

Purchase and Sale Agreement

**1. PARTIES**

Brief Cliff Realty, LLC, hereinafter called the "Seller," agrees to SELL and \_\_\_\_\_ hereinafter called the "Buyer," agrees to BUY, upon the terms hereinafter set forth, the following described Premises:

**2. DESCRIPTION**

Condominium unit known and numbered as [41/43/45] Cliff Road, Unit ##, Gloucester, Essex County, Massachusetts, being a portion of the premises described in a deed recorded with the Southern Essex District Registry of Deeds in Book 38717, Page 132, hereinafter called the "Premises" or the "Unit."

**3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES**

Included in the sale as a part of the Premises are the fixtures belonging to the Seller and used in connection therewith including, if any, wall to wall carpeting where installed, all venetian blinds, window shades, curtain rods, automatic garage door openers, screens, screen doors, storm windows and doors, awnings, shutters, furnaces, heating equipment, stoves, ranges, gas burners and fixtures appurtenant thereto, hot water heaters, plumbing and bathroom fixtures, garbage disposals, electric and other lighting fixtures, mantels, and, if built-in, air conditioning equipment.

**4. TITLE DEED**

The 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) Provisions of M.G.L. c. 183A;
- (c) Provisions of the Master Deed for the Brier Cliff By the Beach Condominium recorded in said Registry in Book 37955, Page 35, and the Declaration of Trust for the Brier Cliff By the Beach Condominium Trust recorded in said Registry in Book 37955, Page 51 (collectively, with any by-laws and/or rules and regulations promulgated thereunder and/or plans recorded therewith, the "Condominium Documents")
- (d) Such taxes for the then current fiscal year as are not due and payable on the date of the delivery of such deed;
- (e) Any liens for municipal betterments assessed after the date of this Agreement that do not exceed 0.5% of the purchase price; and
- (f) Any easement, restriction, or agreement of record presently in force and applicable which does not interfere with the reasonable use of the Premises as a residential condominium unit.

**5. PURCHASE PRICE**

The agreed purchase price for said Premises is \_\_\_\_\_ dollars, of which:

- \$ \_\_\_\_\_ previously paid by Buyer as a deposit
- \$ \_\_\_\_\_ to be paid by Buyer upon the mutual execution of this Purchase and Sale Agreement
- \$ \_\_\_\_\_ to be paid at the time of delivery of the deed (at "closing") by wire transfer or a conveyancing check drawn from the account of an attorney duly licensed in the Commonwealth of Massachusetts
- \$ \_\_\_\_\_ Total

**6. USE OF PURCHASE MONEY TO CLEAR TITLE**

To enable the Seller to make a 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.

**7. TIME FOR PERFORMANCE; DELIVERY OF DEED**

Such deed is to be delivered on [month] [day], 2021, at [(time)], at the Southern Essex District Registry of Deeds, unless otherwise agreed upon by the parties in writing. The parties agree time is of the essence. Seller may elect to have Buyer provide all “seller-side” closing documents at least 24 hours prior to closing to enable Seller to close remotely and have signed original documents delivered to closing.

**8. POSSESSION AND CONDITION OF PREMISES**

Full possession of the Premises free of all personal property, except as otherwise stated herein, is to be delivered at the time of the delivery of the deed, said Premises to be then in the same condition as they now are, reasonable use and wear thereof excepted and in compliance with the provisions of any instrument referred to in clause 4 hereof. The Buyer shall be entitled personally to inspect the Premises within 24 hours prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.

**9. EXTENSIONS 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, the Seller shall use reasonable efforts (which shall not obligate Seller to incur expenses in excess of 0.5% of purchase price) to remove any defects in title, or to deliver possession as provided herein, or to make the Premises conform to the provision hereof, as the case may be, in which event the time for performance hereof shall be extended for a period of up to thirty days, if, and only if Buyer’s lender shall extend its commitment for financing and rate for the same period of time on the same or better terms and conditions as the Buyer’s original commitment, without additional cost to the Buyer, failing which Buyer may elect to notify Seller in writing of the Lender’s unwillingness to extend and of Buyer’s intention to withdraw, at which time all monies paid shall be returned to Buyer and all other obligations of the parties hereto shall cease and this Agreement shall be void, without recourse to the parties hereto.

**10. 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 the Premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then, at the Buyer’s option, any payments made under this agreement shall be forthwith refunded and all other obligations of all parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

**11. BUYER’S ELECTION TO ACCEPT TITLE**

If the Seller shall not be able to deliver possession of and title to the Premises as herein provided, then the Buyer shall have the election at either the original or any extended time for performance to accept such title and possession as the Seller can deliver. If the Buyer so elects, he shall pay the full sales price and, in the event the Premises shall have been damaged by fire or casualty insured against, then the Seller shall, unless the Premises have been previously restored 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 the Premises shall not permit the insurance proceeds or a part thereof to be used to restore the 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 restorations.

**12. ACCEPTANCE OF DEED**

The acceptance and recording of a deed by the Buyer or his nominee as the case may be, shall be a full performance in discharge and release 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, and any representations made by the Seller to the Buyer or Real Estate Broker which pertain to any obligations or condition, which is to be performed after the closing, or which may continue after the closing.

**13. INSURANCE**

Until the delivery of the deed, the Seller shall maintain any and all insurances on the Premises.

**14. ADJUSTMENTS**

Water and sewer use charges, and taxes for the then current fiscal year, if any, shall be apportioned as of the day of performance of this agreement and the net amount thereof shall be added to or deducted from the purchase price payable by the Buyer at the time of delivery of the deed.

**15. ADJUSTMENTS 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.

**16. BROKER FEE**

A fee for professional service is to be paid by the Seller to Coldwell Banker Residential Brokerage, but only if, as, and when the Seller delivers, and the Buyer accepts and records the deed to the Premises. No Broker's fee or commission shall be deemed earned or vested until the deed has been recorded at the appropriate registry of deeds.

**17. BROKER(S)**

Buyer and Seller represent to each other that neither party has dealt with any broker or any other person in connection with this purchase of said premises hereunder other than Coldwell Banker Residential Brokerage and \_\_\_\_\_ the brokers named herein ("Broker"), to whom Seller agrees to pay any commission due pursuant to the provisions of Clause 16. Seller and Buyer represent to each other that neither party knows of anyone else entitled to a fee or commission on the sale hereunder. Buyer and Seller agree that each will hold harmless and indemnify the others from any loss, cost, damage and expense, including reasonable attorney's fees, incurred by Buyer or Seller for a commission or finder's fee as a result of the falseness of these representations. The provisions of this Clause shall survive the Closing. No Broker's fee or commission shall be deemed earned or vested until the deed has been recorded at the appropriate registry of deeds.

**18. DEPOSIT**

All deposits made hereunder shall be held by Coldwell Banker Residential Brokerage in a Federally-insured account subject to the terms of this Agreement. The escrow agent holding the deposit pursuant to the

provisions hereof will not be liable for any action or nonaction taken in good faith in the performance of such agent's duties hereunder but shall be liable only for such agent's own willful default or misconduct. In the event of any dispute relating to the right of possession or disposition of the deposit, the escrow agent shall retain dominion and control over the same until such dispute shall have been settled by mutual written agreement of Buyer and Seller with instructions to the escrow agent, whereupon the deposit will be paid over in accordance with such mutual agreement; or if such dispute is taken to a court of competent jurisdiction, the deposit will be paid over unto the custody of such court or otherwise paid over in accordance with the final order, decree or judgment of such court.

**19. BUYER'S DEFAULT**

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 the Seller's sole remedy at law and in equity. The parties agree that in the event of default by the Buyer the amount of damages suffered by the Seller will not be easily ascertainable and, therefore, Buyer and Seller agree that the amount of the Buyer's deposit represents a reasonable estimate of the damages likely to be suffered. In reaching this agreement as to liquidated damages, the Buyer acknowledges that he or she has considered the likelihood that the actual amount of damages later determined may be greater or lesser than the stipulated amount and that the premises may be sold by the Seller, shortly after a default, to another person at a substantially higher or lower price than the Buyer had agreed to pay.

**20. MORTGAGE CONTINGENCY CLAUSE**

Buyer's obligations hereunder shall be subject to Buyer's obtaining a firm written commitment for a first mortgage loan for not more than \_\_\_\_\_ on or before \_\_\_\_\_ (the "Financing Date"). In the event that Buyer does not notify Seller before 5:00 p.m. on the Financing Date of Buyer's inability to obtain such a mortgage commitment, it shall be conclusively presumed that Buyer has obtained such mortgage commitment and the contingency contained in this clause shall be thereby waived. In the event that Buyer gives notice to Seller on or before 5:00 p.m. on the Financing Date of Buyer's inability to obtain such a mortgage commitment as provided above, then this Agreement shall automatically terminate and become null and void and without recourse to any party hereunder, and all deposits and interest on such deposit shall be forthwith refunded to Buyer.

**21. BUYER'S HOME INSPECTION**

Buyer acknowledges a satisfactory home inspection and agrees to purchase the Premises as-is except as provided otherwise herein.

**22. LIABILITY OF TRUSTEES, SHAREHOLDERS, BENEFICIARY, etc.**

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

**23. 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. The Buyer acknowledges that if the Premises is residential property constructed prior to 1978, Buyer must also receive from Seller and sign a lead paint property transfer notification certification.

**24. 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 the Premises have been equipped with approved smoke detectors and carbon monoxide detectors in conformity with applicable law.

**25. ACCESS**

Until the Closing Date Buyer and Buyer's agents, employees and contractors shall have the right, from time to time, on a reasonable prior notice to Seller, and at Buyer's sole cost, expense, risk and hazard and in all such manner as Buyer may reasonably determine, without damage being imposed upon the Premises, to enter upon the Premises up to three times; at all times being accompanied by Seller or Seller's authorized representative. Seller agrees to fully cooperate with Buyer, in all reasonable respects, but at reasonable times and frequencies and at no cost to Seller. In consideration of the foregoing Buyer agrees to indemnify and save Seller harmless from and against all loss, demands, causes of action, costs and expenses, claim, liability, or damage, including reasonable attorney's fees, caused by or related to any and all entries and activities as aforesaid by Buyer or Buyer's agents, employees, licensees and contractors.

**26. WARRANTIES AND REPRESENTATIONS**

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 either the Seller or the Broker: none.

**27. SELLER'S DOCUMENTS**

At the time of delivery of Seller's deed, Seller shall execute and deliver to Buyer the following documents: (a) an affidavit stating that Seller is not a foreign person under Internal Revenue Code, Section 1445; (b) an affidavit to Buyer and Buyer's title insurance company certifying that there are no parties in possession of the premises and that no work has been done on the premises which would entitle anyone to claim a mechanic's or materialman's lien with respect to the premises; (c) Internal Revenue Code, Section 1099B Forms and W-9 Forms; (d) an affidavit representing there is no urea formaldehyde foam insulation on or in the premises; (e) a smoke detector certificate pursuant to the requirements of General Laws, Chapter 48, Section 26F; and (f) any affidavits and certificates customarily required by Buyer's mortgagee and banks in the greater Boston area in connection with mortgage loans for transactions of this type.

**28. COMMON AREA FEE**

Seller represents that the current monthly common expense assessment applicable to the Unit is \$\_\_\_\_\_ (the "Monthly Fee"). Furthermore, Buyer expressly acknowledges that the Condominium Documents require Buyer to pay in a sum equal to twice the Monthly Fee to the Condominium at closing as the first Grantee of the Unit.

**29. WARRANTY TRANSFER**

Seller hereby assigns to Buyer (or nominee) any and all warranties, service contracts or agreements which are in force and effect if any there be, as to any appliance, fixture or other equipment or property to be conveyed as herein contemplated, effective as of the recording of the deed. Seller shall also provided a warranty as to the workmanlike construction of the Premises effective for one year after the delivery of the deed at Closing.

**30. POST CLOSING COMPLIANCE AND ADJUSTMENTS**

If any errors or omissions are found to have occurred in any calculations or figures used in the settlement statement signed by the parties (or would have been included if not for any such error or omission) and notice hereof is given within two months of the date of delivery of the deed to the party to be charged, 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 sale and purchase 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 sale and purchase.

This provision shall survive delivery of the deed for 90 days.

**31. NOTICE PROVISIONS**

Any written notice or an extension in connection with this Agreement shall be deemed to have been given when hand delivered or when such notice was received by the party being given notice by a commercial overnight courier (e.g. Federal Express) or when sent by the party giving notice by email or facsimile transmission with confirmation of transmission:

If to Buyer:

If to Seller:

Joel Favazza  
Seaside Legal Solutions, P.C.  
PO Box 1172, Gloucester, MA 01931  
P. 978-627-4500  
F. 978-290-5800  
Email: jfavazza@seasidelegal.com

**32. ATTORNEY AUTHORITY**

Accelerations and extensions of time for performance and amendments to this Agreement may be executed on behalf of a party or parties by his/her/their attorney(s).

**33. PRACTICE AND STANDARDS**

Any matter or practice arising under or relating to this Agreement that is the subject of a practice standard of the Real Estate Bar Association shall be governed by such standard to the extent possible. Any title matter which is the subject of a title standard of the Real Estate Bar Association at the time of delivery of the deed shall be governed by said title standard to the extent applicable.

**34. NO RECORDING**

If this Agreement is recorded, then that act will have the effect of canceling this Agreement in its entirety and rendering it null and void and of no further force and effect whatsoever.

**35. INVALIDITY OF PARTICULAR PROVISIONS**

If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**36. COUNTERPARTS AND FACSIMILE AND EMAIL**

This Agreement may be executed in several counterpart copies, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signatures of each of the parties to one such counterpart signature page. All of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page and facsimile or emailed signature pages are sufficient.

**37. 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 canceled, 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. The captions and marginal notes are used only as a matter of

convenience and are not be considered a part of this agreement or to be used in determining the intent of the parties to it.

**38. SELLER FEES**

Seller shall not be required to pay a wire fee in excess of \$30.00 per wire or a discharge tracking fee in excess of \$100.00 per discharge in connection with the closing.

**39. ENTIRE AGREEMENT**

This Agreement supersedes all prior offers, acceptances, understandings, agreements, discussions, and correspondence between the Buyer and the Seller concerning the purchase and sale of the Premises and sets forth the entire understanding of the parties pertaining to the purchase and sale of the Premises.

**40. LEGAL ADVICE**

Buyer and Seller each acknowledge that they have been advised of the importance of seeking legal advice prior to signing this Agreement, and each acknowledges that each has been afforded the opportunity to confer with counsel prior to signing this Agreement.

**SIGNED:**

\_\_\_\_\_  
[Buyer's Name], Buyer

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Buyer's Name], Buyer

\_\_\_\_\_  
Date

Brier Cliff Realty, LLC, Seller, by:

\_\_\_\_\_  
Andrew M. Knott, Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jayne F. Knott, Manager

\_\_\_\_\_  
Date