

From the Office of:
PRESSMAN & KRUSKAL
678 Massachusetts Ave.
Cambridge, MA 02139
(617) 492-2211

**STANDARD FORM
PURCHASE AND SALE AGREEMENT (MODIFIED)**

This _____ day of **Month, Year**

1. PARTIES AND MAILING ADDRESSES

NSP Residential LLC, a Massachusetts limited liability company, with an address of 56 Warren Street, Roxbury, MA 02119

hereinafter called the SELLER, agrees to SELL and

BUYER 1 (and BUYER 2) of Address

hereinafter called the BUYER agrees to BUY, upon the terms hereinafter set forth, the following described premises:

2. DESCRIPTION:

land with the property situated thereon located **currently owned by the BUYER** at **Address** as described in a deed recorded with the **County** County Registry of Deeds in Book **XXXXXX**, Page **XXX**, **subject to SELLER acquiring good, clear, record and marketable title to the subject property.**

3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES

Included in the sale as a part of said premises are the buildings, structures, and improvements now thereon, and the fixtures belonging to the SELLER and used in connection therewith including, if any, all wall-to-wall carpeting, drapery rods, 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, and **all appliances "as is, where is"**.

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 (7) 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 this agreement;
- (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.

7. PURCHASE PRICE

The agreed purchase price for said premises is \$XXX,000.00, of which

\$	5,000.00	have been paid as a deposit this day
\$	XXX,000.00	are to be paid at the time of delivery of the deed by certified, cashier's, treasurer's, or bank check(s), or lender's attorney's conveyancing account check

\$	XXX,000.00	TOTAL
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8. TIME FOR PERFORMANCE OF DELIVERY OF DEED

Such deed is to be delivered at XX:00 o'clock A/P.M. on the tenth (10th) business day after SELLER gives written notice to BUYER that SELLER has acquired title to the property, at the County County Registry of Deeds, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement.

It is specifically understood and agreed that this Agreement is contingent upon SELLER acquiring good, clear, record and marketable title to the subject property. In the event that SELLER has not acquired title within months of the date of this Agreement—or if SELLER shall determine that it cannot acquire good title to the property as provided herein, then the SELLER shall give written notice thereof to BUYER, and this Agreement shall terminate, whereupon any payments made under this agreement shall be forthwith refunded or, if applicable, shall continue to be held in escrow in accordance the Use and Occupancy Agreement hereto.

9. POSSESSION AND CONDITION OF PREMISES

Full possession of said premises free of all tenants and occupants, except as presently occupied 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 and any damage caused by the BUYER and anyone under their control 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 personally inspect said premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the 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 the delivery of the deed the premises do not conform with the provisions hereof, ~~then any payments made under this agreement shall forthwith be 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 shall use reasonable efforts to remove any 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 (30) days. **It is specifically understood and agreed that this Agreement is contingent upon**

SELLER acquiring good, clear, record and marketable title to the subject property.

11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM

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. BUYER'S ELECTION TO ACCEPT TITLE

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 therefor 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 reasonable expended by the SELLER for any partial restoration.

13. ACCEPTANCE OF DEED

The acceptance 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 may, 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 interests, 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 practices.**

15. INSURANCE

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

- a) Fire and Extended Coverage \$ **As presently insured**

16. ADJUSTMENTS

Collected rents, if any, water and sewer use charges, operating expenses according to the schedule attached hereto or set forth below, if any, and taxes for the then current fiscal 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 delivery of the deed. Uncollected rents, if any, for the current rental period shall be apportioned if and when collected by either party.

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 fiscal 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

NOT APPLICABLE.

19. BROKER(S) WARRANTY

NOT APPLICABLE.

20. DEPOSIT

All deposits made hereunder shall be held in escrow by **Name** as escrow agent subject to the terms of this agreement and shall be duly accounted for at the time for performance of this agreement. In the event of any disagreement between the parties, the escrow agent shall retain all deposits made under this agreement pending instructions mutually given in writing by the SELLER and the BUYER, or the final order of a court of competent jurisdiction.

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 exclusive remedy at law or in equity. SELLER and BUYER hereby agree that the amount of the deposit is less than the amount of a reasonable forecast of SELLER's losses that would result if BUYER were to breach this Agreement, which losses could result from SELLER's inability to re-sell the premises for the same agreed purchase price due to any number of currently undeterminable factors, as well as additional expenses incurred by SELLER in maintaining the premises.**

22. RELEASE BY SPOUSE

NOT APPLICABLE.

23. NO BROKER

BUYER and SELLER represent and warrant to each other that they have not contacted any real estate broker in connection with this, and that neither was introduced to the other or to the Premises by any other real estate broker. Each agrees to indemnify the other against and to hold the other harmless from any claim, loss, damage, cost or liability for any brokerage commission or fee which may be asserted by any real estate broker with whom each himself or herself has dealt in connection with this transaction. The provisions of this paragraph shall survive delivery of the deed.

24. LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, etc.

If the SELLER or BUYER executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER nor the BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

25. WARRANTIES AND REPRESENTATIONS

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has s/he relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either the SELLER or the Broker(s): **NONE. Furthermore, BUYER acknowledges his/her/their familiarity with the subject property as the current owner(s) and occupants(s) of the property; BUYER acknowledges that they have had the opportunity to have the property inspected (including but not limited to, lead paint, structure, pent, radon) by inspectors of BUYER's choosing, and that BUYER is purchasing the property in the condition as provided in Paragraph 8 and otherwise in this Agreement, without reliance on any representation made by the SELLER; and BUYER acknowledges that SELLER has made no warranties or representations whatsoever concerning the condition of the subject property nor any other matter relating to the property on which BUYER has relied (other than those specifically set forth in this Agreement) with respect to or in connection with said Premises, it being the understanding of the parties hereto that the entire agreement of the parties with respect to this transaction is fully set forth herein. The provisions of this paragraph shall survive the delivery of the deed.**

26. MORTGAGE CONTINGENCY CLAUSE

It is specifically understood and agreed that the BUYER has been pre-approved by Aura Mortgage Advisors LLC for a mortgage loan in the amount of \$XXX,000.00 at the rates, terms, and conditions as set forth [REDACTED]. Once SELLER has acquired title and given notice thereof to BUYER as provided herein, BUYER will purchase the subject property with said loan, subject only to final approval of Aura Mortgage Advisors LLC.

27. 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.

28. LEAD PAINT LAW

The parties acknowledge that, under Massachusetts law, whenever a child or children under six years of age resides in any residential premises in which any paint, plaster, or other accessible material contains dangerous levels of lead, the owner of said premises must remove or cover said paint, plaster, or other material so as to make it inaccessible to children under six years of age.

BUYER acknowledges that BUYER has been fully informed of the requirements of Ch. 773 of the Acts of 1987 concerning an Act further preventing lead poisoning. BUYER acknowledges that BUYER has received full disclosure and information concerning lead paint and lead-based materials as required by said statute. It is understood that portions of the premises may contain lead-based paint, plaster, or other accessible lead-based materials and that no representations have been made by the SELLER or the broker concerning the presence or absence of such lead-based materials. BUYER understands that in the event a child or children under the age of six years shall become a resident in the premises, the BUYER may incur obligations to remove any such lead-based materials which may contain dangerous levels of lead pursuant to the requirements of the laws of the Commonwealth of Massachusetts and the BUYER hereby agrees to accept and assume any such obligations with respect thereto, and all risks and liabilities arising out of or in any way related to the presence, if any is present, of any such lead-based paint, plaster, or other material, on or after the date of closing.

29. SMOKE AND CARBON MONOXIDE DETECTORS

The SELLER shall, at the time of the delivery of the deed, deliver a certificate from the fire department of the city or town in which said premises are located stating that said premises have been equipped with approved smoke and carbon monoxide detectors in conformity with applicable law.

30. ADDRESSES FOR NOTICES

All notices required hereunder shall be deemed to have been duly given only if in writing and mailed by certified mail, return receipt requested or delivered by FAX transmission with receipt confirmation, to the parties at the addresses specified in Paragraph 1 above, [and in the case of notices addressed to SELLER with a copy to Karen L. Kruskal, Esq., Pressman & Kruskal, 678 Massachusetts Avenue, Cambridge, MA, 02139 (FAX No. 617-492-6509).]

31. TITLE STANDARDS

Any matter or practice arising under or relating to this agreement which is the subject of a title standard or practice standard of the Massachusetts Real Estate Bar Association shall be governed by such standard to the extent practicable.

32. If BUYER records this Agreement or a copy thereof, this Agreement shall at the SELLER's option terminate and all deposits hereunder shall be paid to the SELLER and become the SELLER's property as its sole and exclusive remedy.

33. PRIOR OFFERS REVOKED

This Agreement supersedes all prior agreements and other understandings between the parties and represents the complete agreement of the parties hereto, except as this Agreement is hereafter modified by written agreement by the parties. All prior offers and agreements between the parties shall be null and void after the execution of this Agreement.

34. CLOSING COSTS TO BE PAID BY BUYER

In addition to the closing costs ordinarily paid by BUYER, BUYER will pay the following closing costs ordinarily paid by SELLER: Tax Stamps in the amount of .

35. LEGAL ADVICE

Both BUYER and SELLER acknowledge that they have had the opportunity to seek and confer with qualified legal counsel of their choice prior to signing this Agreement.

36. USE AND OCCUPANCY

It is agreed that the BUYER may continue to use and occupy the premises after SELLER'S acquires title, pending BUYER's purchase of the subject property in accordance with the terms of the Use and Occupancy Agreement which is attached hereto and incorporated herein.

FOR RESIDENTIAL PROPERTY CONSTRUCTED PRIOR TO 1978, BUYER MUST ALSO HAVE SIGNED
LEAD PAINT "PROPERTY TRANSFER NOTIFICATION CERTIFICATION"

BUYER

BUYER

SELLER

SELLER

USE AND OCCUPANCY AGREEMENT

This Agreement made this _____ day of _____, 20XX by and between NSP Residential, LLC, (SELLER) and BUYER 1 [and BUYER 2] (BUYER).

Recitation of Facts

1. SELLER has agreed to sell to BUYER and BUYER has agreed to purchase from SELLER (once SELLER has acquired title to said property), the property known as address.
2. It is anticipated that once SELLER has acquired title to the property, BUYER will continue to use and occupy said premises from the date of closing through the date of BUYER's purchase of said property, on the terms and conditions set forth below.

Now, therefore, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

BUYER may continue to use and occupy the subject premises after SELLER has acquired title to the property through the date of BUYER's purchase of said property. In consideration thereof, BUYER will pay to SELLER a per diem use and occupancy fee in an amount \$XX.00, to be paid in advance in monthly installments of \$XX.00.

During the use and occupancy period, the BUYER shall commit no waste upon and shall cause no damage to the premises. If BUYER does not purchase the property as agreed, BUYER shall vacate the property no later than midnight on thirtieth (30th) day after the last extended closing date as provided in the Purchase and Sale Agreement between the Parties, and upon vacating the same shall leave the premises in broom clean in the same condition as it is now, reasonable wear and tear excepted, and shall remove therefrom all of BUYER's possessions, but shall leave all items belonging to SELLER.

All utilities during the period of use and occupancy (but not including water and sewer) will be the responsibility of BUYER.

The BUYER shall indemnify and hold the BUYER harmless from any claim of liability resulting from any injury to any person or property caused by the BUYER or by anyone under their control, or for any loss or damage to any personal property of the BUYER arising from BUYER's occupancy hereunder during the term of this Agreement. During the use and occupancy period, the BUYER shall maintain appropriate insurance coverage as the occupant(s)/former owners of the property—subject to the advance review and approval of the SELLER.

If BUYER does not purchase the property for any reason, and then fails or refuses to vacate the premises on the thirtieth day after the last date on which the closing could have occurred as set forth herein, the SELLER shall have the right to immediately seek to eject

the BUYER from the premises. Further, the BUYER shall be liable to the SELLER for liquidated damages in the amount of two hundred (\$200.00) dollars per day. In addition, the Current Owner shall be liable to the BUYER for any damages caused to the premises, reasonable wear and tear excepted.

In the event that the BUYER has to seek legal recourse to eject the Current Owner from the premises or to recover liquidated damages or other damages described herein, the BUYER shall be liable to the SELLER for all of the costs of the same, including reasonable attorneys' fees.

As security for their promise to deliver up possession to SELLER no later than midnight on the thirtieth day after the last date on which the closing could have occurred, in accordance with the terms hereof, BUYER shall, no later than the time that SELLER acquires title to the property, pay to Escrow Agent the sum of \$XXXX.00 dollars to be secure BUYER's performance under this Use and Occupancy Agreement. Upon BUYER's purchase of the property, or otherwise after BUYER has vacated the Premises, Attorney Kruskal shall release said XXXX escrow amount to BUYER, after deducting therefrom damages, costs and attorneys fees provided for herein. BUYER's liability hereunder is not limited to the amount held in escrow.

Escrow Agent shall not pay any sums out of Escrow except by written instructions by both BUYER and SELLER. In the event BUYER and SELLER are unable to agree, Escrow Agent shall continue to hold said monies in Escrow until a resolution of the dispute between the BUYER and SELLER. Both BUYER and SELLER hereby indemnify the Escrow Agent and hold Escrow Agent harmless against all costs and expenses incurred in connection with the duties as Escrow Agent. Such costs and expenses may be deducted by the Escrow Agent from the funds held in escrow.

The BUYER agrees to allow the SELLER, their agents or designees, to have access to the premises for the purpose of having inspections, showing the property to prospective tenants and taking measurements, etc. Such access shall only be at reasonable times, upon prior reasonable notice to BUYER.

Nothing in this Agreement shall be interpreted as or to establish a landlord/tenant relationship between the parties and it is expressly understood that this Agreement is not a lease or any other instrument that creates a tenancy for the BUYER.

Excuted under seal this ____ day of ____, 2011

BUYER:

SELLER

BUYER: