

REAL ESTATE PURCHASE AND SALE AGREEMENT

679 Main Street, Holyoke, Massachusetts

This Real Estate Purchase and Sale Agreement is made this 17th day of June, 2011, by and between F.L. Roberts and Company, Incorporated, (hereinafter called "Seller") and _____ (hereinafter called "Buyer"), who agree as follows:

1. Description of Real Estate (hereinafter called "Property"). The Seller agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, the real Property located at 679 Main Street, Holyoke, Massachusetts which Property is more particularly described in the LEGAL DESCRIPTION (SCHEDULE A) attached hereto and incorporated herein by reference. Such transaction is subject to the terms and conditions set forth in TERMS AND CONDITIONS OF SALE (SCHEDULE B) attached hereto and incorporated herein by reference. Buyer hereby acknowledges that these Schedules have been carefully read and are fully understood.
2. Purchase price. The purchase price of the Property is (Bid Amount plus a Five Percent Buyer's Premium) _____ Dollars (\$ _____). Buyer has this day deposited, in cash, bank check or certified funds made payable to Capital Recovery Group, LLC Escrow Account (hereinafter called "Auctioneer") the amount of Ten Thousand dollars (\$10,000.00), the receipt of which is acknowledged by the Auctioneer's signature below (the "Deposit"). The Deposit shall be increased to an amount equal to ten (10%) percent of the purchase price of the Property if such amount is greater than the initial Deposit within twenty (24) hours from the date of this Agreement. Buyer acknowledges and agrees that Buyer's Deposit is nonrefundable except under circumstances in which Seller defaults, Seller is unable to convey title as required pursuant to Paragraph 4 below or the Property is subject to substantial loss or damage prior to Closing, as more particularly described in Paragraph 14 of the Terms and Conditions of Sale. Buyer is required to pay the balance of the total purchase price for the Project in cash, certified check, bank check or cashier's check at Closing. All amounts are payable in United States currency.
3. Closing. Closing shall occur no more than thirty (30) days following the date of this Agreement and shall take place at the offices of A. Craig Brown, Esq., Doherty, Wallace, Pillsbury and Murphy, P.C. located at One Monarch place, Suite 1900, Springfield, Massachusetts. Seller and Buyer agree that time is of the essence with respect to this Agreement and the Closing.
4. Title. Seller will convey good and marketable title to the Property, free and clear of all encumbrances, except building and zoning laws, all other applicable laws and regulations of any governmental authority in effect on the Date of Closing, taxes for the current fiscal tax year and any other municipal assessments that are not due and payable on the Date of Closing, which shall be adjusted as provided in Paragraph 5 below, easements, restrictions and other agreements

of record, the usual public utilities associated with servicing of Property and easements/rights-of-way which exist, subject to the provisions of the Terms and Conditions of Sale attached hereto as Schedule B.

5. Costs and Expenses. Buyer shall pay all costs of title search and/or examination; title insurance coverage; Buyer's share of pro-rated real estate taxes; transfer taxes; Buyer's pro-rated share of fuel, water and/or other utility charges, if any; and representation by legal counsel. Seller shall pay Seller's share of pro-rated real estate taxes; auction fees and/or commissions payable to Capital Recovery Group. LLC; document preparation and processing fees; and representation by legal counsel.

6. Risk of Defects. The Buyer assumes all risk of defects in the Property. The Buyer expressly acknowledges and agrees that the amount bid reflects the "AS IS, WHERE IS" condition of the Property and the assumption of all risks relating to undisclosed defects. The Buyer further acknowledges and agrees that the Buyer in no way relies on any representations made by Seller or Auctioneer.

7. Deed of Conveyance. Seller shall, at Closing, execute and deliver a good and sufficient Deed with Covenants of equal character to those granted to Seller at such time as Seller acquired title to the Property, which deed shall convey good and marketable title as provided in Paragraph 4 above.

8. No Representations and Warranties; Seller's Disclaimer. THE BUYER ACKNOWLEDGES AND AGREES THAT THE SELLER HAS NOT MADE AND DOES MAKE ANY REPRESENTATION OR WARRANTY AS TO ANY MATTER AFFECTING OR RELATING TO THE PROPERTY, INCLUDING WITHOUT LIMITATION THE PHYSICAL CONDITION THEREOF, AND ANY IMPROVEMENTS THAT MAY BE LOCATED UNDERGROUND AT THE PROPERTY AND THE LOCATION AND/OR BOUNDARIES OF THE PROPERTY, AND BUYER ACKNOWLEDGES THAT NO SUCH REPRESENTATION OR WARRANTY HAS BEEN MADE AND AGREES TO TAKE THE PREMISES IN "AS IS", "WHERE IS" CONDITION AS OF THE DATE OF THIS AGREEMENT. SELLER SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY STATEMENT, REPRESENTATION OR INFORMATION PERTAINING TO THE PROPERTY WHICH MAY HAVE BEEN FURNISHED TO THE BUYER BY ANY OF THE SELLER'S EMPLOYEES, OFFICERS, ATTORNEYS, AGENTS OR OTHER PERSONS, AND SELLER EXPRESSLY DISCLAIMS ANY SUCH REPRESENTATIONS OR WARRANTIES. BUYER ACKNOWLEDGES AND AGREES THAT PRIOR TO EXECUTING THIS AGREEMENT BUYER HAD A FAIR AND COMPLETE OPPORTUNITY TO INSPECT THE PROPERTY AND BUYER THEREFORE ACCEPTS THE PROPERTY "AS IS", "WHERE IS" WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER BY SELLER AS TO THE PHYSICAL CONDITION OF THE PROPERTY OR ANY OTHER ASPECT OF THE PROPERTY.

9. Included in Conveyance. Included in the sale of the Property is all of the Seller's right, title and interest in and to any land lying in the bed of any existing public highway, street, road or avenue in front or abutting or adjoining the Property or any portion thereof and all privileges,

beneficial easements and restrictions, and other rights, of whatever nature, appurtenant to, in favor or commonly enjoyed with the Property. Also included in the sale as part of the Property are all buildings, structures and improvements now located thereon, together with all of the fixtures and other items of personal property belonging to the Seller and attached or appurtenant to the Property, including without limitation the gasoline dispensers, underground storage tanks and related piping and appurtenances thereto, and all other fixtures that are part of the Property. Specifically excluded from the sale of the Property is the POS System, all signs, all movable personal property not specifically stated as included as part of the sale of the Property in this Agreement and all items that are proprietary to the Seller or any third party, if any. Any dispute as to whether any particular item is included as part of the Property shall be resolved by the Seller in a manner consistent with this Paragraph 9 and any such resolution shall be final and binding upon the Buyer.

10. Hazardous Materials. The Seller represents to the Buyer that the Seller previously operated a gasoline service station at the Property in accordance with the Seller's normal and customary procedures, which include the monitoring of the disposition of petroleum products delivered to the underground storage tanks at the Property utilizing a veeder root system and periodic underground storage tank tightness tests. The Seller represents to the Buyer that to the best of its knowledge, there has been no release of any "oil" or "hazardous materials", (collectively, "Hazardous Materials") as such terms are defined in M.G.L. c. 21E and the regulations promulgated thereunder at 310 CMR 40.00 *et seq.* (the "Governmental Requirements"), that requires the performance of any remedial and response actions in accordance with applicable Governmental Requirements, and as of the date of this Agreement the Seller is not performing any such remedial and response actions at the Property. The Seller further represents to the Buyer that to the best knowledge of the Seller, the Property is eligible for reimbursement for costs and expenses incurred in connection with the performance of remedial and response actions in relation to Hazardous Materials at the Property in accordance with applicable Governmental Requirements out of the Massachusetts Underground Storage Tank Fund established pursuant to M.G.L. c. 21J and the regulations promulgated thereunder, and the Property will continue to be eligible for such reimbursement immediately following the sale of the Property by the Seller to the Buyer.

11. Execution of Gas Contract. The Seller and the Buyer acknowledge and agree that the Property has been offered for sale with or without a gas contract, pursuant to which the Seller shall supply to the Buyer all of the Buyer's requirements for motor fuels for sale at the Property during the three (3) year period following the Date of Closing in connection the purchase of the Property by the Buyer from the Seller (the "Gas Contract"). If the Buyer proposes to enter into a Gas Contract, the Floor more particularly described on Schedule B has been reduced, as set forth on Schedule B. The Seller and the Buyer agree that if the Buyer offered a purchase price for the Property with a commitment to enter into a Gas Contract, the Seller and the Buyer shall enter into the Gas Contract on the Date of Closing and it shall provide as follows:

(a) The term of the Gas Contract shall be three (3) years, beginning upon the date that the Buyer commences the operation of the Property as a gasoline service station and continuing for a period of three (3) years.

(b) The Buyer shall agree to purchase all of its requirements for motor fuels from the Seller pursuant to the Gas Contract during the term of the Gas Contract.

(c) The purchase price for motor fuels sold by the Seller to the Buyer pursuant to Gas Contract shall be one cent over the New Haven rack price for Valero unbranded, Mobil unbranded, Irving unbranded or New England Petroleum unbranded, whichever price is lower and available based upon daily allocation allotments.

(d) The purchase price for motor fuels shall also include common carrier freight charges, together with any fuel surcharges in effect and all taxes attributable to the motor fuels being purchased by the Buyer from the Seller.

(e) Payment terms shall be COD or seven (7) days after delivery, subject to credit approval.

The Seller and the Buyer shall each initial below if the sale of the Property by the Seller to the Buyer is subject to the execution by the Buyer of a Gas Contract on the Date of Closing:

Seller's Initials _____

Buyer's Initials _____

12. Acceptance of Deed. The acceptance of a deed by Buyer shall be deemed to be a full performance and discharge of every agreement and obligation of Seller contained in this Agreement. Seller shall not have any obligation to Buyer following the delivery by Seller to Buyer of the deed conveying title to the Property in accordance with the terms of this Agreement.

13. Retention of Deposit by Seller. In the event that Buyer fails to perform Buyer's obligations under this Agreement under circumstances in which Seller is not in default under this Agreement, Seller and Buyer agree that Seller shall be entitled to retain the Deposit as liquidated damages in lieu of all other rights and remedies the Seller may have at law or in equity. Seller and Buyer recognize and agree that the determination of actual damages in the event of any default by Buyer would be difficult and the Deposit constitutes the best pre-estimate of such damages. This liquidated damage provision is therefore fair and reasonable and constitutes the Seller's sole remedy as a result of the Buyer's default. The Buyer further acknowledges and agrees that this provision does not constitute a penalty against the Buyer.

13. Entire Agreement. This Agreement and attached Schedules A and B constitute the entire agreement between the Seller and Buyer, supersede all prior negotiations and understandings, and shall not be altered or amended except by written amendment signed by Seller and Buyer. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the Seller and the Buyer have executed this Agreement as a secured instrument on the day, month and year first above written.

SELLER:
F.L. ROBERTS AND COMPANY,
INCORPORATED

By _____
Its

BUYER:

(Signature)

(Print Name)

(Telephone Number)

(Telecopier)

(Email)

SCHEDULE A
LEGAL DESCRIPTION

679 Main Street, Holyoke, Massachusetts

Certain real estate situated in Holyoke, Hampden County, Massachusetts more particularly bounded and described as follows:

Parcel 1:

Beginning at a point in the westerly line of Main Street, two hundred twenty (220) feet, northerly of the northerly line of Berkshire Street; and thence running SOUTHERLY along Main Street, a distance of one hundred thirty (130) feet to a point; thence NORTHWESTERLY at right angles to said Main Street, a distance of one-hundred twenty-five (125) feet to a point; thence NORTHWESTERLY at right angles to the last described line, a distance of one hundred thirty (130) feet, to a point; thence SOUTHEASTERLY at right angles to the last described line and along land now or formerly belonging to Holyoke Water Power Company, a distance of one hundred twenty-five (125) feet to a point in the westerly line of Main Street, being the point of beginning.

Being the same premises shown as Lot #2 on plan entitled "Plan of Lots in the City of Holyoke, MA. owned by MORTIMER A. & CHARLES L. POLEP" Durkee, White, Towne and Chapdelaine dwg. no. 82-4319 dated Nov. 29, 1577; which plan is recorded in said Registry of Deeds in Book of Plans 176, Page 3.

Being the same premises described in a deed recorded in the Hampden County Registry of Deeds at Book 4534, Page 195.

Parcel 2

Beginning at a point in the westerly line of Main Street, two hundred twenty (220) feet, northerly of the northerly line of Berkshire Street; and thence running SOUTHERLY along Main Street, a distance of one hundred thirty (130) feet to a point; thence NORTHWESTERLY at right angles to said Main Street, a distance of one hundred twenty-five (125) feet to a point; thence NORTHEASTERLY at right angles to the last described line, a distance of one hundred thirty (130) feet, to a point; thence SOUTHEASTERLY at right angles to the last described line and along land now or formerly belonging to Holyoke Water Power Company, a distance of one hundred twenty-five (125) feet to a point in the westerly line of Main Street, being the point of beginning.

Being the same premises described in a deed recorded in the Hampden County Registry of Deeds at Book 4539, Page 327.

SCHEDULE B
TERMS AND CONDITIONS OF SALE

679 Main Street, Holyoke, Massachusetts

1. Auctioneer is Capital Recovery Group, LLC. The Seller is F.L. Roberts and Company, Incorporated.
2. This sale is of certain real property located at 679 Main Street, Holyoke, Massachusetts, and is being conducted by the owner.
3. A description of the property to be sold is set forth on Schedule A to the Real Estate Purchase and Sale Agreement.
4. This sale may be adjourned from time to time as the Auctioneer may determine.
5. To bid, a bidder must first deposit Ten Thousand Dollars (\$10,000.00) in cash, certified, cashier's or bank check, or equivalent, payable to Capital Recovery Group, LLC. Escrow Account and register with the Auctioneer. No bid will be considered unless such bidder has first registered with the Auctioneer and deposited with him the required earnest money deposit. Bids will be made orally. The Auctioneer reserves the right to control the increments of the bids. Any bid not in compliance with the terms of sale may be rejected.
6. The Auctioneer may withdraw the real estate at any time until he announces the completion of the sale. The Seller of the real estate reserves the right to reject the high bid and any and all bids as provided in Paragraph 7 below.
7. Bidding will be conducted as a public auction sale. This is an absolute auction subject to a Floor (defined below). Once the bid price, exclusive of the Buyer's premium, exceeds Eighty Five Thousand Dollars (\$85,000) with a Gas Contract as more particularly described in Paragraph 11 of the Real Estate Purchase and Sale Agreement (the "Floor"), the highest bidder will be the Buyer of the Property. If the Buyer's bid does not include the agreement of the Buyer to enter in to a Gas Contract, as more particularly described in Paragraph 11 of the Real Estate Purchase and Sale Agreement, the Floor shall be One Hundred Ten Thousand (\$110,000) Dollars. Notwithstanding the foregoing, the Seller retains the exclusive right to reject any and all bids, including the highest bid in the event that the Floor is not achieved. In the event that the high bid is acceptable to the Seller or the Floor is achieved, a five percent (5%) Buyer's Premium will be added to the highest bid which total will be the purchase price. At the completion of the sale, the successful bidder will sign a Real Estate Purchase and Sale Agreement in the form required by the Seller and provided to registered bidders with these Terms and Conditions of Sale.
8. The balance of the purchase price payable by the successful bidder shall be made in cash, certified check, cashier's check or bank check. Closing is to be held no more than thirty (30) days following the date of the Purchase and Sale Agreement.

9. Seller will convey good and marketable title, by deed with covenants equal to the deed into the Seller, to the Property, free and clear of all encumbrances except building and/or zoning restrictions of record, restrictive covenants or record, usual public utilities associated with servicing the Property and easement/rights-of-way which are of record.

10. Buyer may examine title for ten (10) days after the day the bid is accepted and shall within that time notify Seller in writing of any defects in title which may render the title unmarketable in accordance with the standards adopted by the Real Estate Bar Association. Seller shall have twenty (20) days to cure any defects of title so brought to its attention, which may render the title unmarketable. Buyer shall have the right to rescind and have refunded Buyer's Deposit where defects of title which render the title unmarketable are not cured by Seller within this twenty (20) day period.

11. In the event the successful bidder fails to comply with any of the terms and conditions of sale and/or defaults hereunder, the bidder's Deposit will be retained by Seller, unless the Auctioneer, in its sole discretion, reopens the bidding and the new highest bidder immediately executes a Purchase and Sale Agreement. Upon close of bidding and compliance with the terms of sale, the Auctioneer shall declare that the terms of the sale have been complied with and that the public sale is closed. If the Buyer fails to perform at Closing, the Seller will retain the Buyer's Deposit.

12. The Buyer's commitment under the Purchase and Sale Agreement is NOT contingent upon securing financing or upon any other conditions. The Buyer's deposit is non-refundable except for the Seller's inability to convey good and marketable title to the Property.

13. THE PROPERTY IS SOLD "AS IS, WHERE IS" WITH ALL EXISTING DEFECTS AND WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY OR MERCHANTABILITY. BIDDERS ARE INVITED TO INSPECT THE PREMISES AND PUBLIC RECORDS PRIOR TO MAKING A BID. NO WARRANTIES, GUARANTEES OR REPRESENTATIONS OF ANY KIND ARE MADE; AND ALL WARRANTIES ARE DISCLAIMED WITH RESPECT TO ANY IMPROVEMENTS LOCATED UNDERGROUND, THE LOCATION AND/OR BOUNDARIES OF THE PREMISES OR IMPROVEMENTS THEREON, ENVIRONMENTAL COMPLIANCE, OR ITS COMPLIANCE WITH ANY APPLICABLE ZONING OR LAND USE REGULATIONS, LAWS OR ORDINANCES. BUYER IS RELYING UPON ITS OWN INSPECTION AND ITS OWN PROFESSIONAL ADVISORS IN ITS EXAMINATION OF THE PROPERTY AND ALL IMPROVEMENTS THEREON. BUYER HEREBY REPRESENTS WARRANTIES AND COVENANTS TO SELLER THAT, PRIOR TO THE AGREEMENT DATE BUYER HAS CONDUCTED BUYER'S OWN INVESTIGATION OF THE PROPERTY AND THE PHYSICAL CONDITION THEREOF. BUYER AGREES THAT SELLER IS NOT GIVING ANY EXPRESS OR IMPLIED WARRANTY, HAS NO SUCCESSOR LIABILITY AND IS NOT OBLIGATED TO GIVE ANY WARRANTIES. THE BUYER WILL ASSUME RESPONSIBILITY AND EXPENSES FOR ANY TITLE SEARCH, TITLE

EXAMINATION OR TITLE INSURANCE, AS SET FORTH IN SAID PURCHASE AND SALE AGREEMENT.

THE BUYER WILL ASSUME RISK OF ANY DEFECTS, AND EACH BIDDER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE AMOUNT BID REFLECTS THE "AS IS, WHERE IS" CONDITION OF UNDISCLOSED DEFECTS. EACH BIDDER FURTHER ACKNOWLEDGES AND AGREES THAT SUCH BIDDER IN NO WAY RELIES UPON REPRESENTATIONS MADE BY SELLER OR HIS AGENTS.

14. In the event of a substantial loss or damage to the Property occurring after the execution of the Purchase and Sale Agreement and prior to Closing, Buyer shall have the election either to terminate the Purchase and Sale Agreement and receive a refund of the Deposit or to complete the purchase and receive any insurance proceeds or eminent domain award received by Seller on account of the damage or loss.

15. In the case of disputed bidding, the Auctioneer shall be the sole and absolute judge of such dispute.

16. The Auctioneer acts only as agent for the Seller.

17. In the event of any conflict between these Terms and Conditions of Sale and the Purchase and Sale Agreement, the Purchase and Sale Agreement shall control.

18. This sale is subject to confirmation by the Seller in the event that the Floor is not achieved.

19. Other terms or conditions may be announced at the sale. The Property is subject to sale prior to auction. Seller expressly reserves the right to cancel the sale or modify the terms and conditions prior to announcing completion of the sale.

20. **NOTE: By registering, you have signed a written, binding contract agreeing to these Terms and Conditions of Sale. If you do not agree with any of these Terms and Conditions of Sale, return your bidding cards to the clerk immediately.**