

Petition
TOWN OF LYNNFIELD
ZONING BOARD OF APPEALS

Name of Petitioner 160 Moulton Drive LLC

Address 33 Maple Street, Malden, MA

Address of property which is the subject of the Petition 160 Moulton Drive, Lynnfield, MA

(Map 47, Parcel 2548)

- Indicate and describe relief being sought by this Petition:

- A. Appeal Decision made by _____
Bldg. Inspection Planning Board, etc. _____ Date _____
- B. Apply for Variance
- C. Apply for Special Permit
- D. Other (specify) – See attached Exhibit A

2. Specify Zoning Bylaw Section(s) from which you desire relief:

5.0 and 10.6

RELIEF CANNOT BE GRANTED AT THIS HEARING FOR ANY CONDITION OR BYLAW NOT STATED ABOVE.

3. With respect to Land under consideration:

- A. Its Area: 1.40 acres Street Frontage: 259'±.
- B. District Zone (see Bylaws) RA
- C. Deed Record: Essex South District Registry of Deeds Book 34390. Page 290

RECEIVED
2010 JUL 11 A 10:01
TOWN CLERKS OFFICE
LYNNFIELD, MA

4. Ownership:

- Name, Address of Current Owner(s)

James W. Yee Revocable Trust and Lillian L. Yee Revocable Trust

160 Moulton Drive, Lynnfield, MA 01940

- If Applicant is not owner, check the interest in the premises, and attached evidence of such interest. (See attached Exhibit B)

Prospective Buyer: 160 Moulton Drive LLC

Lessee: N/A

Other (explain)

5. The undersigned petitioner affirms the foregoing statements are true statements of fact:

160 MOULTON DRIVE LLC

by Its Attorney

THEODORE C. REGNANTE

401 Edgewater Place, Suite 630, Wakefield, MA 01880

(781) 246-2525

Assessors Clerk _____ Date _____

6. A check payable to the Town of Lynnfield shall be delivered to the Secretary for the Board of Appeals, Town Hall, Lynnfield, MA 01940, for the proper amount indicated in the above fee schedule.

7. The Application and fee shall be submitted at least four (4) weeks prior to the date of the hearing.

8. Public Hearings are normally scheduled for the 1st Tuesday of each month.

Petitioner not to write below:

Petition reviewed by Building Inspector for completeness _____

Received and Stamped by Town Clerk _____

Entered with the Board of Appeal _____

Fees actually paid \$ _____

Advertised in _____

Parties of interest mailed notices _____

Hearing Date _____

RECEIVED
TOWN CLERK
MAY 15 2013

EXHIBIT A

Property: 160 Moulton Drive, Lynnfield, MA
(Map 47, Parcel 2548; 1.40 acres)

Owners: James W. Yee Revocable Trust
and
Lillian L. Yee Revocable Trust

Applicant: 160 Moulton Drive LLC
33 Maple Street, Malden, MA
Rosemarie A. Durning, Manager

1. Special Permit under Section 5.0 of the Zoning Bylaws and Chapter 40A, Section 6 of the Mass General Laws to change an existing non-conforming use (restaurant) to an apartment building in an RA zone (no variance requested);
2. Site Plan Approval under Section 10.6 of the Zoning Bylaw to allow demolition of existing restaurant building and construction of a new multi-unit apartment building and associated improvements (including signage and lights) (no variance requested) as set forth in:
 - (a) Engineering Plans entitled "160 Moulton Drive Bali Hai Lynnfield Mass. Scale 1"=20" dated July 6, 2018, drawn by Hayes Engineering, Inc. (the "Engineering Plans");
 - (b) Architectural Plans entitled "160 Moulton Drive, Lynnfield, Mass. " dated July 7, 2018, drawn by Sousa Design, 81 Boylston St., Brookline, MA 02445 (the "Architectural Plans") (no variance requested).
3. Such further relief as necessary to construct the improvements in accordance with the approved Engineering and Architectural Plans.

To: Lynnfield Zoning Board of Appeals

From: Theodore C. Regnante, Esq.
Jesse D. Schomer, Esq.
Regnante, Sterio, & Osborne LLP

Date: July 10, 2018

Re: State and Local Law in Regard to Proposed Changes of Nonconforming Uses

This firm is counsel to 160 Moulton Drive LLC, which is under contract to buy the property located at 160 Moulton Drive in Lynnfield, today the location of the Bali Hai restaurant. The developer proposes to raze and replace the existing building (including the illuminated free standing sign, parking lot, and antiquated septic system) and replace it with a 32-unit multi-family apartment building and a modern state of the art septic system. Under state and local law, a pre-existing, nonconforming use – such as the present use of the property for the operation of a restaurant, which is a prohibited use in the Residential A (RA) zoning district – may be changed to another nonconforming use under certain circumstances. This memorandum addresses the legal basis for such a change.

Property History

We have not been able to determine exactly when the Bali Hai restaurant first opened, but it is known that, in or around the 1950s, it replaced a historic hotel and restaurant (the Suntaug Lake Inn) that had existed since around the turn of the 20th Century. The original Suntaug Lake Inn building was built in or around 1903, as shown on a 1903 plan of land recorded in the Essex County South Registry of Deeds at Plan Book 1734, Page 560. The original Inn building was destroyed by fire and replaced by a new building in or around 1919, which operated as the Suntaug Lake Inn for the next several decades. The chain of title for the property suggests that the Inn was converted to the Bali Hai restaurant in or around 1956, as shown in a deed recorded in said Registry at Book 4317, 258. This building too was destroyed by fire and replaced by the current Bali Hai restaurant building in the early 1970s, which has continuously operated as a restaurant since that time.

Institution of Zoning Controls in Lynnfield

Lynnfield first instituted zoning controls on November 15, 1929. Under that bylaw, the property was situated in a residential zoning district, where allowed uses included single- and two-family homes, churches, schools, hospitals, municipal properties, farms/nurseries, country clubs, public service stations, and home occupations. The district required 25-foot setbacks to streets and 10-foot setbacks to side and rear lot lines, a maximum building coverage for most buildings of 25%, and a minimum lot area of 5,000 s/f.

As noted above, the Suntaug Lake Inn already existed (in its second iteration) prior to the institution of zoning controls in 1929. Our research of the title history of the property establishes

that the entirety of the property has been owned at all times by a common owner, and that no portion of the property was ever sold to third-parties. Thus, although the 1903 plan suggests an intent to sell off the fifteen house lots shown on that plan, this never came to fruition. Rather, as of November 1929, all of the lots comprising the property were still owned by a common owner (John E. Walsh) (see Book 2804, Page 98). That unified chain of title continues to this day.

In sum, the entirety of the property has been continuously used for commercial purposes (first as a hotel/restaurant, later as a restaurant) since prior to the institution of zoning controls in Lynnfield. Such commercial uses have never been permitted under local zoning regulations at any time. As such, the present use of the property constitutes a pre-existing, nonconforming use.

Changes to Nonconforming Uses Under State and Local Law

Under both state and local law, pre-existing, nonconforming uses and structures are afforded certain legal protections. While localities are permitted to grant greater protections to pre-existing, nonconforming uses and structures, state law sets forth the minimum protection that all towns and cities must afford. That minimum is set forth in Section 6 of the Zoning Enabling Act, M.G.L. c. 40A, which provides, in relevant part, as follows:

Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun . . . before the first publication of notice of the public hearing on such ordinance or by-law . . . , but shall apply to any change or substantial extension of such use, . . . to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

Locally, Section 5.1 of the Lynnfield Zoning Bylaw provides similar protections: “the bylaw shall not apply to structures or uses lawfully in existence or lawfully begun . . . before the first publication of notice of the public hearing . . . at which the bylaw, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized here under.”

The language of M.G.L. c. 40A, § 6 has been described by the courts as “difficult and infelicitous.” *Fitzsimonds v. Bd. of Appeals of Chatham*, 21 Mass. App. Ct. 53, 55 (1985). However, one consensus that has emerged from case law is that one pre-existing, nonconforming use may be changed to another, also nonconforming use as long as local zoning regulations

specifically allow it. The Appeals Court first reached this conclusion in *Blasco v. Bd. of Appeals of Winchendon*, 31 Mass. App. Ct. 32, 39 (1991). In reaching this conclusion, the court needed to weigh two competing purposes of the Zoning Enabling Act. On the one hand, the Act was intended to give local officials “the maximum scope for local self-determination.” On the other hand, its purpose was the “eventual elimination” of nonconformities. The *Blasco* court resolved this tension by concluding that a nonconforming use could be changed to another nonconforming use, but only if doing so was specifically provided for in local zoning regulations. *See Blasco*, 31 Mass. App. Ct. at 39; *see also Titcomb v. Bd. of Appeals of Sandwich*, 64 Mass. App. Ct. 725, 729-730 (2005).

Based on the holdings in *Blasco* and *Titcomb*, our analysis turns next to whether Lynnfield allows nonconforming uses to be changed to other, also nonconforming uses. Section 5.2 of the Lynnfield Zoning Bylaw specifically provides such protection, as follows:

The Zoning Board of Appeals may award a special permit to change a nonconforming use in accordance with this Section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

The following section further specifies that:

The following types of changes to nonconforming uses may be considered by the Zoning Board of Appeals: 1. Change or substantial extension of the use; 2. *Change from one nonconforming use to another, less detrimental, nonconforming use.*

Lynnfield Zoning Bylaw § 5.2.1 (emphasis added). Based on these provisions, the Lynnfield Zoning Board of Appeals has the authority to allow the conversion of the pre-existing, nonconforming use of the Bali Hai property from a restaurant to multi-family residential use (which is also nonconforming in the RA zoning district) if it finds that such a change would be less detrimental to the neighborhood. It is clear that such a change satisfies this requirement.

In its existing use, the Bali Hai property is incongruous in a neighborhood that is otherwise dedicated primarily to residential use. The replacement of a commercial use with residential use would allow property that is presently an eyesore to be vastly improved by building an apartment building that will be designed to more closely match the residential character of the neighborhood. In addition, the proposed apartment building will generate less traffic (as shown in the traffic study submitted with this application) and noise (caused by the general operation of the restaurant business, as well as frequent alcohol-related disturbances at the property in recent years), and will increase tax revenue in the Town of Lynnfield. The new apartment building will not have a liquor license nor will it have entertainment which activities presently necessitate frequent law enforcement. Also, the project will result in a reduction in the amount of impervious surfaces on the property, as well as the relocation of an aging septic system with a state of the art system that – unlike the existing system – complies with all local and state wetlands and ground water protection regulations.

In sum, the replacement of the Bali Hai restaurant with the proposed apartment complex would be a vast improvement for the neighborhood. As such, it qualifies for a Special Permit under Section 5.2.1 of the Lynnfield Zoning Bylaw as a “change from one nonconforming use to another, less detrimental, nonconforming use.”

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QUITCLAIM DEED

WE, James W. Yee and Lillie L. Yee, husband and wife, as tenants by the entirety, of 510 Clinton Road, Brookline MA, Norfolk County, GRANTORS, grant the parcel of Land with the buildings thereon at 160 Moulton Drive, situated in Lynnfield MA, Essex County as follows:

50% to the James W. Yee Revocable Trust dated June 24, 1996, as amended from time to time (see certificate as to trust terms recorded simultaneously herewith); and
James W. Yee as trustee + Lillie L Yee Tr.

50% to the Lillie L. Yee Revocable Trust dated June 24, 1996, as amended from time to time (see certificate as to trust terms recorded simultaneously herewith),
*Lillie L. Yee, as trustee
+ James W Yee Tr.*

with QUITCLAIM COVENANTS the land in said Lynnfield with the buildings thereon situated and more fully described as follows:

Beginning at the corner of Oak Street, now or formerly so-called, and of Suntaug Street, now or formerly so-called;

Thence the line turns and runs in a Southerly direction along property now or formerly of the Torrey Estate a distance of two hundred seventy (270) feet, more or less, to Railroad Avenue now or formerly so-called;

Thence the line turns and runs along said Railroad Avenue in a Westerly direction, a distance of three hundred (300) feet to Oak Street;

Thence the line turns and runs along said Oak Street in a Northerly direction, a distance of two hundred seventy (270) feet more or less to point of beginning.

Meaning and intending to convey Lots 1 to 16 inclusive together with two passageways twenty (30) feet in width, all as shown on "Plan of Lots adjoining Suntaug Lake Inn, Lynnfield, Mass., dated May, 1903, James Adams, C.E.", recorded in Book 1734, Page 561, Essex South District Registry of Deeds, and subject to any restrictions and reservations of record so far as in force and applicable.

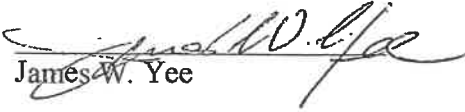
There is excepted from the foregoing such portions as were taken by an instrument recorded with said Deeds, March 10, 1955, in Book 4146, Page 394, and by an instrument recorded with said Deeds June 26, 1959, in Book 4573, Page 477.

For Grantor's title see deed dated November 22, 1994 and recorded at Essex County Registry of Deeds in Book 12834, Pages 207 to 209.

160 Moulton Dr. Lynnfield, MA

Said premises are conveyed subject to easements, restrictions, and reservations of record, if any, for consideration paid in full satisfaction of less than Ten Dollars and 00/100 (\$10.00).

Executed under seal this 12th day of August, 2015.

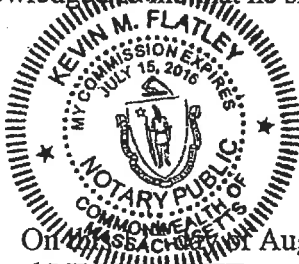

James W. Yee


Lillie L. Yee

COMMONWEALTH OF MASSACHUSETTS

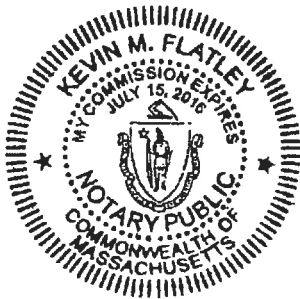
NORFOLK: SS

On this 12th day of August, 2015, before me, the undersigned notary public, personally appeared JAMES W. YEE proved to me through satisfactory evidence of identification which was a driver's license to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Trustee.




Notary Public
My Commission Expires 7/15/16

On this 12th day of August, 2015, before me, the undersigned notary public, personally appeared LILLIE L. YEE proved to me through satisfactory evidence of identification which was a driver's license to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose, as Trustee.




Notary Public
My Commission Expires 7/15/16

EXHIBIT B

STANDARD FORM
PURCHASE AND SALE AGREEMENT

Made this 22nd day of May, 2018

1. PARTIES

The JAMES W. YEE REVOCABLE TRUST u/d/t June 24, 1996, by James W. Yee, Trustee, and The LILLIE. YEE REVOCABLE TRUST u/d/t June 24, 1996, by Lillie L. Yee, both of 510 Clinton Road, Brookline, Massachusetts, hereinafter called the SELLER, agree to SELL and 160 Moulton Drive, LLC of 33 Maple Street, Malden, Massachusetts hereinafter called the BUYER or PURCHASER, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

2. DESCRIPTION

Land with buildings thereon located at 160 Moulton Drive, Lynnfield, Essex County, MA as more particularly described in deed recorded with Essex South District Registry of Deeds in Book# 34390, Page# 290, containing approximately 60,984 square feet of land more or less. This agreement is for the sale of the land and buildings only, and specifically excludes the restaurant business being conducted at the property known as Bali Hai, the furniture, fixtures and equipment associated with the restaurant business, and the liquor license granted to the restaurant by the Town of Lynnfield.

3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES

Included in the sale as a part of said premises are the buildings, structures, and improvements now thereon, belonging to the SELLER and used in connection therewith including, if any, all wall-to-wall carpeting, automatic garage door openers, venetian blinds, window shades, screens, screen doors, storm windows and doors, awnings, shutters, furnaces, heaters, heating equipment, stoves, ranges, oil and gas burners, and fixtures appurtenant thereto, hot water heaters, plumbing and bathroom fixtures, garbage disposers, electric and other lighting fixtures, mantels, outside television antennas, fences, gates, trees, shrubs, plants.

4. TITLE DEED

Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except

- (a) Provisions of existing building and zoning laws;
- (b) Existing rights and obligations in party walls which are not the subject of written agreement;
- (c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
- (d) Any liens for municipal betterments assessed after the date of closing;
- (e) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the current use of said premises.

5. PLANS

If said deed refers to a plan necessary to be recorded therewith the SELLER shall deliver such plan with the deed in form adequate for recording or registration.

6. REGISTERED TITLE

In addition to the foregoing, if the title to said premises is registered, said deed shall be in form sufficient to entitle the BUYER to a Certificate of Title of said premises, and the SELLER shall deliver with said deed all instruments, if any necessary to enable the BUYER to obtain such Certificate of Title.

Seller's Initials

JWY

Seller's Initials

L. Yee

1

Buyer's Initials

RND

Buyer's Initials

7. PURCHASE PRICE

The agreed purchase price for said premises is [REDACTED] of which

\$ [REDACTED] having been paid as a deposit this day and
\$ [REDACTED] having been paid with offer to purchase
\$ [REDACTED] is to be paid at the time of delivery of the deed by wire or Attorney's IOLTA check.
\$ [REDACTED] TOTAL

8. TIME FOR PERFORMANCE; DELIVERY OF DEED

On or before the thirtieth day following the expiration of the Buyer's Investigative Period, as defined hereafter, the Buyer shall pay all sums as due under this Agreement and the Seller shall tender a deed to Buyer. The closing shall take place at the office of the Buyer's attorney.

SELLER shall be allowed to remain in the premises for up to sixty (60) days following the closing for purposes of winding down and closing its restaurant business ("Use and Occupancy Period"). During such Use and Occupancy Period, the Seller shall not be required to pay any rent, real estate taxes, or other sums to the Buyer for its use of the premises. Seller shall pay all expenses related to the operation of the premises including all utilities, water/sewer, and shall keep all hazard and liability insurance coverage in effect during its use of the premises. At closing, the Parties shall execute a mutually acceptable Use and Occupancy Agreement which incorporates the within terms.

9. POSSESSION and CONDITION OF PREMISES

Full possession of said premises free of all tenants and occupants, except as herein provided, is to be delivered at the time of the delivery of the deed, said premises to be then (a) in the same condition as they now are, reasonable use and wear thereof excepted, and (b) not in violation of said building and zoning laws, and (c) in compliance with provisions of any instrument referred to in clause 4 hereof. The BUYER shall be entitled to an inspection of said premises prior to the delivery of the deed in order to determine whether the condition thereof complies with terms of this clause.

10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM

If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of delivery of the deed the premises do not conform with the provisions hereof, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto, unless the SELLER elects to use reasonable efforts to remove defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty days. Seller's right to extend the closing date as referenced in section 10 of the attached purchase and sale is conditional upon Buyer's ability to obtain an extension of Buyer's mortgage commitment and/or interest rate lock, upon the same or better terms and without any additional costs to Buyer. Buyer shall use reasonable efforts to extend said commitment for a period of up to 30 days, provided such extension is at no additional cost to Buyer. Seller shall have the option, but is not obligated to pay the costs of extending Buyer's commitment, in which event, the commitment shall be deemed to remain in force for purposes of this Paragraph, provided there is no additional cost or expense to Buyer. In the event Buyer is unable to obtain such an extension, or Seller is unwilling to pay any additional costs as above referenced, then Buyer may terminate this Agreement and the deposits made under this Agreement shall be forthwith refunded to Buyer and all obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto.

11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, etc.

If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, or if at any time during the period of this agreement or any extension thereof, the holder of a mortgage on said premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

12. BUYERS ELECTION TO ACCEPT TITLE

Seller's Initials [Signature]
Seller's Initials [Signature]

Buyer's Initials [Signature]
Buyer's Initials _____

The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said premises 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 premises shall have been damaged by fire or casualty insured against, then the SELLER shall, unless the SELLER has previously restored the premises 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 premises shall not permit the insurance proceeds or a part thereof to be used to restore the said premises 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.

13. ACCEPTANCE OF DEED

The acceptance and recording of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

14. USE OF MONEY TO CLEAR TITLE

To enable the SELLER to make conveyance as herein provided, the SELLER shall, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interest, provided that all instruments so procured are recorded simultaneously with the delivery of said deed or within a reasonable time thereafter in accordance with customary conveyancing practice.

15. INSURANCE

Until the delivery of the deed, the SELLER shall maintain insurance on said premises as follows:

| TYPE OF INSURANCE | AMOUNT OF COVERAGE |
|-----------------------|---------------------------|
| (a) Fire | |
| (b) Extended Coverage | * \$ as presently insured |
| (c) | |

All risk of loss shall remain with the SELLER until the deed is recorded.

16. ADJUSTMENTS

Taxes for the then current year shall be apportioned and fuel value shall be adjusted as of the day of performance of this agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the BUYER at the time of the delivery of the deed.

17. ADJUSTMENT OF UNASSESSED AND ABATED TAXES

If the amount of said taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement unless herein otherwise agreed.

18. BROKER'S FEE

The Parties acknowledge that neither has contacted or retained the services of any real estate broker for this transaction.

19. BROKER'S WARRANTY

N/A

Seller's Initials J. Lee
Seller's Initials L. Yee

Buyer's Initials Rind
Buyer's Initials _____

20. DEPOSIT

All deposits made hereunder shall be held in a non-interest bearing account by Attorney William F. Crowley as escrow agent subject to the terms of this agreement, provided however that in the event of any disagreement the ESCROW HOLDER may retain said deposits pending instructions in writing mutually given by the SELLER and the BUYER. Provided that in the event the ESCROW HOLDER files an interpleader action as may be required, or if the BROKER is made a party to any lawsuit, by virtue of acting as escrow agent, the ESCROW HOLDER shall be entitled to recover reasonable attorney's fees and costs which may be deducted from escrowed funds. Such fees and costs shall be assessed as court costs in favor of the prevailing party.

21. BUYER'S DEFAULT; DAMAGES

If the BUYER shall fail to fulfill the BUYER'S agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages and this shall be SELLER'S sole and exclusive remedy for breach by BUYER at law and in equity. BUYER and SELLER agree that the amount of the BUYER'S deposit represents a reasonable estimate of the damages likely to be suffered by SELLER in the event that BUYER defaults.

22. MORTGAGE CONTINGENCY CLAUSE

Waived.

23. CONSTRUCTION OF AGREEMENT

This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be cancelled, modified or amended only by a written instrument executed by both the SELLER and the BUYER. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it.

24. LEAD PAINT LAW

BUYER acknowledges receipt of the Department of Public Health Property Transfer Notification and understands that SELLER makes no representation or warranty, express or implied, as to the lead paint content of the property. BUYER takes full responsibility for compliance with all laws relating to same (and in particular Mass. General Law Ch. 111, Sec. 197). BUYER will assume the burden of cost for all tests, costs, and compliance arising therefrom.

25. SELLER'S OBLIGATION

The Buyer intends to demolish the structures on the premises. Therefore, the Seller shall not be required to equip the structure(s) on the within described realty with approved smoke and carbon monoxide detectors. SELLER agrees to cooperate with the BUYER and BUYER'S Lender's counsel in executing any necessary, reasonable and customary documents as may be required by BUYER'S Lender including but not limited to FRPTA, Mechanics Lien, UFFI, and Parties in Possession of Affidavits, as well as any documentation related to the filing of IRS form 1099.

26. BUYER'S INVESTIGATION PERIOD

The Buyer shall have one hundred twenty (120) days from the date of execution of this Agreement to conduct such inquiries, tests, engineering, and securing such approvals and permits from land use granting authorities ("due diligence") which may be needed in order to secure such permits and approvals to demolish the existing structure and to construct a new two-story structure containing twenty-four (24) two-bedroom residential units together with sufficient ground level parking. Buyer shall, at its option, have the right to one thirty (30) day extension in order to conduct due diligence, by giving Seller written notice no later than 5 o'clock P.M. on the 120th day following the execution of this Agreement.

Buyer may terminate this Agreement and receive all deposits paid hereunder by giving written notice to Seller that it is not satisfied with the results of its due diligence no later than 5 P.M. on the business day following the expiration of the due diligence period, or any extension thereof. The failure of the Buyer to so notify in writing as herein stipulated shall bind the Buyer to all terms and conditions contained herein.

Seller's Initials [Signature]
Seller's Initials [Signature]

Buyer's Initials [Signature]
Buyer's Initials _____

The Seller grants to the Buyer a power of attorney to sign on its behalf any and all applications necessary for such permits and approvals to construct the project.

27. TITLE V N/A

28. ACKNOWLEDGEMENT

The buyer has been urged to conduct independent investigations with tax assessors, zoning and building departments, and the Board of Health etc. to verify any information related to the premises, including but not limited to the age of the building or its components, square footage and borders of the lot; square footage of the building, zoning type; condition and age of mechanical and electrical systems, annual taxes, condition of premises, idiosyncrasies of the neighborhood abutting the home; past and present structural problems of the structure including problems with the roof or basement; the title to the property.

The BUYER acknowledges that he has not relied upon any warranties or representations not incorporated in this Agreement, except for the following additional warranties and representations, if any, made by the SELLER: **NONE.**

29. NOTICES

All notices required or permitted to be given hereunder shall be in writing and deemed duly given when (1) mailed by registered or certified, first-class mail, return receipt requested, postage prepaid, (2) hand delivered, (3) sent by facsimile, (4) sent by overnight delivery service, or (5) sent by electronic mail (email), addressed to each party at the address set forth in Section 1 of the Purchase and Sale Agreement, in the case of notice to BUYERS with a copy to:

Kerry Cucinatti, Esq.
Stonehill Law Office, P.C.
591 North Ave, Door 1
Wakefield, MA 01880
P. 781-246-0111
F. 781-854-0223
E. kerry@stonehilllaw.com

and in the case of notice to SELLERS with a copy to:

William F. Crowley, Esq.
159 Haven Street, Suite 1
Reading, MA 01867
781-942-2233
Fax: 781-942-0292
Email: wfcqsq@verizon.net

Buyer and Seller hereby authorize their respective attorneys (as the case may be) to execute on their behalf any extension for financing or for the time for performance under this Agreement and any change of location for delivery of the deed, and the Buyer and Seller shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge that either party has disclaimed the authority granted herein to bind them. For purposes of this Agreement, facsimile signatures shall be construed as original.

30. ADDITIONAL PROVISIONS

- A. Any title matter or matter of practice arising under or relating to this agreement which is the subject of a title or practice standard respectively of the Real Estate Bar Association of Massachusetts shall be governed by such standard to the extent applicable.
- B. The Buyer and Seller each represent and warrant to the other that each has not contacted any real estate broker in connection with this transaction and was not directed to the other as a result of any services or facilities of any real estate broker except as set forth herein. Each agrees to indemnify the other and to hold the other harmless from any claim, loss, damage, costs, or liabilities for any brokerage commission or fee which may be asserted against the other in connection with this transaction arising out of the contracts of each with any real estate brokers except as set forth herein. The provisions of this Paragraph shall survive delivery of the deed.

Seller's Initials [Signature]
Seller's Initials [Signature]

Buyer's Initials [Signature]
Buyer's Initials _____

- C. Without limitation, said premises shall not be considered to be in compliance with the provisions of this Agreement with respect to title unless:
- (a) All structures and improvements, including, but not limited to driveway, parking area, garage and septic system, and all means of access to said premises shall not encroach upon or under any property not within such lot lines;
 - (b) Said premises abut a public way, duly laid out or accepted as such by the municipality in which said premises are located; and
 - (c) No building, structure, improvement, or property of any kind encroaches upon or under said premises from other premises.
- D. Seller represents that, to the best of Seller's knowledge and without making any independent investigation, there are no underground storage tanks on the premises, and there has been no release of any toxic or hazardous substances (as same is contemplated by M.G.L. c. 21E), and that the premises are served by a septic system.
- E. Buyer's performance hereunder is conditioned upon title to the premises being insurable on a standard ALTA form policy currently promulgated by companies licensed to do business in the Commonwealth of Massachusetts at normal premium rates and without exception for any matters not expressly permitted under Paragraph 4. It is agreed that in event of a title matter for which a title insurance company is willing to issue a so-called "clean" policy or provide "affirmative coverage" over a known defect or problem, BUYER may elect to accept same but shall not be required to do so, and shall have the right, at the option of Buyer's counsel, to deem title to the premises unacceptable, or unmarketable and to terminate this Agreement.
- F. Seller represents that to the best of Seller's knowledge, and without making any independent investigation, the premises have not been insulated with Urea Formaldehyde Foam Insulation (UFFI).
- G. From and after the date of execution of the agreement by Seller, Buyer shall have the right of access to the premises for the purposes of surveys, testing, appraisals, taking measurements and obtaining contractor's estimates with 24 hour notice given to the SELLER. Buyer shall indemnify Seller and hold Seller harmless from all actions, suits, claims, liabilities, losses, damages, and costs, including reasonable attorney's fees, arising from (a) personal injury suffered by Buyer, Buyer's mortgage lender, and their agents, on or about the premises, or (b) property damage to the premises caused by such entries, provided same is not due to negligent acts or omission of the Seller or Seller's agents.
- H. Between the date hereof and the closing, the Seller shall maintain and service the Premises and its appurtenances at the same level of effort and expense as the Seller has maintained or serviced the Premises for the Seller's own account prior to the date of this Agreement.
- I. If any errors or omissions are found to have occurred in any calculations or figures used in the Settlement Statement signed by the parties at the closing (or would have been included if not for such error or omission) and notice thereof is given within three (3) months of the date of delivery of the deed to the party to be charged (along with reasonably detailed back-up data), then such party agrees promptly to make a payment to correct the error or omission. The parties hereto also agree to execute and deliver to the requesting party whatever additional documents or amendments to existing documents are reasonably required to effectuate the purchase and sale under this agreement provided such additional documents or amendments are prepared by the requesting party, and do not in any way adversely affect, or otherwise enlarge the liability of any of the parties relative to said purchase and sale. This paragraph shall survive the closing for a period of three (3) months.
- J. Notwithstanding any other provisions of this Agreement regarding the conditions of said Premises, at the time of the delivery of the deed hereunder, all dwelling and daily use areas of the Premises, including, without limitation, closets and, if applicable, the basement and garage, shall be broom-swept and clean and free of all SELLER's (and/or tenant's, if applicable) possessions and debris (except for those items being conveyed with the Premises as provided in this Agreement); all other areas of the Premises, including, without limitation, closets, attic, basement, crawl spaces, under-porch/deck areas, shed(s) and garage shall be delivered free of all building materials such as lumber, insulation, and the like, paints, solvents, chemicals, debris and personal property (except for those items being conveyed with the Premises as provided in this Agreement); and all systems, including but not limited to electrical, plumbing, heating, air conditioning and ventilation systems and all appliances shall be in the same condition at closing as they were on the date of offer agreement (except for items of repair/replacement to be performed and/or completed, if any, pursuant to this Agreement), reasonable wear and tear excepted. Additionally, Seller shall at closing deliver to Buyer all keys which pertain to the Seller's ownership of the Premises. At the conclusion of the Use & Occupancy period, seller may leave any equipment/furniture on the premises.

Seller's Initials

[Handwritten Signature]

Seller's Initials

[Handwritten Signature]

Buyer's Initials

[Handwritten Signature]

Buyer's Initials

- K. Seller shall execute the deed in Seller's fiduciary capacity, it being agreed that a deed executed under a Power of Attorney shall not constitute a satisfactory deed under Paragraph 4 of this Agreement unless an original of the Power of Attorney is also recorded.
- L. It is understood and agreed that (a) all contemporaneous or prior representations, statements, understanding and agreement, oral or written, between the parties are merged in this Agreement, which alone fully and completely expresses the agreement of the parties, and (b) that this Agreement is entered into after full investigation, neither party relying on any statement or representation made by the other which is not embodied in this Agreement.
- M. The Parties acknowledge and agree that this Agreement may be signed in counterparts, and for purposes of this Agreement, facsimile or electronically scanned signatures shall be construed as original, except as to the Deed and the Closing documents and except as to documents intended to be recorded, provided however that no party shall avoid any obligation hereunder by failing to provide such original signature.
- N. Seller represents the following as to the SELLER's actual knowledge, and without conducting any independent investigation or inquiry of any kind or nature (and no constructive or imputed knowledge shall be attributed to SELLER):
 - i. Seller has the legal right, power and authority to enter into this agreement and to perform all of its obligations hereunder.
 - ii. There are no tenancies, occupancies or licenses in or to the premises, with the exception of the liquor license which is not included in this sale.
 - iii. Seller has not commenced nor has Seller received written notice of the commencement of any proceeding, which would affect the present zoning classification of the premises. Seller will not initiate any such proceedings and will promptly notify Buyer if Seller receives notice of any such proceeding commenced by third parties.
 - iv. There is no notice, suit, order, decree, claim, writ, injunction or judgment relating to material violations of any laws ordinances, codes, regulations or other requirements with respect to the premises in, of or by any court or governmental authority having jurisdiction over the premises.
 - v. No written notice or written communication has been received by SELLER from any public authority that there exists with respect to the premises any condition which violated any municipal, state or federal law, rule or regulation, which has not been corrected.
 - vi. There are no suits, actions or proceedings pending or threatened against Seller materially affecting the premises or Seller's right or power to consummate the transaction contemplated by this Agreement before any court or administrative agency or office that will not be removed simultaneously with the delivery of the deed.
 - vii. There is no pending Seller bankruptcy, mortgage foreclosure, requirement for third party approval or other legal proceedings that would inhibit this conveyance.
 - viii. The Seller has received no written notice of eminent domain taking, condemnation, betterment or assessment, actual or proposed, with respect to the premises.
 - ix. The Seller has received no written notice of any violations of any environmental law respecting the premises and has no actual knowledge of the existence of any underground fuel or oil storage tanks on the premises.
- O. The Seller is the owner of all fixtures and personal property conveyed hereunder and there are no conditional sales or retail installment sale agreements applicable to any such fixtures and personal property Seller states to the best of Seller's knowledge that there are no conditions of the Premises which constitute a violation of the provisions of any municipal, county, state or federal codes, ordinances, statutes or regulations relating to zoning, building, environmental or health matters, but which statements shall not constitute a warranty against the existence of such conditions about which Seller has no knowledge, nor representation or warranty against the discovery or occurrence of such conditions after the delivery of the deed. Seller will promptly notify Buyer of any material change in facts which arise prior to the

Seller's Initials [Signature]
 Seller's Initials [Signature]

Buyer's Initials [Signature]
 Buyer's Initials _____

Closing which would make such statements untrue if such state of facts had existed on the date of execution of this Agreement.

- P. Notwithstanding any other provision contained herein, in the event that any date specified herein should fall on a Saturday, Sunday, legal holiday or state of emergency, then said date shall be construed to mean the next business day.
- Q. Seller shall not sell, mortgage, pledge, hypothecate, encumber or otherwise transfer or dispose of all or any part of the Property, or initiate any action to amend zoning regulations presently applicable to all or any part of the Property, nor consent to any zoning changes, or market for sale, sell, transfer, assign, dispose of, or consent to the utilization of, any development rights, including air rights, if any, or materially modify or amend or consent to any material modification, amendment, termination or surrender of any material governmental permit, with the exception of the liquor license..
- R. Seller shall not enter into any agreements which create exceptions to marketable title, nor enter into any other agreements affecting the Property that will extend beyond the Closing or be binding on Buyer.
- S. Seller gives Buyer consent to any filings made on their behalf with any governmental authority seeking permitted uses, site plan, zoning, use or any other land use approval.
- T. Buyers shall not assign this contract or rights thereto to a third party without Seller's consent, which shall not be unreasonably withheld.

NOTICE: This is a legal document that creates binding obligations. If not understood, consult an attorney.

BUYER: Norman Dumire mgr. DATE 5/22/18

BUYER: _____ DATE _____

SELLER: James D. Lee DATE 5/24/18

SELLER: Lillian L. Yoo DATE 5/24/18

Seller's Initials JDL
Seller's Initials L.Y.

Buyer's Initials ND
Buyer's Initials _____