall mean all federal state and local laws, statues, rules, codes, ordinances, regulations, orders, judgments, decrees, binding and enforceable guidelines, including any judicial or administrative order, consent decree or judgment, in each case to the extent binding, relating to the environment, the protection of health or Hazardous Materials, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; the Federal Water Pollution Control Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §2601 et seq.; the Clean Air Act, 42 USC §7401 et seq.; the Safe Drinking Water act, 42 USC §3803 et seq.; the Oil Pollution Act of 1990, 33 USC §2701 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 USC §11001 et seq.; the Hazardous Material Transportation Act, 49 USC §1801 et seq.; and the Occupational Safety and Health Act, 29 USC §651 et seq. (to the extent it regulates occupational exposure to Hazardous Materials); any state, local or foreign counterparts or equivalents, in each case as amended from time to time, and includes the Project Permits (defined below). As used herein, “Hazardous Materials” shall mean (i) substances that are defined or listed in, or otherwise classified pursuant to, any applicable law or regulations as “hazardous substances,” hazardous materials,” “hazardous wastes,” “toxic substances,” “pollutants,” “contaminants” or other similar term intended to define, list or classify a substance by reason of such substance’s ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity or “EP toxicity” and (ii) oil, petroleum or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources. Except as may be identified in any Phase 1 ESA prepared for the benefit of Seller and provided to Buyer: (i) to Seller’s Knowledge, there are no violations of any Environmental Laws with respect to the Property and Seller has not used, stored, disposed of or released any Hazardous Materials on the Property; (ii) to Seller’s Knowledge, during Seller’s ownership of the Property, the Property has not been used, and to Seller’s Knowledge, the Property has not been used in the past, to treat, store or dispose of Hazardous Materials in violation of Environmental Laws, and neither Seller, nor, to Seller’s Knowledge, anyone else, has otherwise dumped, placed, released, or discharged Hazardous Materials in violation of Environmental Laws on the Property or any property adjacent to the Property.

(m) There are no tax liens on any of the Property, and Seller has paid or will pay through the Closing all real estate taxes, withholdings and governmental charges due with respect to the Personal Property under all applicable federal, state and local laws and regulations. There are no legal, administrative or other tax proceedings currently in progress or threatened pursuant to which Seller is or could be made liable for any taxes.

(n) Seller has engaged no broker or agent in connection with the sale. Seller shall indemnify, defend and hold Buyer harmless from and against any loss, damages, liabilities, costs or expenses, including without limitation attorneys’ fees and court costs, resulting from any claim for a fee or commission by any other broker or finder with whom Seller has dealt.



(o) Seller is not a “foreign person” as defined in Section 1445(f)(3) of the Code.

(p) Neither Seller 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, nor will they become, a person or entity with whom United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated Nationals 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 and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

## ARTICLE VIII Disclaimer of Warranties

Section 8.1. Buyer’s Inspections. Buyer acknowledges that Buyer has had or will have an adequate opportunity to inspect the Property and all factors relevant to its use and operation.

Section 8.2. Purchase “As Is”. Buyer further acknowledges that Buyer has substantial experience with investment real property and that, except for the Seller’s representations and warranties set forth herein, Buyer is acquiring the Property in an “as is” condition, and solely in reliance on Buyer’s own inspection and examination. Except as set forth in Section 7.3 and in the Deed, neither Seller, nor any agents, representatives or employees of Seller, have made any representations or warranties, direct or implied, oral or written, with respect to the Property, or its fitness for any particular purpose except as expressly set forth herein.

Section 8.3. Representations, Warranties. Except as otherwise specifically provided in Section 7.3, no representations, warranties, covenants or other obligations of Seller or Buyer set forth in this Agreement shall survive the Closing, and no action based thereon shall be commenced after the Closing. All of Seller’s representations and warranties set forth in Section 7.3 shall survive Closing for a period not to exceed twenty-four (24) months after the Closing Date (the “Survival Period”), and shall inure to the benefit of Buyer and its legal representatives, successors or assigns; provided, however, that Seller shall have no liability or other obligation with respect to any such representation or warranty herein contained unless, prior to the expiration of the Survival Period, Buyer shall have notified Seller in writing setting forth specifically the representation or warranty allegedly breached, a description of the alleged breach in reasonable detail, and a proposed remedy. The aggregate liability of Seller for breach of any representation or warranty made by Seller in Section 7.3 shall not exceed Three Million Dollars (\$3,000,000.00) (the “Seller’s Liability Cap”). Purchaser shall not have any further right, claim or recourse against the Seller in excess of the Seller’s Liability Cap or from any other asset of Seller except for the sale proceeds from this transaction, and Buyer waives any right or claim of any kind or nature against Seller other than a right or claim limited to the Seller’s Liability Cap as aforesaid. Notwithstanding the foregoing, there shall be no limitation on the aggregate liability of Seller hereunder in the event of fraud or intentional material misrepresentation by the

Seller, in which event Buyer shall be entitled to all rights and remedies against Seller available to it at law and/or in equity.

Section 8.4. Merger. Except as otherwise specifically provided in Section 7.3 and this Article VIII, the delivery of the Deed by Seller, and the acceptance thereof by Buyer, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed hereunder.

Section 8.5. No Reliance. Except as expressly stated in Section 7.3 and in the Deed, Seller makes no representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered by Seller or its brokers or agents to Buyer in connection with the transaction contemplated hereby. Buyer acknowledges and agrees that all materials, data and information delivered by Seller to Buyer in connection with the transaction contemplated hereby are provided to Buyer as a convenience only and that any reliance on or use of such materials, data or information by Buyer shall be at the sole risk of Buyer, except as otherwise expressly stated herein. Without limiting the generality of the foregoing provisions, Buyer acknowledges and agrees that (a) Buyer shall be responsible for conducting its own inspections and investigations for the Property and for obtaining any reports thereon which is deemed necessary, (b) any environmental, engineering or other report with respect to the Property which is delivered by Seller to Buyer shall be for general informational purposes only, (c) Buyer shall not have any right to rely on any such report delivered by Seller to Buyer, but rather will rely on its own inspections and investigations of the Property and reports commissioned by Buyer with respect thereto, and (d) neither Seller, any affiliate of Seller nor the person or entity which prepared any such report delivered by Seller to Buyer shall have any liability to Buyer for any inaccuracy in or omission from any such report.

Section 8.6. Disclaimers. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7.3 AND THE DEED, IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ZONING, PERMITTING, USE, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF SELLER TO BUYER, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. BUYER ACKNOWLEDGES AND AGREES THAT AT THE CLOSING SELLER SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS," EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT. BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, PROPERTY INFORMATION

PACKAGES DISTRIBUTED WITH RESPECT TO THE PROPERTY) MADE OR FURNISHED BY SELLER, THE MANAGER OF THE PROPERTY, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

Section 8.7. Seller shall not be liable under Section 7.3 or the Deed for any loss or claim arising out of any inaccuracy in or breach of any of the representations and warranties of Seller contained in Section 7.3 or the Deed if Buyer had actual knowledge of such inaccuracy or breach prior to or at Closing.

Section 8.8. Effect and Survival of Disclaimers. Seller and Buyer acknowledge that the compensation to be paid to Seller for the Property takes into account that the Property is being sold subject to the provisions of this Article VIII. Seller and Buyer agree that the provisions of this Article VIII shall survive Closing.

## ARTICLE IX Risk of Loss

Section 9.1. Risk of Loss. In the event the Property is materially damaged prior to Closing, Buyer may either (i) terminate this Agreement and receive back the Deposit in accordance with this Agreement; or (ii) close with no adjustment in Purchase Price.

Section 9.2. Condemnation. Any taking or condemnation for any public or quasi-public purpose or use by any competent authority in appropriate proceedings or by any right of eminent domain of all or any material part of the Property between the Execution Date and the time of the Closing shall, at Buyer's option, cause a termination of this Agreement. The election to terminate provided for hereby must be exercised by Buyer by written notice to Seller to such effect, which notice shall be given by Buyer on or before the thirtieth (30<sup>th</sup>) day after Buyer's receipt of written notice of such condemnation (but in any event prior to the Closing, provided however that Buyer shall be entitled to extend the Closing Date to a date that is two business days beyond the date that would be the thirtieth (30<sup>th</sup>) day following such notice). If Buyer shall not elect so to terminate this Agreement, Seller shall be relieved of its duty to convey title to the portion of the Property so taken or condemned, but Buyer will be entitled to receive all proceeds of any such taking or condemnation provided Buyer takes title hereunder and Seller shall make no settlement or adjustment of such proceedings without Buyer's consent, and shall take at the Closing all action necessary to assign its entire interest in any such award to Buyer.

Section 9.3. Return of Deposit. The Deposit shall be returned to Buyer immediately following termination of this Agreement by Buyer under this Article and all other obligations of the parties hereto shall cease and this Agreement shall be void and without recourse to the parties hereto subject to the provisions of Section 6.3.

## ARTICLE X Operation of Property

Section 10.1. Property Management. Seller shall operate the Property before the Closing in substantially the same manner that Seller operated the Property before the Execution

Date. Subject to the foregoing provisions, it is expressly understood and agreed that Seller may, so long as Buyer is so advised and consents in advance, (a) enter into service contracts, utility contracts and other contracts pertaining to the management of the Property, (b) renegotiate, modify or cancel (including without limitation on account of a Tenant's default) any of the Leases, (c) accept surrender of the premises demised under any of the Leases and (d) execute or otherwise enter into any new Lease. In no event shall Seller accept any payment of fixed rental under any Lease more than thirty (30) days in advance.

## ARTICLE XI Closing

Section 11.1. Closing Date. The Closing shall take place at the time and place specified in Section 6.7 hereof. The cash portion of the Purchase Price ("Cash Balance") shall be held in escrow by the Buyer's attorney pursuant to customary conveyancing practice until the Deed is recorded, provided however that the Deed shall be recorded no later than 1:00 P.M. on the Closing Date unless Seller's attorney has been advised of any matter of record arising after the effective date of the Preliminary Title Report and preventing Seller from conveying title to the Property in accordance with the applicable provisions of this Agreement.

Section 11.2. Closing Deposits. At the Closing, Seller and Buyer shall exchange the following documents and funds:

11.2.1. Seller's Deposits. Seller shall deliver to Buyer the following:

(a) Deed. A duly executed and acknowledged quitclaim deed with covenant in form acceptable to Buyer (the "Deed") conveying the Real Property and the Improvements to Buyer subject only to Permitted Encumbrances.

(b) LLC Agreement. A duly executed copy of the Ownership LLC Agreement

(c) [*intentionally omitted*]

(d) [*intentionally omitted*]

(e) Non-Foreign Affidavit. A duly executed original affidavit as to Seller's non-foreign status.

(f) Authority. Such evidence as may be reasonably required as to the authority of the person or persons executing documents on behalf of Seller.

(g) Affidavits. Executed affidavits and indemnifications in form and substance reasonably satisfactory to the Buyer regarding mechanics' and materialmen's liens and parties in possession sufficient to eliminate any title insurance exceptions for these matters with respect to the Property.

(h) Additional Documents. Such other documents, including without limitation settlement statements and escrow instructions, as are required of Seller to close in accordance with this Agreement and local conveyancing practice.

11.2.2. Buyer's Deposits. Buyer shall deliver to Seller the following:

(a) Cash Balance. The Cash Balance;

(b) Equity Portion. A duly executed copy of the Ownership LLC Agreement reflecting issuance of the Equity Portion of the Consideration.

(c) Closing Costs. Additional cash in the amount necessary to pay Buyer's share of closing costs, as set forth in Section 12.2.; and

(d) Additional Documents. Such other documents, including without limitation authority documents, settlement statements and escrow instructions, as are required of Buyer to close in accordance with this Agreement and local conveyancing practice.

Section 11.3. Use of Purchase Price to Clear Title. To enable Seller to make conveyance as herein provided, Seller may, at the Closing, use the Purchase Price or any portion thereof to clear title of any or all encumbrances or interests so long as Seller has obtained and furnished to Buyer at or prior to the Closing a recordable release of each such encumbrance or interest or (in the case of an institutional mortgage or other security interest) written commitment from the holder thereof to provide such release upon receipt of a sum certain.

Section 11.4. Closing Statement. The parties shall execute and deliver a Closing and Proration Statement confirming the funds flow and prorations required under Article XII hereof.

## ARTICLE XII Closing Costs, Prorations

Section 12.1. Seller's Costs. Seller shall pay (a) ½ of the transfer taxes payable upon recordation of the Deed and (b) the costs necessary to discharge Seller's obligations under this Agreement.

Section 12.2. Buyer's Costs. Buyer shall pay (a) ½ of transfer taxes; (b) the cost of the Preliminary Title Report; (c) all title insurance premiums; (d) the cost of recording the Deed; and (e) all other costs required in order to close in accordance with this Agreement (except as specified in Section 12.1).

Section 12.3. Prorations. Taxes (including any business and license taxes and any other state, county or municipal assessments), utility and fuel bills and other customarily-adjusted operating expenses shall be prorated as of the Closing Date and added to or subtracted from (as the case may be) the Cash Balance. All charges accruing prior to the Closing Date shall be the obligation of Seller and all charges accruing on or after the Closing Date shall be the obligation of Buyer. If the amount of such taxes is not known on the Closing Date, such taxes shall be prorated on the basis of taxes assessed for the preceding fiscal period, subject to reapportionment as soon as the new tax rate and valuation can be ascertained. In the event of any abatement of such taxes subsequent to the apportionment thereof, the amount of such abatement, less the reasonable cost of obtaining the same, shall be prorated as of the Closing Date.

## ARTICLE XIII

### Notices

Section 13.1. Notices. All notices required or permitted to be given hereunder shall be in writing and sent by a recognized overnight courier service offering confirmation of delivery to the appropriate address indicated below or at such other place or places as either Buyer or Seller may, from time to time, respectively, designate in a written notice given to the other:

To Buyer: Fathom CC, LLC  
183 Middle Street, Suite 21  
Portland, ME 04101  
Attn: James H Brady, Manager

With a copy to: Christopher E. Howard, Esq.  
Pierce Atwood LLP  
254 Commercial Street  
Portland, Maine 04101

To Seller: North River IV, LLC  
224 12<sup>th</sup> Avenue  
New York, New York 10001  
Attention: Christopher H. Pachios, Manager

With a copy to: Michael L. Lane, Esq.  
Preti, Flaherty, Beliveau & Pachios LLP  
One City Center  
Portland, Maine 04101

## ARTICLE XIV

### Additional Commitments

Section 14.1. Parking Commitment. Seller or its Affiliate shall lease parking spaces proximate to the Project (together with related access) to Buyer as follows (“Parking Lease”):

(a) Up to 75 parking spaces at market rate specific to the space utilization for a term of ten (10) years, with the right to extend for up to two (2) additional 10-year terms, at Buyer’s option. Buyer shall have the option to adjust the number of parking spaces included in the lease between the minimum and maximum specified above on semi-annual basis (for the periods November 1<sup>st</sup> through April 30<sup>th</sup> and May 1<sup>st</sup> through October 31<sup>st</sup> ) with written notice to be provided by Buyer to Seller not less than 90 days prior to the commencement of each semi-annual period. In the absence of notice the previously specified number of spaces shall carry over for the ensuing semi-annual period.

(b) “Overnight Parking Spaces” to be agreed upon by Buyer and Seller with such agreement to be set forth in the Parking Lease.

(c) Seller, or its Affiliate, intends to construct a parking garage as part of the Master Development provided Seller, or its Affiliate, shall have no obligation to do so. In the event a parking garage is constructed, the parking spaces may be relocated to the parking garage, with appropriate adjustment in market rent. The location of parking spaces in the parking garage shall be specified in the Parking Lease.

(d) Provided a parking garage is built as part of the Master Development by Seller or its affiliates, Buyer and Seller may discuss possible purchase and sale of spaces, but purchase and sale is not a condition to the transaction contemplated hereby.

Section 14.2. Lay-Down Space. In the event Seller does not elect to build a parking garage adjacent to the Real Property contemporaneously with Buyer's construction of the Project, then Seller shall provide Buyer with access to and right to use the lay-down space shown in Exhibit D hereto for Project construction, at Buyer's expense, which shall be based on a market rate for displaced surface parking. A license to use the lay-down area will be executed and delivered at Closing ("Construction License"). If the Construction License is not finalized in a form reasonably acceptable to Buyer on or before the expiration of the Due Diligence Period, then Buyer may terminate this Agreement by giving Seller written notice thereof on or before the expiration of the Due Diligence Period, in which event the Deposit will be refunded to Buyer and this Agreement shall terminate and the parties shall have no further obligations of any nature whatsoever hereunder. Buyer and Seller agree to exercise reasonable good faith efforts to agree on any adjustments required in the lay-down space to accommodate the needs of both parties in the development of the Project and the Master Development. In the event the Seller elects to construct a parking garage contemporaneously with the construction of the Project, then Seller shall have no obligation to grant the Construction License; however the Seller and Buyer will exercise reasonable good faith efforts to coordinate construction and accommodate the needs of space needs of both parties with respect to contemporaneous construction of the Project and the parking garage.

Section 14.3. Repurchase Option. Buyer shall grant to Seller an option to repurchase the Property (the "Repurchase Option") in the event the Buyer has not closed on the senior construction debt financing required to construct the Project ("Project Construction Financing") within thirty-six (36) months following Closing (the "Financing Period"). The Repurchase Option shall expire upon the earlier of (i) Buyer closing on the Project Construction Financing or (ii) if not previously exercised, twelve (12) months following the expiration of the Financing Period. The basic terms of the Repurchase Option are as follows:

(a) Seller may exercise the Repurchase Option by providing Buyer written notice of exercise at any time following the expiration of the Financing Period and prior to expiration of the Repurchase Option.

(b) The Repurchase Option price purchase price for the Property ("Repurchase Option Price") shall be an amount equal to the Purchase Price.

(c) Buyer agrees that it will not encumber the Property or permit the Property to be encumbered by any leases, contracts, liens, mortgages, attachments, covenants, restrictions

or easements prior to the expiration of the Repurchase Option. Nevertheless, Seller and Buyer agree to apply such portion of the Repurchase Option Price as may be required to obtain a release and discharge of any and all liens and encumbrances encumbering the Property, and such amounts shall be paid as a disbursement at closing of the Repurchase Option.

(d) The closing of the Repurchase Option shall occur at such date and time as is specified in the notice of exercise provided by Seller to Buyer under subsection (a) above. At closing of the Repurchase Option, Buyer agrees to convey the Property to Seller in the same fashion, by the same form of deed, subject only to the same Encumbrances and in the same condition as conveyed to Buyer by Seller at Closing hereunder. The closing of the Repurchase Option shall be subject to the same adjustments, pro rations and closing cost allocations as applicable to the Closing hereunder, and at the closing of the Repurchase Option the parties shall execute and deliver to one another the same forms of affidavits and certificates as are required for the Closing hereunder.

Section 14.4. Recordation. The form of Deed, the easements referred to in Exhibit A, the Parking Lease, the Construction License and the Repurchase Option will be memorialized in in form and substance acceptable to both Seller and Buyer, to be executed and delivered by the parties at Closing (“Commitments”). If the Commitments are not finalized in a form reasonably acceptable to Buyer on or before the expiration of the Due Diligence Period, then Buyer may terminate this Agreement by giving Seller written notice thereof on or before the expiration of the Due Diligence Period, in which event the Deposit will be refunded to Buyer and this Agreement shall terminate and the parties shall have no further obligations of any nature whatsoever hereunder. The Commitments shall survive the Closing and shall be memorialized in a written agreement in recordable form that will be executed and delivered by Buyer and Seller at Closing.

## ARTICLE XV Miscellaneous Provisions

Section 15.1. Attorneys’ Fees. If any suit or action be instituted to enforce the rights of either party under this Agreement, the prevailing party shall be entitled to reasonable attorneys’ fees and court costs.

Section 15.2. Further Assurances. Whenever reasonably requested to do so by the other party, Seller and Buyer shall execute, acknowledge, and deliver any and all such further conveyances, assignments, confirmations, satisfactions, releases, instruments of further assurance, approvals, consents and any and all such further instruments and documents as may be necessary in order to complete any and all conveyances, transfers, sales and assignments herein provided, and to do any and all other acts and to execute, acknowledge and deliver any and all documents as so requested in order to carry out the intent and purpose of this Agreement.

Section 15.3. Buyer’s Right to Assign. Buyer shall have no right, power, or authority to assign this Agreement, or any portion hereof, or to delegate any duties or obligations arising hereunder, either voluntarily, involuntarily or by operation of law, without the prior written



consent of Seller, it being expressly understood and agreed that such consent may be withheld or denied in Seller's sole and absolute discretion and bear all costs incurred by Seller in the preparation or review of any assignment agreement. Notwithstanding the foregoing, Buyer may, by written notice to Seller prior to the Closing Date, designate a nominee controlled by Buyer to take title to the Property.

Section 15.4. Successors and Assigns. Without waiver of the terms and conditions of Section 15.3, all of the rights, benefits, duties, liabilities, and obligations of the parties hereto shall inure to the benefit of, and be binding upon, their respective successors and assigns.

Section 15.5. Acceptance of Deed. The acceptance of the Deed by Buyer or its nominee, as the case may be, shall be deemed to be a full performance and discharge of every agreement, obligation and liability of Seller herein contained or expressed or derived herefrom, except as provided for in Section 7.3 and Article VIII, by the express terms thereof, are to be performed or remain in effect after the Closing as provided for in Section 7.3 and Article VIII.

Section 15.6. Time. Time is of the essence of this Agreement and of every provision herein contained.

Section 15.7. Headings. The title and headings of the Sections hereof are intended solely for means of reference and are not intended to modify, explain or place any construction on any of the provisions of this Agreement.

Section 15.8. Modification. This Agreement may not be modified, amended or otherwise changed in any manner except by a writing mutually executed by both parties. To the extent there is any conflict between the terms and conditions of this Agreement and the terms and conditions of any other documents relating to the acquisition of the Property as they relate to rights and obligations between Buyer and Seller, the terms and conditions of this Agreement shall be deemed controlling.

Section 15.9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maine.

Section 15.10. Nonrecourse. Buyer agrees to look solely to the Property and Seller in connection with this Agreement, and further agrees that the individual partners, directors, officers, shareholders, employees, agents, members, managers, trustees, beneficiaries and other principals of Seller shall not be liable under or with respect to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

FATHOM CC, LLC:

By: JAB  
Its: Manager  
title (duly-authorized)

NORTH RIVER IV, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
title (duly-authorized)

ESCROW AGENT: OLD REPUBLIC NATIONAL  
TITLE INSURANCE COMPANY

By: \_\_\_\_\_  
Its: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

FATHOM CC, LLC:

By: JIB  
Its: Manager  
title (duly-authorized)

NORTH RIVER IV, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
title (duly-authorized)

ESCROW AGENT: OLD REPUBLIC NATIONAL  
TITLE INSURANCE COMPANY

By: Michael P. Gowdy  
Its: Counsel

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

FATHOM CC, LLC:

By: \_\_\_\_\_

Its: \_\_\_\_\_  
title (duly-authorized)

NORTH RIVER IV, LLC

By: Christopher S. Flagg  
**CHRISTOPHER S. FLAGG**

Its: PRESIDENT  
title (duly-authorized)

ESCROW AGENT: OLD REPUBLIC NATIONAL  
TITLE INSURANCE COMPANY

By: \_\_\_\_\_

Its:

## EXHIBIT A

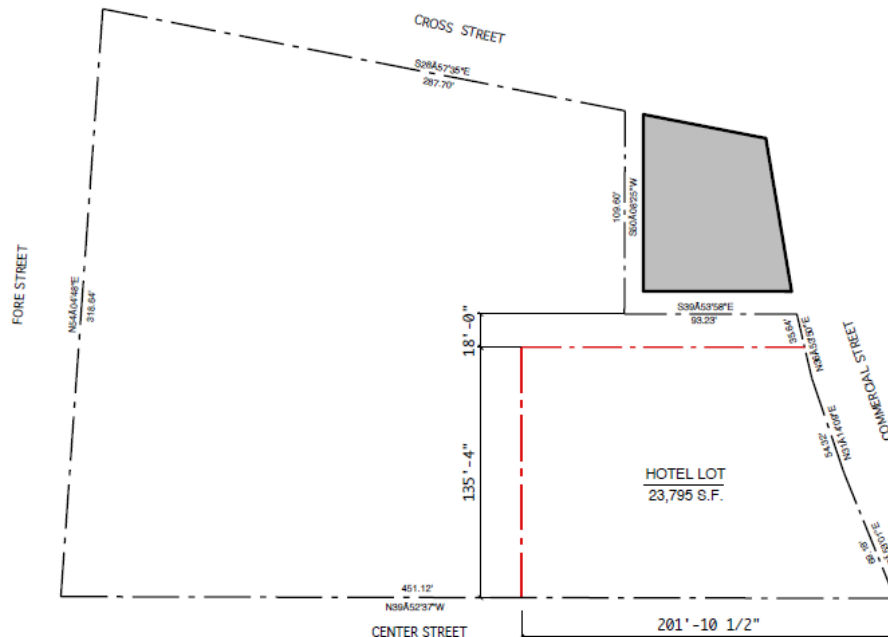
### DESCRIPTION OF REAL PROPERTY

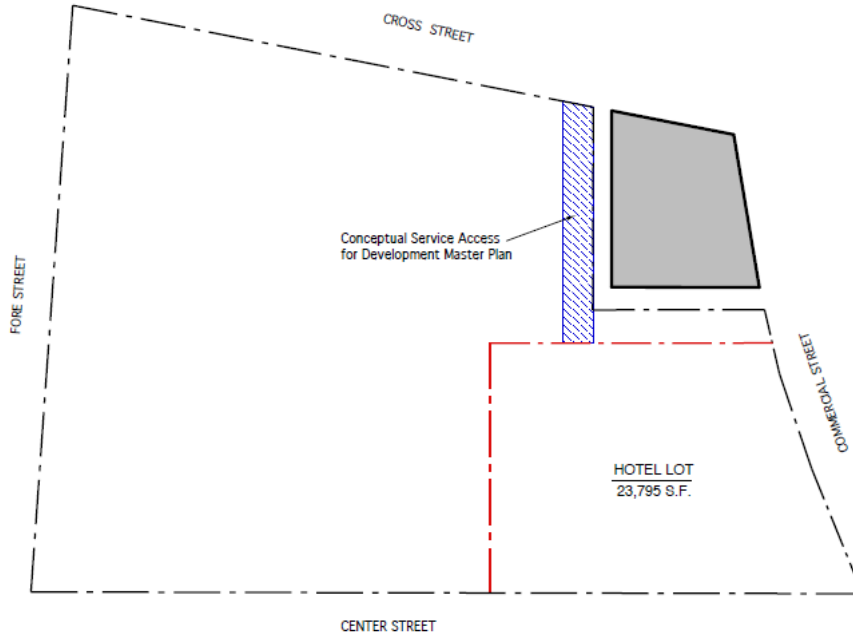
The attached 2-page plan depicts the Real Property, which consists of a 23,795 square feet portion of Seller's property located at the corner of Commercial Street and Center Street in Portland, Maine. The areas shown on the plan are further described as follows:

- The area labeled "Hotel Lot 23,795SF" the depicts the area to be conveyed in fee to Buyer.
- The cross-hatched area on page 2 of the plan labeled "Conceptual Service Access for Development Master Plan" extending from Cross Street to the Site Area depicts the location of an access easement for use in common with Seller as the hotel's service entrance for deliveries, waste removal and employee entry, with an appropriate easement to be granted to Buyer in the deed to the Site Area.
- The Real Property will include footing/foundation easements for Buyer's hotel development and will reserve to Seller footing/foundation easements under the Real Property for footing/foundation easements for Seller's Master Development.

Real Property description is to be formalized by ALTA/ACSM Land Title Survey as provided in Section 6.4.5 of the Agreement.

Plan attached





WINTON SCOTT  
ARCHITECTS, PA  
5 Milk Street  
Portland, Maine 04101  
207 774 4811

EXHIBIT 2:  
SERVICE ACCESS PLAN  
Scale: 1"=50'

A2  
July 18, 2018