



## RESOLUTION

**AUTHORIZING THE ACQUISITION OF PROPERTY AT 30 LEDGE STREET, TAX MAP 85, LOT 65, FOR A PURCHASE PRICE NOT TO EXCEED ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$175,000)**

### *CITY OF NASHUA*

*In the Year Two Thousand and Ten*

**RESOLVED** by the Board of Aldermen of the City of Nashua that the Mayor is authorized to enter into a Purchase and Sale Agreement, in substantially the same form as the attached Purchase and Sale Agreement and Addendum, with Bayview Loan Servicing, LLC, to purchase the property at 30 Ledge Street (Tax Map 85, Lot 65). The purchase price of said land and buildings shall not exceed One Hundred Seventy-five Thousand Dollars (\$175,000) to be paid from Special Revenue Account 374-7304 "Neighborhood Stabilization Program".

**LEGISLATIVE YEAR 2010**

**RESOLUTION:** R-10-44

**PURPOSE:** Authorizing the acquisition of property at 30 Ledge Street, Tax Map 85, Lot 65, for a purchase price not to exceed One Hundred Seventy-five Thousand Dollars (\$175,000)

**ENDORSER(S):** Mayor Donnalee Lozeau

**COMMITTEE  
ASSIGNMENT:**

**FISCAL NOTE:** The fiscal impact of this legislation includes the acquisition cost of the property not to exceed \$175,000. Anticipated future costs would include demolishing the building and site preparation for the property to become part of a city park. Those costs are not known at this time.

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**ANALYSIS**

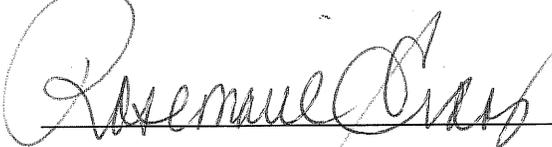
This resolution would authorize the city to acquire the property at 30 Ledge Street for a sum not to exceed \$175,000 on terms and conditions substantially the same as the attached Purchase and Sale Agreement and Addendum. Funds for the purchase will come from Special Revenue Account 374-7304 "Neighborhood Stabilization Program". If this purchase is approved, city administration will request this property be designated as a city park.

Charter §77 provides that the planning board shall review and make recommendations to the mayor and board of aldermen on the purchase and sale of any land by the city.

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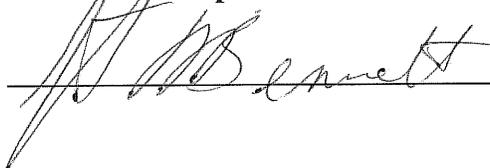
**Approved as to account  
structure, numbers and  
amount:**

**Financial Services Division**

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

**Approved as to form:**

**Office of Corporation Counsel**

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

**Date: July 9, 2010**

**PURCHASE AND SALE AGREEMENT AND DEPOSIT RECEIPT**

**1. THIS AGREEMENT** made this 29th day of June, 2010 between **Bayview Loan Servicing, LLC** ("SELLER") of 4425 Pone De Leon Blvd 5<sup>th</sup> FL , Coral Gables, State of Florida, Zip 33146, and The City of Nashua, New Hampshire ("BUYER") of 229 Main Street, City of Nashua, County of Hillsborough, State of New Hampshire, Zip 03060.

**2. WITNESSETH:** That SELLER agrees to sell and convey, and BUYER agrees to purchase, for the purchase price and subject to every one of the terms and conditions hereafter set forth, the real property located in City of Nashua, New Hampshire, known as or more particularly described as **30 Ledge Street, Nashua NH Building and land known as** Tax Map 85, Lot 65, inclusive of all the buildings, structures and other improvements of every kind and description now in, on, over and under the land and recorded in the Hillsborough County Registry of Deeds as Book 8177 Page 123 on February 5, 2010 (collectively referred to as the "PROPERTY").

**3. The PURCHASE PRICE** is One Hundred Seventy-Five Thousand and no/100.

DEPOSIT, receipt of which is hereby acknowledged in the form of Check, is to be held in an escrow account by Flegal Law Offices ("ESCROW AGENT"), in the sum of \$1,000.

ADDITIONAL DEPOSIT will be paid on or before \_\_\_\_\_, in the sum of \$0 \_\_\_\_\_ and to be held by ESCROW AGENT.

Initial Deposit and Additional Deposits shall be applied to the Purchase Price, unless otherwise described in Section 16.

Cash, Certified Check, Bank Draft or Wire Transfer payable to Seller on the date of transfer of title in the sum of \$174,000.00.

Provided, nonetheless, the Balance Due shall be net (whether plus or minus) of any prorations set forth within Section 10 of this Agreement, as applicable.

**4. DEED:** Marketable title shall be conveyed by a warranty deed, and shall be free and clear of all encumbrances except usual public utilities serving the PROPERTY, encumbrances noted herein, and encumbrances acceptable to BUYER.

**5. TRANSFER OF TITLE:** On or before July 30, 2010 at City Hall or some other place of mutual consent as agreed to in writing, time being of the essence ("CLOSING").

**6. POSSESSION:** Full possession and occupancy of the premises with all keys shall be given upon the transfer of title free of all occupants and occupant's personal property and encumbrances except as herein stated.

Exceptions and/or Additional Property included: None

**7. MAINTENANCE:** Until possession is delivered, SELLER agrees to maintain the PROPERTY in good condition and working order with the PROPERTY to be then in the same conditions of the date of this Agreement, reasonable wear and tear accepted. The City understands that the building is in a partially demolished condition and may, at no fault of the seller, continue to deteriorate despite the best efforts of the BUYER to prevent such deterioration.

**8. TITLE:** Buyer shall have 30 calendar days to examine title from the effective date. If upon examination of title it is found that the title is not marketable or contains matters of record not previously disclosed to the BUYER, SELLER shall have a reasonable time, not to exceed thirty (30) days from the date of notification of defect (unless otherwise agreed to in writing), to remedy such defect. Should SELLER be unable to provide marketable title within said thirty (30) days, BUYER may rescind this Agreement at BUYER'S sole option, with full deposit being refunded to BUYER pursuant to RSA 331-A and all parties being released from any further obligations hereunder. SELLER hereby agrees to make a good faith effort to correct the title defect within the thirty (30) day period above prescribed once notification of such defect is received, except with respect to any monetary liens which BUYER may pay-off and remedy at the CLOSING. The cost of examination of the title shall be borne by BUYER.

**9. PRORATIONS:** All income earned but not received, all expenses incurred but not paid out, all income received but not earned, all expenses paid out but not incurred, all real estate taxes, and fuel in storage as of the date of transfer of title, shall be apportioned, as appropriate, between the SELLER and the BUYER as of the date of transfer of title.

**10. ACCESS TO THE PROPERTY:** Seller agrees to allow Buyer or Buyer's representative access to the Property to conduct any necessary investigations, tests, and/or studies. Seller also acknowledges that Buyer's representatives may perform construction renovations to reinforce the building structure prior to Transfer of Title. Any constructions renovations performed by Buyer will be at Buyer's cost and expense.

**11. FINANCING:** This agreement is not contingent upon BUYER obtaining financing except as provided in this section and in section 12. The City of Nashua is acquiring the properties with funds from HUD's Neighborhood Stabilization Program (NSP). This program requires that the acquisition cost is at minimum 1% below the appraised value. The City is in the process of getting a written appraisal and this offer is contingent on the appraisal being at minimum 1% greater than \$175,000.00.

**12. ADDITIONAL PROVISIONS:**

- The property meets the NH CDFA property eligibility requirements for NSP funding;
- Satisfactory completion of the environmental review and historic review;
- City receives the written appraisal reflecting the same value as the verbal appraisal;
- Approval of purchase by the Board of Aldermen;
- Buyer may rescind this agreement if the Buyer is not satisfied, at its sole discretion, with any of the results from the investigations, test, and/or studies performed.

**13. ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties relating to the subject thereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement.

**14. GOVERNING LAW.** This Agreement shall be construed by and in accordance with the laws of the State of New Hampshire, excluding its choice of law rules or rulings.

**15. EFFECTIVE DATE:** This is a binding contract and the effective date is when signed and dated, whether by electronic transfer or original, and all changes initialed and dated, by SELLER and BUYER. Each party is to receive a fully executed duplicate original of this Agreement. This Agreement shall be binding upon the heirs and/or other authorized representatives of both parties.

This is a legal instrument. If not understood, legal, tax or other counsel should be consulted before signing.

BUYER: City of Nashua, New Hampshire

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

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

Hereunto Duly Authorized

\_\_\_\_\_  
Date

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SELLER: Bayview Loan Servicing, LLC

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

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

Hereunto Duly Authorized

\_\_\_\_\_  
Date

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**IB PROPERTY HOLDINGS, LLC**

**ADDENDUM "A"**  
**FIRST ADDENDUM TO CONTRACT**

**IB PROPERTY HOLDINGS**  
**ASSET NUMBER:** \_\_\_\_\_

**Seller:** \_\_\_\_\_ **Buyer(s):** \_\_\_\_\_

Street Address: \_\_\_\_\_ City/State: \_\_\_\_\_

In the event any provision of this First Addendum To Contract dated \_\_\_\_\_ ("First Addendum") conflicts in whole or in part with any of the terms of the contract between Buyer and Seller, as identified therein, ("the Contract"), the provisions of this First Addendum will control. Buyer shall neither assign its rights nor delegate its obligations hereunder without obtaining Seller's prior written consent, which may be withheld in Seller's sole discretion. In no event shall any assignment relieve Buyer from its obligations under this Contract. Any other purported or attempted assignment or delegation without obtaining Seller's prior written consent shall be void and of no effect.

**BUYER AND SELLER AGREE AS FOLLOWS:**

(A) **NO REPRESENTATION OR WARRANTIES: PROPERTY SOLD "AS IS."** Buyer acknowledges and understands that the Property (Property is herein defined to be the property and improvements, if any, which are the subject of the Contract) is being sold as-is, and with all faults. Buyer further acknowledges and understands that the Property was acquired by the Seller through a foreclosure action or loan liquidation procedure, and, therefore, the Seller was not an owner-occupant and its information concerning the Property and its condition is limited. Buyer is hereby informed that Seller is unaware of any latent defects in the Property or any appurtenant systems, including but not limited to plumbing, heating, air conditioning and electrical systems, fixtures, appliances, roof, sewers, septic, soil conditions, foundation, structural integrity, environmental condition, pool or related equipment. Seller makes no representations or warranties as to any of the above, the condition of the Property, the Property's systems, the serviceability or fitness for a particular use of the Property, or any component of the Property. Buyer agrees that in contracting to buy the Property, Buyer has not relied upon any representation or warranty made by the Seller, any parent, subsidiary or affiliate thereof, or any of its officers, directors, employees, agents or representatives. Buyer has been afforded the opportunity to undertake its own investigations and inspections of the Property.

(B) **PURCHASE PRICE.** Sale Price to be \$\_\_\_\_\_, Earnest Money Deposit to be \$\_\_\_\_\_ at the signing of contract and an additional deposit of \$\_\_\_\_\_ upon the removal of all inspection contingencies at which time all deposit monies are considered to be non-refundable, with the exception of the financing contingency, if applicable. Time is of the essence with reference to the payment(s) of all escrow deposits. Balance of the purchase price in the amount of \$\_\_\_\_\_ to be paid by wire transfer of readily available funds at closing.

(C) FINANCING CONTINGENCY. (PLEASE INITIAL ONLY ONE PARAGRAPH, AS APPLICABLE)

(1) / *Sale Contingent on Mortgage Financing*

(a) This contract is subject to the condition that on or before \_\_\_\_\_, Buyer shall secure, or there shall be available to Buyer, a written commitment for a loan to be secured by a mortgage or deed of trust on the property in the amount of \$ \_\_\_\_\_, or such lesser sum as Buyer accepts.

(b) If, after the Buyer has submitted a true loan application and otherwise made every reasonable effort to procure a loan commitment from any source made available to Buyer within five (5) days from the date hereof and the Buyer has been unable to do so, and after serving written notice thereof upon Seller within one (1) business day of the time specified in subsection (C)(1)(a) above for securing such commitment, this Contract shall become null and void, and all moneys paid by Buyer hereunder shall be refunded. In the event Buyer does not serve notice of Buyer's failure to procure said loan commitment upon Seller as herein provided, then this contract shall continue in full force and effect without any loan contingencies.

(c) Buyer shall, at Buyer's expense, execute all documents necessary to procure a mortgage loan from any source. Any delays caused by Buyer's Lender shall not constitute a default by Seller.

(d) Mortgage interest rates, lender fees, and discount points vary with financial institutions and the marketplace on a daily basis. The Buyer has the right to select the Lender and the right to negotiate the financial terms and conditions of the loan. This may be subject to Seller's approval and/or Lender's requirements.

(2) / *All Cash Transaction.* This is an all-cash sale and purchase, and is NOT contingent upon Buyer's obtaining Financing for the purchase of the Property regardless of any mortgage loan application made by the Buyer to any lending institution. Buyer understands and agrees that neither delivery of a commitment for a mortgage loan from any lending institution nor the Buyer's acceptance of such a commitment will in any way be a condition of Buyer's obligation under this Contract. Buyer represents to Seller that Buyer has sufficient readily available funds to complete the purchase of the Property.

(D) CLOSING COSTS. Buyer agrees to pay all allowable closing costs on behalf of the Seller and Buyer, including the cost of a lender's title insurance policy, if applicable. Buyer understands that Buyer may also have to pay certain pre-payable expenses, including, but not limited to, adjustments for short-term interest, taxes, water and sewer charges, insurance, MIP or PMI. Buyer understands that if Buyer obtains an FHA or PMI mortgage, the MIP or PMI premium will be added to the mortgage amount and increase their monthly payment. Buyer shall also pay for the following: \_\_\_\_\_

(E) **INSPECTIONS.** Buyer, at Buyer's sole cost and expense, and after Seller's written acceptance of this offer, shall have the opportunity to inspect the Property including, but not limited to, environmental, asbestos, radon gas, lead paint, physical defects including structural defects, roof, basement, mechanical systems such as heating and air conditioning, electrical systems, sewage and septic systems, plumbing, exterior site drainage, termite and other types of pest and insect infestation or damage caused by such infestation, and review and/or order a boundary survey. If Buyer does not give to Seller written notice of cancellation, for any reason Buyer deems appropriate, within seven (7) calendar days of acceptance of this offer as outlined in paragraph (R), Buyer shall conclusively be deemed to have: (1) completed all inspections, investigations, review of applicable documents and disclosures and removed all contingencies; (2) elected to proceed with the transaction; and (3) assumed all liability, responsibility, and expense for repairs or corrections other than for items which Seller has otherwise agreed in writing to repair or correct. If Buyer objects to the condition of the Property within the specified time period, Buyer, as their sole option, may terminate this contract and neither party shall have any further obligations hereto. As a condition to termination under the inspection period, Buyer agrees to submit to Seller any and all written reports as to such inspections within three (3) calendar days following the expiration of the inspection period, after which time Seller will immediately refund the earnest money deposit.

(F) **REPAIRS.** The Property is being sold "as-is" and any repairs to the Property identified by Buyer or which may be any required by any lending institution to which Buyer may have applied ("Repairs") shall be the responsibility of the Buyer. The Seller will be under no obligation whatsoever to make any Repairs to the Property. Buyer agrees not to enter the Property prior to Closing for the purpose of making any repairs or alterations without Seller's express written consent.

(G) **LIQUIDATED DAMAGES-DEPOSIT.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE CONTRACT, IF BUYER HAS NOT TERMINATED THE CONTRACT AND IF THE SALE OF THE PROPERTY TO BUYER HAS NOT BEEN CONSUMMATED FOR ANY REASON OTHER THAN SELLER'S DEFAULT UNDER THE CONTRACT, SELLER SHALL BE ENTITLED TO RETAIN THE DEPOSIT AS SELLER'S LIQUIDATED DAMAGES. THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO ASCERTAIN THE ACTUAL DAMAGES SUFFERED BY SELLER AS A RESULT OF BUYER'S FAILURE TO COMPLETE THE PURCHASE OF THE PROPERTY PURSUANT TO THE CONTRACT, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THE CONTRACT, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION REPRESENTS A REASONABLE ESTIMATE OF THE DAMAGES WHICH SELLER WILL INCUR AS A RESULT OF SUCH FAILURE, PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT LIMIT SELLER'S RIGHT TO RECEIVE REIMBURSEMENT FOR ATTORNEY'S FEES, NOR WAIVE OR AFFECT SELLER'S RIGHT AND BUYER'S INDEMNITY OBLIGATIONS UNDER OTHER SECTIONS OF THE CONTRACT. THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER. NOTWITHSTANDING THE FOREGOING, IF BUYER INTERFERES WITH OR MAKES ANY ATTEMPTS TO INTERFERE WITH SELLER RECEIVING OR RETAINING, AS THE CASE MAY BE, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION, INCLUDING WITHOUT LIMITATION, GIVING ANY NOTICE OR INSTRUCTION TO ESCROW HOLDER NOT TO DELIVER THE DEPOSIT TO SELLER, SELLER SHALL HAVE THE RIGHT TO ELECT TO RECOVER THE GREATER OF ITS ACTUAL DAMAGES OR THE LIQUIDATED DAMAGES BY GIVING WRITTEN NOTICE TO BUYER, AND SELLER SHALL HAVE ALL OTHER RIGHTS AND REMEDIES AGAINST BUYER PROVIDED AT LAW AND IN EQUITY. THE PARTIES HAVE SET FORTH THEIR INITIALS BELOW TO INDICATE THEIR AGREEMENT WITH THE DAMAGES PROVISION CONTAINED IN THIS SECTION.

\_\_\_\_\_  
SELLER'S INITIALS

\_\_\_\_\_  
BUYER'S INITIALS

(1) **No Specific Performance.** As material consideration to Seller's entering into the Contract with Buyer, Buyer expressly waives the (a) remedy of specific performance on account of Seller's default under the Contract, and (b) any right otherwise to record or file a *lis pendens* or a notice of pendency of action or similar notice against all or any portion of this Property.

(2) **No Contesting Liquidated Damages.** As material consideration to each party's agreement to the liquidated damages provisions stated above, each party hereby agrees to waive any and all rights, whatsoever to contest the validity of the liquidated damage provisions for any reason whatsoever, including, but not limited to, that such provision was unreasonable under circumstances existing at the time the Contract was made.

(H) **SELLERS CLOSING COSTS AND BROKERAGE COMMISSION. (APPLICABLE ONLY IF COMPLETED)** If necessary to complete a transaction, Seller will make the following contributions if the Property is single-family residential: (1) \$\_\_\_\_\_ to Buyers non-recurring closing costs and discount points; (2) \$\_\_\_\_\_ as a credit to Buyers at closing for a Buyer to purchase Home Protection Plan; (3) \$\_\_\_\_\_ maximum of Buyer's Non-allowable FHA/VA costs; and (4) \$\_\_\_\_\_ towards termite report. Any amount over Seller's contribution under this Section (1) or (2) are to be at the expense of the Buyer. Seller will pay a maximum commission of \$\_\_\_\_\_ or \_\_\_\_\_% to be split between Broker and Co-Broker, if applicable. The total commission earned will be based on a percentage of the Sales Price.

(I) **TRANSFER OF TITLE.** Seller will transfer title by means of a special or limited warranty deed, or an equivalent thereof (the "Deed"), which will warrant against acts of the grantor only. The acceptance of the Deed by the Buyer will be deemed to constitute full compliance by the Seller with all of the terms and conditions of the Contract and this First Addendum. None of the provisions of the Contract or the First Addendum will survive the delivery of the Deed.

(J) **INSURANCE POLICIES.** Seller's insurance policies are not transferable, and will not be prorated at Closing.

(K) **TITLE DEFECTS.** Seller shall have a minimum of thirty (30) days from the date upon which Seller receives a copy of a title insurance commitment or a title report within which to resolve any title exceptions or defects or other title issues which in any way impede or impair Seller's ability to convey title as required herein. If, within such thirty (30) day period, Seller determines that it is unable or unwilling, at its sole discretion, to resolve such matters then the Buyer (1) may take title in its then existing state, thereby waiving any title objections, or (2) terminate the Contract and receive a refund of any deposit as Buyer's sole and exclusive remedy. Seller's exercise of its right hereunder shall not require further notice thereof to the Buyer. In the event Seller fails to resolve such issues within the aforesaid thirty (30) day period, it shall be presumed that Seller has determined that it is unable or unwilling to resolve such issues

(L) **( )/( ) LEAD-BASED PAINT CONTINGENCY. (APPLICABLE IF INITIALED AND ONLY WITH REGARD TO SINGLE FAMILY RESIDENTIAL PROPERTY)** Buyer's obligation to close this transaction is contingent upon Buyer conducting a risk assessment or inspection of the Property for the presence of lead-based paint and/or lead-based paint hazards, at the Buyer's sole cost and expense, on or before 5 PM EST/EDT on that date ten (10) days from the Execution or Effective Date (the "LBP Test Period"). Intact lead-based paint that is in good condition is not necessarily a hazard (see the EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the expiration of the LBP Test Period unless Buyer delivers to Seller written notice listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. Seller may, at Seller's sole discretion, within ten (10) days after delivery of the notice, elect in writing whether to correct the condition(s) prior to settlement. If Seller elects to correct the condition, Seller shall, upon completion of the correction(s), furnish to Buyer certification from a risk assessor or inspector demonstrating that the condition has been remedied. If Seller does not elect to make the repairs, or if Seller counter-offers, Buyer shall have five (5) days to respond to the counter-offer or remove this contingency and take the Property in "as is" condition or the Contract shall become void. Buyer may remove this contingency at any time without cause.

**(M) ( )/( ) WAIVER OF LEAD-BASED PAINT INSPECTION PERIOD; SELLER'S REPRESENTATION'S. (APPLICABLE IF INITIALED AND ONLY WITH REGARD TO SINGLE FAMILY RESIDENTIAL PROPERTY)**

Buyer acknowledges that it has had the opportunity to undertake studies, inspections or investigations of the Property as Buyer deemed necessary to evaluate the presence of lead-based paint and/or lead-based paint hazards on the Property. To the extent that Buyer has waived or otherwise declined the opportunity to undertake such inspections and investigations as a condition to the completion of the Closing under the terms of Paragraph (O), Buyer has knowingly and voluntarily done so. Buyer understands and acknowledges that the Property may have been built prior to 1978 and lead-based paint and/or lead-based paint hazards may be present on the Property. In accordance with Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, attached to this First Addendum as Exhibit "H" and made part hereof, Seller attaches the Disclosure of Information on Lead Based Paint and/or Lead-Based Paint Hazard Lead Warning Statement. Seller shall have no responsibility or liability with respect to any such occurrence of lead-based paint. It is understood by the parties that Seller does not make any representation or Warranty, express or implied, as to the accuracy or completeness of any information contained in Seller's files or in the documents produced by Seller or its agents, including, without limitation, any environmental audit or report. Buyer acknowledges that Seller and Seller's affiliates shall have no responsibility for the contents and accuracy of such disclosures, and Buyer agrees that the obligations of Seller in connection with the purchase of the Property shall be governed by the Contract irrespective of the contents of any such disclosures or the timing or delivery thereof.

**(N) CLOSING DATE/ TIME OF THE ESSENCE.** It is agreed that time is of the essence with respect to all dates specified in the Contract and any addenda, riders or amendments thereto. This means that all deadlines are intended to be strict and absolute. In the event Buyer fails to close on the scheduled closing date through no fault of the Seller, Seller may, in its discretion, agree to extend the closing date. In the event Seller agrees to extend the closing date, Buyer shall pay, in addition to the Sale Price, a (1) \$300.00 fee for the extension, and (2) a per diem penalty of \$100.00 (\$150.00 per diem if this is a cash offer or the property is commercial property) for each day that the closing day is extended. In addition, there shall be a per diem penalty of \$20.00 deducted from the selling Broker's commission for each day that the closing is extended beyond the scheduled closing date. For Sale Prices greater than or equal to \$200,000.00, the fees are as follows: (1) \$600.00 fee for the extension, and (2) a per diem penalty of \$200.00 (\$300.00 per diem if this is a cash offer or the property is a commercial property) for each day that the closing day is extended. . In addition, if the Sales Price is greater than or equal to \$200,000.00, there shall be a per diem penalty of \$40.00 deducted from the selling Broker's commission for each day that the closing is extended beyond the scheduled closing date.

Buyer assumes all liability in providing all necessary information to their Lender. Furthermore, Buyer shall instruct their Lender and attorney to work in conjunction with the brokers to ensure a timely close of escrow. The Broker and Co-Broker, if applicable, shall assume all responsibility for follow-up with the Buyer, any lender or mortgage representative involved in financing this transaction, and either party's attorney and/or title company to ensure that there is no delay in closing. Buyer will not be given possession, or may not occupy the premises prior to closing and disbursement of sale proceeds. Buyer shall be considered in default of the Contract in the event Buyer occupies or alters the Property or permits it to be altered unless provided for in the Contract.

**(O) TERMINATION OF CONTRACT.** In the event the Contract is terminated by Seller pursuant to any provision of the Contract, this First Addendum, any other addendum, or in the event Seller is otherwise unable to perform this Contract, Seller's sole liability to Buyer will be to return Buyer's deposit, at which time the Contract shall cease and terminate and Seller and Buyer shall have no further obligations, liabilities or responsibilities to one another.

**(P) REVIEW PERIOD.** Buyer and Seller agree that Seller shall require a forty-eight (48) hour review period for all closing documents, which shall commence upon Seller's receipt of same.

(Q) **SEVERABILITY.** If any provisions of this Addendum shall be prohibited by or invalid under applicable law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Addendum or the Sales Contract.

(R) **ACCEPTANCE OF OFFER.** Buyer is aware of the following: (1) Seller has reserved the right to make multiple counteroffers on this property; (2) Seller reserves the right to continue to offer the Property for sale until this offer has been formally accepted in writing; (3) acceptance of this offer or any counter-offers hereto is subject to Seller's Executive Committee's approval; (4) this offer shall expire on \_\_\_\_\_ at 5:00 PM EST/EDT. Any decision as to Buyer's acceptance of this offer shall be approved by Seller's Executive Committee on or before \_\_\_\_\_ at 5:00 PM EST/EDT. Seller's acceptance of another offer prior to Buyer's acceptance and communication of acceptance of this counter-offer to Seller or Seller's agent shall revoke this counter-offer. Communication of acceptance of this counter-offer must be received by Seller in writing prior to the expiration of the time frame specified above and may be in the form of a facsimile, e-mail, or hard copy via mail so long as receipt of delivery can be confirmed.

(S) **MISCELLANEOUS**

(1) ***Limitation of Damages.*** BUYER ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT SELLER SHALL UNDER NO CIRCUMSTANCE BE RESPONSIBLE TO BUYER FOR ANY AMOUNT OF DAMAGES IN EXCESS OF THE AMOUNT OF THE DEPOSIT, AND UNDER NO CIRCUMSTANCE SHALL SELLER BE RESPONSIBLE OR LIABLE FOR ANY SECONDARY, CONSEQUENTIAL, COMPENSATORY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES ASSOCIATED WITH THE INABILITY TO POSSESS THE RESIDENCE, UNINHABITABILITY, INCONVENIENCE OR LOSS OF TIME OR USE AS A RESULT OF DEFECTS. LIKEWISE, BUYER ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT SELLER WILL HAVE NO LIABILITY FOR ANY LOSS OR DAMAGE TO BUYER DUE TO ANY RADON GAS OR OTHER HAZARDOUS MATERIALS OR SUBSTANCES, WHETHER NATURAL OR ARTIFICIAL, WHICH MAY BE LOCATED WITHIN THE SOIL OR SUBSURFACE ROCK WITHIN THE LOT OR WITHIN ANY PART OF \_\_\_\_\_ (property legal description), ANY AND ALL OF WHICH ARE HEREBY WAIVED AND FORGIVEN BY BUYER TO SELLER, WHETHER THEY NOW EXIST OR HEREAFTER ARISE.

(2) ***Waiver of Jury Trial.*** BUYER WAIVES THE RIGHT TO A JURY TRIAL IN ANY ACTION OR PROCEEDING BASED UPON OR RELATED TO ANY ASPECT OF THE PROPERTY IN CONNECTION WITH THIS CONTRACT, ANY DOCUMENT EXECUTED OR DELIVERED IN CONNECTION WITH THIS PURCHASE OR FOR ANY OTHER CLAIM RELATING TO OR BETWEEN THE PARTIES TO THIS CONTRACT OF WHATSOEVER KIND OR NATURE, INCLUDING (WITHOUT LIMITING THE GENERALITY OF THE FOREGOING) ANY AND ALL CLAIMS ARISING FROM, RELATED TO OR IN CONNECTION WITH INJURIES SUSTAINED IN CONNECTION WITH THE PROPERTY. BUYER MAKES THIS WAIVER KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY AND BUYER ACKNOWLEDGES THAT NO ONE HAS MADE ANY REPRESENTATION OF FACT TO INDUCE BUYER TO MAKE THIS JURY TRIAL WAIVER OR IN ANY MANNER OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. BUYER FURTHER ACKNOWLEDGES HAVING HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL IN CONNECTION WITH THE TRANSACTION AND WITH RESPECT TO THIS CONTRACT AND IN THE MAKING OF THIS WAIVER SELECTED BY BUYER'S OWN FREE WILL AND THAT BUYER HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH SUCH COUNSEL. BUYER FURTHER ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE MEANING AND RAMIFICATIONS OF THIS JURY TRIAL WAIVER AND FULLY INTENDS THAT THIS WAIVER SHALL BE READ AS BROADLY AS POSSIBLE AND SHALL EXTEND TO ANY AND ALL CLAIMS, DISPUTES, CAUSES OF ACTION, IN CONNECTION WITH THE PROPERTY, ANY INJURY, DAMAGE, OR ANY OTHER CLAIM ARISING AS A RESULT OF THIS TRANSACTION, THE PURCHASE OF THE PROPERTY, OR ANY MATTER RELATED THERETO.

(3) **Binding Nature.** This Contract shall be binding upon the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and, as permitted hereunder, assigns.

(4) **Attorneys' Fees.** Subject to the limitation upon damages recoverable by Buyer as set forth hereinabove, the prevailing party in connection with any litigation arising out of this Contract shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees, which reasonable attorneys' fees shall include but not be limited to paralegal and legal assistant fees and those reasonable attorneys' fees incurred by such prevailing party for the services of such prevailing party's attorney(s) at all judicial levels.

(5) **No Recording.** Buyer agrees that neither this Contract nor any notice or memorandum hereof shall be recorded in the Public Records of County or State where the Property is located or any other public records. Any such recording by Buyer or anyone acting by, through or under Buyer shall constitute a material breach by Buyer of this Contract and shall entitle Seller to invoke the default provisions hereof.

(6) **Entire Agreement.** This Contract represents the entire agreement of the parties hereto and supersedes any and all agreements and understandings between the parties hereto, whether oral or written. No statement, representation or other inducement made prior hereto, whether written or oral, unless included as a part of this Contract, shall be of any force or effect or may be relied upon by Buyer.

**IB PROPERTY HOLDINGS, LLC**

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

Date: \_\_\_\_\_ Date: \_\_\_\_\_

Buyer: \_\_\_\_\_

Date: \_\_\_\_\_

Listing Broker: \_\_\_\_\_ Selling Broker: \_\_\_\_\_

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

Date: \_\_\_\_\_ Date: \_\_\_\_\_



## RESOLUTION

**AUTHORIZING THE ACQUISITION OF PROPERTY AT 47 PINE STREET, TAX MAP 85, LOT 61, FOR A PURCHASE PRICE NOT TO EXCEED SIXTY-FOUR THOUSAND DOLLARS (\$64,000)**

### *CITY OF NASHUA*

*In the Year Two Thousand and Ten*

**RESOLVED** by the Board of Aldermen of the City of Nashua that the Mayor is authorized to enter into a Purchase and Sale Agreement, in substantially the same form as the attached Purchase and Sale Agreement, with Alison Slater, to purchase the property at 47 Pine Street (Tax Map 85, Lot 61). The purchase price of said land and buildings shall not exceed Sixty-four Thousand Dollars (\$64,000) to be paid from Special Revenue Account 374-7304 "Neighborhood Stabilization Program".

**PURCHASE AND SALE AGREEMENT AND DEPOSIT RECEIPT**

**1. THIS AGREEMENT** made this 14<sup>th</sup> day of July, 2010 between 47 Pine Street, LLC, (“SELLER”) of 15 Colonial Ave, Nashua, NH, and The City of Nashua, New Hampshire (“BUYER”) of 229 Main Street, City of Nashua, County of Hillsborough, State of New Hampshire, Zip 03060.

**2. WITNESSETH:** That SELLER agrees to sell and convey, and BUYER agrees to purchase, for the purchase price and subject to every one of the terms and conditions hereafter set forth, the real property located in City of Nashua, New Hampshire, known as or more particularly described as **47 Pine Street , Nashua NH Building and land known as** Tax Map 85, Lot 61, inclusive of all the buildings, structures and other improvements of every kind and description now in, on, over and under the land and recorded in the Hillsborough County Registry of Deeds as Book 8163 Page 0475 on December 17, 2009 (collectively referred to as the “PROPERTY”).

**3. The PURCHASE PRICE** is Sixty Four Thousand and no/100.

DEPOSIT, receipt of which is hereby acknowledged in the form of Check, is to be held in an escrow account by Flegal Law Offices (“ESCROW AGENT”), in the sum of \$0.

ADDITIONAL DEPOSIT will be paid on or before August 11, 2010, in the sum of \$1000.00 and to be held by ESCROW AGENT.

Initial Deposit and Additional Deposits shall be applied to the Purchase Price, unless otherwise described in Section 16.

Cash, Certified Check, Bank Draft or Wire Transfer payable to Seller on the date of transfer of title in the sum of \$63,000.00.

Provided, nonetheless, the Balance Due shall be net (whether plus or minus) of any prorations set forth within Section 10 of this Agreement, as applicable.

**4. DEED:** Marketable title shall be conveyed by a warranty deed, and shall be free and clear of all encumbrances except usual public utilities serving the PROPERTY, encumbrances noted herein, and encumbrances acceptable to BUYER.

**5. TRANSFER OF TITLE:** On or before September 12, 2010 at City Hall or some other place of mutual consent as agreed to in writing, time being of the essence (“CLOSING”).

**6. POSSESSION:** Full possession and occupancy of the premises with all keys shall be given upon the transfer of title free of all occupants and occupant’s personal property and encumbrances except as herein stated.

Exceptions and/or Additional Property included: None

**7. MAINTENANCE:** Until possession is delivered, SELLER agrees to maintain the PROPERTY in good condition and working order with the PROPERTY to be then in the same conditions of the date of this Agreement, reasonable wear and tear accepted. The City understands that the building is in a partially demolished condition and may, at no fault of the seller, continue to deteriorate despite the best efforts of the BUYER to prevent such deterioration.

**8. TITLE:** Buyer shall have 30 calendar days to examine title from the effective date. If upon examination of title it is found that the title is not marketable or contains matters of record not previously disclosed to the BUYER, SELLER shall have a reasonable time, not to exceed thirty (30) days from the date of notification of defect (unless otherwise agreed to in writing), to remedy such defect. Should SELLER be unable to provide marketable title within said thirty (30) days, BUYER may rescind this Agreement at BUYER'S sole option, with full deposit being refunded to BUYER pursuant to RSA 331-A and all parties being released from any further obligations hereunder. SELLER hereby agrees to make a good faith effort to correct the title defect within the thirty (30) day period above prescribed once notification of such defect is received, except with respect to any monetary liens which BUYER may pay-off and remedy at the CLOSING. The cost of examination of the title shall be borne by BUYER.

**9. PRORATIONS:** All income earned but not received, all expenses incurred but not paid out, all income received but not earned, all expenses paid out but not incurred, all real estate taxes, and fuel in storage as of the date of transfer of title, shall be apportioned, as appropriate, between the SELLER and the BUYER as of the date of transfer of title.

**10. ACCESS TO THE PROPERTY:** Seller agrees to allow Buyer or Buyer's representative access to the Property to conduct any necessary investigations, tests, and/or studies. Seller also acknowledges that Buyer's representatives may perform construction renovations to reinforce the building structure prior to Transfer of Title. Any constructions renovations performed by Buyer will be at Buyer's cost and expense.

**11. FINANCING:** This agreement is not contingent upon BUYER obtaining financing except as provided in this section and in section 12. The City of Nashua is acquiring the properties with funds from HUD's Neighborhood Stabilization Program (NSP). This program requires that the acquisition cost is at minimum 1% below the appraised value. The City is in the process of getting a revised written appraisal and this offer is contingent on the appraisal being at minimum \$65,000.00 .

**12. ADDITIONAL PROVISIONS:**

- The property meets the NH CDFA property eligibility requirements for NSP funding;
- Satisfactory completion of the environmental review and historic review;
- City receives the written appraisal reflecting the same value as the verbal appraisal;
- Approval of purchase by the Board of Aldermen;
- Buyer may rescind this agreement if the Buyer is not satisfied, at its sole discretion, with any of the results from the investigations, test, and/or studies performed.

**13. ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties relating to the subject thereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement.

**14. GOVERNING LAW.** This Agreement shall be construed by and in accordance with the laws of the State of New Hampshire, excluding its choice of law rules or rulings.

**15. EFFECTIVE DATE:** This is a binding contract and the effective date is when signed and dated, whether by electronic transfer or original, and all changes initialed and dated, by SELLER and BUYER. Each party is to receive a fully executed duplicate original of this Agreement. This Agreement shall be binding upon the heirs and/or other authorized representatives of both parties.

This is a legal instrument. If not understood, legal, tax or other counsel should be consulted before signing.

BUYER: City of Nashua, New Hampshire

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

\_\_\_\_\_  
Date

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

Hereunto Duly Authorized

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SELLER: 47 Pine Street, LLC

By: Alison Slater 

July 26, 2010

\_\_\_\_\_  
Date

Its: Member

Hereunto Duly Authorized

Address: 15 Colonial Ave

Nashua, NH 03062

\_\_\_\_\_