

## CONTRACT FOR PURCHASE AND SALE OF REAL ESTATE

THIS CONTRACT FOR PURCHASE AND SALE OF REAL ESTATE (the "Contract") is made and entered into by and between MacDermot LLC, a Maine limited liability company with an address of 201 U.S. Route One #303, Scarborough, Maine 04074 (the "Seller") and Pomeroy Realty, LLC, or its assigns or nominee, whose address is 156 Barstow Road, Gorham, Maine 04038 ("Buyer") (Seller and Buyer may be referred to herein singularly as a "Party" or collectively as the "Parties"), effective as of the Effective Date (as defined below).

### ARTICLE I DEFINED TERMS AND EXHIBITS

- 1.1 This Contract uses the following terms as defined below:
- a. "Closing" means the consummation of the purchase of the Property by Buyer from Seller in accordance with the terms and provisions of this Contract.
  - b. "Closing Date" means the day of the Closing as defined in Section 9.1.
  - c. "Earnest Money" means the portion of the Purchase Price deposited by the Buyer in escrow with the Escrow Agent, as hereinafter defined, at the time and in the amounts specified in Section 3.3 hereof.
  - d. "Effective Date" means the date the last Party has fully executed copy of this Contract.
  - e. "Escrow Agent" means Kevin McQuinn, Lux Realty Group, P.O. Box 7444, Portland, Maine 04112.
  - f. "Financing Period" means the period commencing with the Effective Date and ending forty-five (45) days therefrom as further described in Section 7.1(e).
  - g. "Hazardous Materials" means any flammable explosives, radioactive materials, hazardous material, hazardous waste, hazardous or toxic substances or related materials as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9.601 et. seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 18.01 et. seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 69.01 et. seq.) and in the regulations adopted in publications promulgated pursuant thereto, and all asbestos (friable or non-friable), petroleum derivatives, polychlorinated biphenyls, flammable substances and materials defined as hazardous materials under any federal, state or local laws, ordinances, codes, rules, orders, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling,

production or disposal thereof.

- h. "Inspection Period" means the period commencing with the Effective Date and ending sixty (60) days therefrom as further described in Section 7.1(d).
- i. "Permitted Encumbrances" means those exceptions or conditions as are approved or deemed to be approved by Buyer under Section 4.1.
- j. "Property" means all of Seller's right, title and interest in a certain tract of land, with buildings and improvements thereon, located at 117 Auburn Street, Portland, Maine, identified by the City of Portland Tax Assessor as Tax Map 375-C-39, and more particularly described in a deed from MacDermot Parking Company, LLC to MacDermot, LLC dated May 8, 2008 and recorded in the Cumberland County Registry of Deeds in Book 26056, Page 43, together with a two story concrete block building containing approximately 10,380 square feet of office and clinic space configured as set forth on Exhibit A, together with (i) all and singular the rights and appurtenances pertaining to such real estate, including any right, title and interest of Seller in and to the adjacent streets, alleys, rights-of-way, strips or gores of land, improvements, fixtures, and/or personal property situated thereon and attached thereto, including all water, wastewater, storm water, drainage or other similar utility capacity rights allocable to the Property; (ii) the non-exclusive right to use certain access over an abutting parcel for ingress and egress; (iii) the exclusive right to use the parking area located on the Property, and (iv) the non-exclusive right to use in common with others certain parking areas located adjacent to said Property.
- k. "Purchase Price" means the total consideration to be paid by Buyer to Seller for the purchase of the Property under Section 3.1.
- l. "Title Commitment" means the Commitment for Title Insurance issued by the Title Company covering the Property Section 4.1.
- m. "Title Company" means the title insurance company selected by the Buyer to issue the Title Commitment and the Title Policy.
- n. "Title Policy" means the Owner's Policy of Title Insurance issued by the Title Company under Section 4.1.

## ARTICLE II AGREEMENT OF PURCHASE AND SALE

2.1 The Property. Upon the terms and conditions of this Contract and in consideration of the respective covenants, warranties and representations contained herein, Seller agrees to sell and convey to Buyer the Property, all appurtenances relating thereto,

including all water, wastewater, storm water, drainage or other similar utility capacity rights allocable to the Property, and Buyer hereby agrees to buy and take the Property and the appurtenances from Seller.

### ARTICLE III PURCHASE PRICE

3.1 The Purchase Price. The total amount to be paid by Buyer to Seller for the Property and all appurtenances thereto shall be and shall be referred to as the "Purchase Price."

3.2 Payment of Purchase Price. The Purchase Price shall be payable to Seller on the Closing Date in cash, bank cashier's check or certified check, or by wire transfer of funds.

3.3 Earnest Money. Within five (5) days after the Execution Date, Buyer will deposit the sum of \_\_\_\_\_ with Escrow Agent as Earnest Money to be held by the Escrow Agent in escrow for the Property. Buyer and Seller agree to hold Escrow Agent harmless from damages, losses or expenses arising out of this Contract. In the event of Seller's non-acceptance, this earnest money shall be promptly returned to Buyer. If the purchase and sale hereunder is consummated in accordance with the terms and provisions of this Contract, the entire Earnest Money shall be applied by the Escrow Agent as partial payment of the Purchase Price due at the Closing. In all other events, the Earnest Money shall be disposed of by the Escrow Agent as provided herein.

### ARTICLE IV TITLE AND SURVEY

4.1 Title Commitment. Buyer, at Buyer's cost, shall have the right to obtain the following: (i) an ALTA Form B Owner's Title Insurance Commitment covering the Property issued by a reputable title insurance company pursuant to which the title company agrees to issue to Buyer, at Closing, an owner's policy of title insurance in the amount of the purchase price, consistent with the Commitment; and (ii) a current boundary or ALTA/ACSM Land Title survey of the Property, showing all improvements, easements and matters referenced on the Title Insurance Commitment, certified to Buyer, its counsel, and the Title Company (the "Survey"). If Buyer shall have any objection(s) with respect to the status of title to the Property as reflected in the Commitment and/or the Survey which render title unmarketable or which would interfere with Buyer's intended use of the Property, Buyer may notify Seller of such objections on or before the expiration of the Inspection Period (as hereinafter defined) (the "Buyer's Title Objection Notice"). Any matters shown in the Commitment and Survey to which Buyer does not timely object, except as otherwise provided herein, shall be deemed "Permitted Encumbrances". In the event the Commitment or the Survey reflects any defect or title condition to which Buyer timely objects, then Seller shall be required to use its commercially reasonable efforts to cause all such defects and title conditions to be cured no later than the date which is sixty (60) days following receipt of Buyer's Title Objection Notice ("Seller's Title Cure Period"), it being understood that Seller shall not be obligated to institute litigation in connection with same. Notwithstanding anything to the contrary contained in this Contract, Buyer need not object to and Seller shall, on or before the Closing Date, remove or

satisfy (1) judgments against Seller, and (2) other monetary liens (including any mortgages, deeds of trust, mechanic's, materialmen's or vendor's liens with respect to the Property and any real estate tax liens (including improvement district and special taxing district liens) other than liens for ad valorem taxes and assessments not yet due and payable (collectively, "Monetary Liens"), none of which shall be deemed Permitted Encumbrances.

4.2 Seller's Failure to Perfect Title or Make Property Conform. In the event that Seller, exercising commercially reasonable efforts, does not eliminate all such defects and title conditions as of the expiration of Seller's Title Cure Period, Buyer shall have the option of either: (i) accepting the title "as is", without reduction in the Purchase Price and without claim against Seller therefor, or (ii) terminating this Contract by delivery of written notice thereof to Seller no later than ten (10) days following the expiration of Seller's Title Cure Period, in which event the Escrow Agent shall return the Earnest Money to Buyer, whereupon both parties shall be released from all further obligations under this Contract, unless otherwise specifically set forth herein.

4.3 Buyer's Election to Accept Title. If, during the pendency of this Contract, the Property or any portion thereof shall be taken by any right of eminent domain, or if, during the pendency of this Contract, the Property shall suffer a casualty which has an adverse effect on the Buyer's intended use of the Property, then, in either such event, Buyer may terminate this Contract upon 10 days' prior written notice to Seller, and Escrow Agent shall promptly return the Earnest Money to Buyer. If this Contract shall be so terminated, then the parties shall have no further recourse against one another. The Buyer shall also have the election, at Closing to accept such title as the Seller can deliver to the said Property in their then condition and to pay therefore the Purchase Price without deduction, in which case the Seller shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the said Property shall have been damaged by casualty insured against, then the Seller shall, unless the Seller has previously restored the Property to their former condition, either:

- a. pay over or assign to the Buyer, on delivery of the deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by the Seller for any partial restoration, or
- b. if a holder of a mortgage on said Property shall not permit the insurance proceeds or a part thereof to be used to restore the said Property to their former condition or to be so paid over or assigned, give to the Buyer a credit against the Purchase Price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage less any amounts reasonably expended by the Seller for any partial restoration.

Upon conveyance of the Property to Buyer, Seller shall also pay over or assign to Buyer any award or claim arising out of any eminent domain taking.

## ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLER

5.1 To the best of Seller's knowledge, Seller represents, warrants, covenants and agrees with Buyer that as of the Effective Date and as of the Closing Date:

a. Seller has and shall have the full right, power and authority to convey the Property to Buyer as provided in this Contract and to carry out its obligations hereunder, and that all required action by the Seller to enter into this Contract and to carry out its obligations hereunder has been, or upon Closing will have been, taken.

b. Seller has received no notice and has no current actual knowledge of condemnation or contemplated condemnation proceedings affecting the Property or any part thereof by any other entity with eminent domain authority.

c. There is no litigation or threatened litigation affecting Seller or the Property that would in any way constitute a lien, claim or obligation of any kind against the Property. Seller will have at the time of Closing good and indefeasible title in fee simple to the Property, free and clear of all encroachments, liens, encumbrances, covenants, conditions, restrictions, rights-of-way, easements and other matters affecting title, except for the Permitted Encumbrances and such liens and security interests that will be released at or before Closing.

d. No person, firm or entity, except as set forth in this Contract, has any rights in the Property or right to acquire the Property, or any part thereof.

e. Seller has not received any notice and has no current actual knowledge of any claims for unpaid bills for work performed on or materials delivered to the Property that though not then the subject of, might provide the basis of a mechanic's and materialmen's or other lien on the Property.

f. Seller has no current actual knowledge of any environmental, civil (including actions by private parties), criminal, administrative, or other proceedings pending against the Property or any judgments or orders entered against Seller or the Property or any property in the immediate vicinity of the Property relating to the use, generation, manufacture, storage or disposal of any Hazardous Material on, in or under the Property. Seller has no current actual knowledge of any failure to comply with any applicable local, state and federal environmental laws, regulations, ordinances and administrative and judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport and disposal of any Hazardous Material located on the Property.

g. This Contract and the sale of the Property will not cause to be imposed on the Buyer any liability to withhold any amount pursuant to § 1445 of the Internal Revenue Code (and the implementing regulations).

h. Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to and affecting the Property, and performance of this Contract will not result in any breach of, or constitute any default under, or result in any

imposition of any lien or encumbrance upon the Property or any agreement or other instrument to which Seller is a party, or by which Seller, or the Property might be bound.

i. Seller has not claimed any special use tax exemption for the Property. In any event Seller shall be responsible for any and all taxes, fees, or assessments assessed against the Property for periods of time prior to the date of closing due to changes in land usage or ownership. Buyer hereby agrees to notify Seller before taking action with respect to matters covered by this paragraph and agrees to notify Seller of receipt of any notices regarding the matters covered under this paragraph.

#### ARTICLE VI EXPRESS COVENANTS OF SELLER

6.1 Between the date hereof and the Closing, Seller expressly covenants and agrees that

a. Within five (5) days following the Effective Date, Seller shall deliver to Buyer copies, if any, of all engineering, environmental or wetlands studies or reports relating to the Property, all site plans or other surveys of the Property, and all other agreements, warranties or guaranties relating to the Property, all of which are provided by Seller without warranty or representation as to accuracy or completeness.

b. Seller shall obtain certification and approval from the City of Portland Planning Office that the Property is properly zoned for Buyer's intended use of the Property as medical office / clinic.

c. Seller shall obtain written certification from licensed professionals that i) the roof of the Property is in good condition and free of leaks, ii) the HVAC serving the second floor of the Property is in good working condition, and iii) the elevator serving the Property is in good working condition.

d. Seller shall obtain written confirmation and acknowledgment from adjacent lot owners that the Property is benefited by the exclusive use of parking spaces on lot(s) adjacent to the Property.

e. Seller shall not commit waste of the Property.

f. Seller shall give to Buyer immediate written notice of the institution of or receipt of notice of any litigation or threatened litigation affecting the Property which would in any way constitute or have the effect of presently or in the future creating a lien, claim or obligation of any kind against the Property.

g. Seller shall give Buyer immediate notice upon the occurrence of any event, or

receipt of any notice, which might give rise to a breach by Seller of any of its representations or warranties set forth in Article 5 above.

h. Seller shall not impose, nor permit to be imposed upon the Property, any new or additional encumbrances to title and shall discharge, or cause to be discharged, any claims of lien or liens imposed upon the Property on or prior to Closing.

i. Seller shall vacate the Property and terminate all existing tenancies, leases or rights to occupy any portion of the Property and cause all tenants, lessees or parties in occupancy of the Property to vacate the Property and to remove any and all property located thereon, on or prior to the Closing Date.

j. From the Effective Date until Closing, Seller shall: (i) maintain the Property in the same manner as Seller has heretofore done and (ii) not, without the prior written consent of Buyer, enter into any agreement or instrument or take any action that would encumber the Property after Closing, that would bind Buyer or the Property after Closing, or that would be outside the normal scope of maintaining the Property and (iii) promptly furnish Buyer with a copy of all notices of violation of laws or municipal ordinances, regulations, orders or requirements of any state, city or municipal departments or other governmental authorities having jurisdiction over the Property.

## ARTICLE VII CONDITIONS PRECEDENT TO BUYER'S PERFORMANCE

7.1 Buyer shall not be obligated to perform under this Contract unless:

a. Closing Documents. Seller shall have provided to Buyer at Closing, each of the documents required pursuant to Section 9.2(a) hereof, in form and content mutually satisfactory to Buyer and Seller.

b. Seller's Warranties, Representations and Covenants. Each of Seller's warranties and representations set forth in Article V hereof are true and correct as of the Effective Date, and remain true as of the Closing Date. Furthermore, as of Closing, Seller shall have performed all its covenants as set forth in Article VI hereof.

c. No Condemnation. On the Closing Date, no portion of the Property shall have been condemned or sold under threat of condemnation, or is subject to any proceedings for condemnation by any other entity with eminent domain authority.

d. Buyer's Investigation. Within the Inspection Period Buyer, in its sole discretion, has determined that the Property is suitable for the Buyer's intended use. From and after the Effective Date and until the Closing, Buyer and its agents, servants, employees and representatives shall have the right, from time to time, at Buyer's sole expense and risk and in

such manner as Buyer may reasonably determine, to enter upon the Property to make or cause to be made engineering studies, surveys, test borings, and such other inspections, investigations, tests, analyses, and studies of the Property as Buyer, in its sole discretion, may deem necessary or desirable. If any environmental assessment obtained by the Buyer with respect to the Property reveals any present or past generation, storage, handling, transportation and/or disposal of any Hazardous Materials on the Property, or recommends further or additional testing or inspection of the Property, the Inspection Period shall, without limiting Buyer's termination right provided in this Section 7.1(d), automatically be extended for an additional thirty (30) days. The provisions of this Section 7.1(d) may only be waived, wholly or in part, by the Buyer, in a specific written waiver executed and delivered by the Buyer to Seller. If, prior to 5:00 p.m. on the day of the expiration of the Inspection Period, Buyer determines in its sole and absolute discretion, that the Property is unacceptable to Buyer for any reason or no reason, including, without limitation, unsatisfactory soil conditions, environmental conditions, parking conditions, zoning conditions, or engineering or other mechanical and structural conditions, Buyer shall have the unconditional right to give notice to Seller electing to terminate the Contract, and, in that event, this Contract shall terminate, Seller irrevocably authorizes the Escrow Agent to immediately deliver the Earnest Money to Buyer, and neither party shall have any further rights or obligations each to the other under this Contract except for those that expressly survive. Seller shall not be entitled to and is hereby estopped from objecting to the determination of the Buyer with respect to its evaluation as set forth in this Section 7.1(d). Seller acknowledges that Buyer's investigation of the Premises is solely for Buyer's benefit and shall not limit or reduce the representations and warranties made by Seller hereunder.

e. Buyer's Financing. Within the Financing Period Buyer shall have obtained a conventional loan (the "Loan") for the purchase of the Property on terms and conditions acceptable to the Buyer, in Buyer's sole discretion. If Buyer cannot obtain final approval of the Loan within the Financing Period, Buyer shall provide Seller with written notice within said time period of Buyer's inability to obtain the Loan and this Contract shall be terminated, the Earnest Money returned to Buyer, and neither party shall have any further obligations under this Contract. It shall be a further condition of Buyer's obligations hereunder that the Loan commitment shall not lapse, be terminated and/or withdrawn prior to the Closing for any reason whatsoever (other than at the request of Buyer). In the event the Loan commitment shall lapse, be terminated and/or withdrawn by Buyer's lender for any reason (other than at the request of Purchaser) at any time prior to closing, Buyer shall within Seven (7) days of Buyer's receipt of notice of lapse, termination and/or withdrawal notify Seller of same, and upon such notification Buyer may, at Buyer's option, elect to terminate this Contract and receive back the Earnest Money. The provisions of this Section 7.1(e) may only be waived, wholly or in part, by the Buyer, in a specific written waiver executed and delivered by the Buyer to Seller. If, prior to 5:00 p.m. on the day of the expiration of the Financing Period, Buyer determines that it is unable to obtain the Loan on terms and conditions acceptable to the Buyer, in Buyer's sole discretion, Buyer shall have the unconditional right to give notice to



Seller electing to terminate this Contract, and, in that event, this Contract shall terminate, Seller irrevocably authorizes the Escrow Agent to immediately deliver the Earnest Money to Buyer, and neither party shall have any further rights or obligations each to the other under this Contract except for those that expressly survive. Seller shall not be entitled to and is hereby estopped from objecting to the determination of the Buyer with respect to its evaluation of the terms and conditions of the Loan as set forth in this Section 7.1(e).

f. Seller shall have provided to the Buyer, prior to Closing, written certification and approval from the City of Portland Planning Office that the Property is properly zoned for Buyer's intended use of the Property as professional office in accordance with Seller's covenants as set forth in Article VI(b) hereof.

g. Seller shall have provided to the Buyer, prior to Closing, written certification from licensed professionals that that i) the roof of the Property is in good condition and free of leaks, ii) the HVAC serving the second floor of the Property is in good working condition, and iii) the elevator serving the Property is in good working condition, all in accordance with Seller's covenants as set forth in Article VI(c) hereof.

h. Seller shall have provided to the Buyer, prior to Closing, written confirmation and acknowledgment from adjacent lot owners that the Property is benefited by the exclusive use of parking spaces on lot(s) adjacent to the Property in accordance with Seller's covenants as set forth in Article VI(d) hereof.

Buyer, at Buyer's sole option, may elect to waive, in whole or in part, any of the conditions to Buyer's obligations set forth in this Article VII (f), (g), or (h) by delivery of written notice to Seller of its election to so waive any such conditions on or before Closing. If the conditions set forth in this Article VII (f), (g), or (h) have not been satisfied or waived, in whole or in part, on or prior to Closing or if, at any time, Buyer, in its sole and absolute discretion shall have determined that any of the conditions set forth in this Article VII (f), (g), or (h) will not be satisfied, or will be satisfied but on terms unacceptable to Buyer, Buyer shall have the right (i) to terminate the Contract by giving written notice thereof to Seller, whereupon the Escrow Agent shall deliver the Earnest Money to the Buyer, and thereafter the parties shall be released of all further obligations each to the other under the Contract, except as herein provided, or (ii) proceed to Closing, whereby the condition(s) not otherwise satisfied shall be deemed waived; provided, however, in the event the failure of any of the foregoing conditions is a result of a default of Seller, including, without limitation, a breach by Seller of any of the covenants, representations and warranties of Seller hereunder, then Buyer shall have the additional remedies provided in Article X(b) of this Contract.

#### ARTICLE VIII CONDITIONS PRECEDENT TO SELLER'S PERFORMANCE

8.1 Purchase Price. Seller shall not be obligated to perform under this Contract

unless Buyer shall have paid the total purchase price and delivered the other items listed in Section 9.2 (b).

## ARTICLE IX CLOSING

9.1 Date and Place of Closing. The Closing hereunder shall take place in the offices of the Escrow Agent, or at such other place as Seller and Buyer may mutually agree. Unless extended by mutual agreement, the Closing Date shall be thirty (30) days after the expiration of the Inspection Period.

9.2 Items to be Delivered at the Closing.

a. Seller. At the Closing, Seller shall deliver to Buyer or its assignees, at Seller's cost and expense, the following items:

- i. a Warranty Deed in accordance with the Short Form Deeds Act, 33 M.R.S.A. §§ 761 et seq, duly executed and acknowledged by Seller, conveying good and indefeasible fee simple title to the Property to Buyer, subject only to the Permitted Exceptions.
- ii. an affidavit executed by Seller satisfactory to evidence that Buyer will not be required to withhold any tax and that no withholding liability exists as of the Closing under Section 1445 of the Internal Revenue Code (and the implementing regulations) or under 36 M.R.S.A. § 5250-A.
- iii. a written notice, pursuant to 38 M.R.S.A. § 563(6), which notice shall certify to the best of Seller's knowledge that either (i) that there is no underground oil storage facility located on the Property, or (ii) if there is such a facility on the Property, that the facility exists and shall disclose its registration number or numbers, the exact location of the facility, whether or not it has been abandoned in place, and that the facility is subject to regulation by the Board of Environmental Protection.
- iv. written certification and approval from the City of Portland Planning Office that the Property is properly zoned for Buyer's intended use of the Property as professional office.
- v. written certification from licensed professionals that i) the roof of the Property is in good condition and free of leaks, ii) the HVAC serving the second floor of the Property is in good working condition, and iii)

the elevator serving the Property is in good working condition.

- vi. written confirmation and acknowledgment from adjacent lot owners that the Property is benefited by the exclusive use of parking spaces on lot(s) adjacent to the Property; and
  - vii. all additional documents and instruments the Title Company may require in order to issue the Title Policy or which Buyer's counsel and Seller or Seller's counsel may mutually reasonably determine are necessary to the proper consummation of this transaction.
- b. Buyer. At the Closing, Buyer shall deliver to the Seller each of the following items:
- i. the total Purchase Price; and
  - ii. all additional documents and instruments the Title Company may require in order to issue the Title Policy or which Buyer's counsel and Seller or Seller's counsel may mutually reasonably determine are necessary to the proper consummation of this transaction.

9.3 Adjustments at Closing. All normal and customarily proratable items, including real estate taxes, water, sewer, utilities, and fuel, shall be prorated as of the Closing Date, Seller being charged and credited for all of same up to such date and Buyer being charged and credited for all of same on and after such date. If the actual amounts to be prorated are not known as of the Closing Date, the prorations shall be made on the basis of the best evidence then available, and thereafter, when actual figures are received, a cash settlement will be made between Seller and Buyer. The provisions of this Section 9.3 shall survive the Closing.

9.4 Possession and Closing. Possession of the Property shall be delivered to Buyer by Seller at the Closing.

9.5 Costs of Closing. Seller agrees to pay:

- a. One-half ( $\frac{1}{2}$ ) of the Maine real estate transfer tax in accordance with 36 M.R.S.A. § 4641-A;
- b. Seller's attorneys' fees; and
- c. all charges incurred by Seller for the procurement, preparation and recording of any releases, waivers, or other instruments required to clear Seller's title to the Property in

accordance with the provisions hereof.

Buyer agrees to pay:

- a. The cost of any tests or inspections performed on the Property;
- b. The cost of any Survey on the Property if elected under Section 4.1;
- c. the premium for issuance of the Title Policy required under Section 4.1;
- d. Fee for recording the deed;
- e. One-half (½) of the Maine real estate transfer tax in accordance with 36 M.R.S.A. § 4641-A; and
- f. Buyer's attorneys' fees;

All other costs, fees, penalties and other expenses incurred at the Closing shall be paid by Seller and/or Buyer as is customarily done in connection with a closing of the type of transaction contemplated by this Contract.

#### **ARTICLE X DEFAULTS AND REMEDIES**

##### 10.1 Seller's Defaults; Buyer's Remedies.

a. Seller's Defaults. Seller shall be deemed to be in default hereunder if Seller shall fail to meet, comply with or perform any material covenant, agreement or obligation on its part required under this Contract or any warranty or representation shall become untrue when made or deemed to be made.

b. Buyer's Remedies. In the event Seller shall be deemed to be in default hereunder, Buyer, at Buyer's option and as its sole and exclusive remedies: (i) shall be entitled to terminate this Contract whereupon Buyer shall be entitled to an immediate refund of the Earnest Money, and the parties hereto shall have no further obligations to one another hereunder, or (ii) may pursue all available remedies at law or in equity, including the remedy of specific performance of this Contract. No failure on the part of Buyer to exercise, and no delay in exercising, any right under this section shall not operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

##### 10.2 Buyer's Defaults; Seller's Remedies.

a. Buyer's Default. Buyer shall be deemed to be in default hereunder if Buyer

shall fail to meet, comply with or perform any material covenant, agreement or obligation on its part required under this Contract.

b. Seller's Remedy. In the event Buyer shall be deemed to be in default hereunder, Seller shall, as its sole and exclusive remedy, be entitled to terminate this Contract and request that the Escrow Agent deliver the Earnest Money to Seller (on receipt of written notice from Seller that Buyer has defaulted). Such notice to the Escrow Agent need not be accompanied by any other document or consent of any other party, it being agreed between Buyer and Seller that the Earnest Money shall be liquidated damages for a default of Buyer hereunder because of the difficulty, inconvenience, and uncertainty of ascertaining actual damages for such default. It is further agreed that the liquidated damages provided for herein represent a reasonable forecast of Seller's full and complete damages, considering all the circumstances existing as of the date of this Contract.

## ARTICLE XI MISCELLANEOUS

11.1 References. All references to "Article", "Articles", "Section", or "Sections" contained herein are, unless specifically indicated otherwise, references to Articles and Sections of this Contract.

11.2 Exhibits. References to "Exhibits" contained herein, if any, are references to exhibits attached hereto, all of which are made a part hereof for all purposes.

11.3 Captions. The captions, headings and arrangements used in this Contract are for convenience only and do not in any way affect, limit, amplify or modify the terms and provisions hereof.

11.4 Number and Gender of Words. Whenever herein the singular number is used, the same shall include the plural where appropriate and words of any gender shall include each other gender where appropriate.

11.5 Notices. Any notice required or permitted to be given under this Contract shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by telecopy or electronic mail. Buyer's and Seller's respective addresses for purposes of this Contract, and to which all notices required hereunder shall be sent, are as follows:

(a) If to Seller:

MacDermot LLC  
Attention: Michael Cloutier, Member  
201 U.S. Route One #303

Scarborough, Maine 04074  
E-Mail: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile No. \_\_\_\_\_

With a copy to:

Andre G. Duchette, Esq.  
Taylor, McCormack & Frame, LLC  
30 Milk St., 5th Floor  
Portland, ME 04101

(b) If to Buyer:

Pomeroy Realty, LLC  
156 Barstow Road  
Gorham, Maine 04038  
E-Mail:gpome40@hotmail.com  
Phone: (207) 329-6223

With a copy to:

Robert E. Danielson, Esq.  
Law Offices of Robert E. Danielson  
65 West Commercial Street, Suite 106  
P.O. Box 545  
Portland, Maine 04112-0545  
E-Mail:rdanielson@optlaw.net  
Phone: (207) 879-1337  
Facsimile No.: (207) 879-1557

Any notice so addressed and sent by United States mail or overnight courier shall be deemed to be given on the earliest of (1) when actually delivered, (2) on the first business day after deposit with an overnight air courier service, or (3) on the third business day after deposit in the United States mail, postage prepaid, in each case to the foregoing address of the intended addressee. Any notice so delivered in person shall be deemed to be given when receipted for by, or actually received by Seller or Buyer, as the case may be. If given by telecopy, a notice shall be deemed given and received when the telecopy is transmitted to the party's telecopy number specified above and confirmation of complete receipt is received by the transmitting party between the hours of 8:00 a.m. and 6:00 p.m. Eastern Time on a business day or on the next business day if not confirmed during such business hours. If given by electronic mail, a notice shall be deemed given and received when the electronic mail is transmitted to the

notice shall be deemed given and received when the electronic mail is transmitted to the recipient's electronic mail address specified above. Either party may designate a change of address by written notice to the other by giving at least ten (10) days prior written notice of such change of address. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given or received by counsel to the Buyer shall be deemed given or received by Buyer and notices given or received by counsel to the Seller shall be deemed given or received by Seller.

11.6 Governing Law and Venue. This Contract is being executed and delivered and is intended to be performed in the State of Maine, and the laws of such State shall govern the validity, construction, enforcement and interpretation of this Contract, unless otherwise specified herein. Venue for any legal proceeding relating to this Contract shall be Maine Superior Court, Cumberland County.

11.7 Entirety and Amendments. This Contract embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Property and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

11.8 Invalid Provisions. If any provision of this Contract is held to be illegal, invalid, or unenforceable under present or future laws, such provisions shall be fully severable the same as if such invalid or unenforceable provisions had never comprised a part of the Contract; and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Contract. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be automatically as a part of this Contract, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable. Notwithstanding anything to the contrary contained herein, if any condition precedent to Buyer's or Seller's obligations hereunder is held to be illegal, invalid or unenforceable under present or future laws, then Buyer or Seller may terminate this Contract by written notice delivered to the other party and, thereafter, the parties hereto shall have no further obligations or liabilities hereunder, one to the other.

11.9 Multiple Counterparts. This Contract may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Contract, it shall not be necessary to produce or account for more than one such counterpart.

11.10 Parties Bound. This Contract shall be binding upon and inure to the benefit of Seller and Buyer and their respective heirs, personal representatives, successors and assigns.

11.11 Risk of Loss. Risk of loss or damage to the Property or any part thereof by fire or any other casualty from the Execution Date up to the time of delivering the Warranty Deed

transferring title to the Property to Buyer will be on Seller and thereafter will be on Buyer.

11.12 Further Acts. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by Seller to Buyer, Seller and Buyer agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered at the Closing or after the Closing any and all such further acts, deeds and assurances as may be necessary to consummate the transactions contemplated hereby.

11.13 Time of the Essence. It is expressly agreed by the parties hereto that time is of the essence with respect to this Contract. If the final day of any period of any date of performance under this Contract falls on a Saturday, Sunday or legal holiday, then the final day of said period or the date of performance shall be extended to the next business day thereafter.

11.14 Real Estate Brokerage. The Parties each represent and warrant to the other that there are no real estate brokers, salesmen or finders involved in this transaction other than Kevin McQuinn, Lux Realty Group, representing Seller (the "Broker"). Seller agrees to pay upon Closing (but not otherwise), a brokerage commission to Broker pursuant to a separate agreement for services rendered in connection with the sale and purchase of the Property. Said commission shall in no event be earned, due or payable unless and until the transaction contemplated hereby is closed and fully consummated strictly in accordance with the terms of this Contract and Seller has received the Purchase Price in immediately available funds and Buyer has accepted and recorded the deed; if such transaction is not closed and fully consummated for any reason, including, without limitation, failure of title or default by Seller or Buyer or termination of this Contract pursuant to the terms hereof, then such commission will be deemed not to have been earned and shall not be due or payable. If a claim for brokerage in connection with the transaction is made by any broker, salesman or finder other than Broker, claiming to have dealt through or on behalf of one of the Parties hereto ("Indemnitor"), Indemnitor shall indemnify, defend and hold harmless the other Party hereunder ("Indemnitee"), and Indemnitee's officers, directors, agents and representatives, from all liabilities, damages, claims, costs, fees and expenses whatsoever (including reasonable attorney's fees and court costs at trial and all appellate levels) with respect to said claim for brokerage. The provisions of this Section shall survive the Closing and any cancellation or termination of this Contract.

11.15 Survival. All covenants and agreements contained herein and intended to be performed subsequent to any Closing hereunder shall survive the execution and delivery of the deed and other closing documents required hereby and shall specifically not be deemed to be merged into or waived by any instrument of Closing, but shall expressly survive and be binding upon Seller and Buyer. Any liability of Seller for misrepresentation or breach of warranty contained herein shall survive the execution and delivery of the deed and other closing documents required hereby, shall specifically not be deemed to be merged into or waived by any instrument of Closing, and such liability shall expressly survive and be binding upon Seller.



IN WITNESS WHEREOF, the undersigned have executed this Contract as of the day and year first above set forth.

**[Remainder of Page Left Intentionally Blank]**

**[Signatures on Next Page]**

SELLER: MACDERMOT LLC

By: 

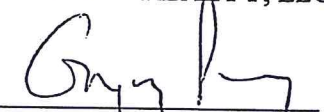
Print Name: Michael Cloutier

Its: Member

Date: 2-1-17


\_\_\_\_\_  
Witness

BUYER: POMEROY REALTY, LLC

By: 

Gregory C. Pomeroy, Member

Date: 1/18/17

  
Witness

The Undersigned Escrow Agent acknowledges receipt of an original execute copy of this Contract either together with or subsequent to Buyer's Earnest Money in the amount of \_\_\_\_\_ on the \_\_\_ day of \_\_\_\_\_, 2017. Escrow Agent certifies that the Effective Date of this is as set forth below:

Effective Date: \_\_\_\_\_, 2017.

ESCROW AGENT:

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

Print Name: \_\_\_\_\_

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

  
Witness