

PURCHASE AND SALE AGREEMENT

SECTION 1 -- INFORMATION AND DEFINITIONS

- 1.1 DATE OF AGREEMENT: , 2016
- 1.2 PREMISES: 415 Boston Post Road, Sudbury, MA
Parcel ID: K08-0006
- 1.3 SELLER: Town of Sudbury
- Address: c/o Melissa Murphy-Rodrigues, Town Manager
278 Old Sudbury Road
Sudbury, MA 01776
- SELLER'S Attorney: Barbara J. Saint Andre, Esq.
Address: KP Law, P.C.
101 Arch St., Boston, MA 02110
- Phone: (617) 556-0007 Fax: (617) 654-1735
- 1.4 BUYER:
Address:
- BUYER'S Attorney: _____
Address: _____
Phone: _____
- 1.5.0 PURCHASE PRICE: The agreed purchase price for said Premises is , of which:
- | | |
|--------------|---|
| \$ | has been paid as a deposit under this Agreement; and |
| \$ _____ .00 | are to be paid at the time of delivery of the deed by certified or bank check or by wire transfer |
| \$.00 | TOTAL |
- 1.6 CLOSING DATE: , 2016 at 11:00 a.m. Time is of the essence.
- PLACE: Middlesex County Registry of Deeds or a closing by mail, at SELLER'S option.
- 1.7 Title: Release Deed
- 1.8 BROKER: None

2. Covenant. SELLER agrees to sell and BUYER agrees to buy the Premises upon the terms hereinafter set forth.

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 SELLER and used in connection therewith, if any.

4. Title Deed. Said Premises are to be conveyed by a good and sufficient release deed running to BUYER, 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) Easements, restrictions and reservations of record, if any, provided the same do not materially interfere with the use of the Premises for _____ purposes; and

5. Deed; Plans. SELLER shall be responsible for drafting the deed. If said deed refers to a plan necessary to be recorded therewith SELLER shall deliver such plan with the deed in a 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 a form sufficient to entitle BUYER to a Certificate of Title of said Premises, and SELLER shall deliver with said deed all instruments, if any, necessary to enable BUYER to obtain such Certificate of Title.

7. Possession and Control 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 Section 4 hereof. BUYER shall be entitled to inspect said Premises personally prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this Agreement.

8. Extension to Perfect Title or Make Premises Conform. If 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 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, and thereupon the time for performance hereof shall be extended for a period of thirty calendar days. In no event, however, shall reasonable efforts require SELLER to expend more than \$500.00, including attorneys' fees in connection with such efforts, exclusive of monetary or other voluntary liens.

9. Failure to Perfect Title or Make Premises Conform. If at the expiration of the extended time 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, then the deposit 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. BUYER'S Election to Accept Title. BUYER shall have the election, at either the original or any extended time for performance, to accept such title as SELLER can deliver to the said Premises in their then condition and to pay therefor the purchase price, without deduction, in which case SELLER shall convey such title

11. Acceptance of Deed. The acceptance of a deed by BUYER, or its assignee or 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.

12. Insurance. Until the delivery of the deed, SELLER shall maintain insurance on the Premises as it presently has.

13. Adjustments. A payment in lieu of taxes shall be paid in accordance with G.L. c. 44, §63A as of the day of performance of this Agreement and the amount thereof shall be added the purchase price payable by BUYER at the time of delivery of the deed. 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. Any sewer, water, and/or fuel charges shall be adjusted as of the date of closing.

14. Brokers. 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. BUYER and SELLER agree to defend, indemnify the other against and hold the other harmless, to the extent permitted by law, from any claim, loss, damage, costs or liabilities for any brokerage commission or fee which may be asserted against the other by any broker in connection with this transaction. The provisions of this paragraph shall survive delivery of the deed. [Alternate language will be substituted in the event that Buyer has used a broker. The Town will not pay any broker commission.]

15. Deposit. All deposits made hereunder shall be held in escrow by the Town of Sudbury Treasurer as escrow agent, in a non-interest bearing account, 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 may retain all deposits made under this Agreement pending instructions mutually given by SELLER and BUYER.

16. Liability of Trustee, Shareholder, Fiduciary. If SELLER or BUYER executes this Agreement in a representative or fiduciary capacity, only the principal or the estate represented

shall be bound, and neither SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

17. Representations and Warranties. BUYER acknowledges that BUYER has not been influenced to enter into this transaction nor has it 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 SELLER or the Broker(s): NONE.

18. Contingencies. SELLER'S performance hereunder is, at SELLER'S option, expressly subject to the following conditions:

- (a) Compliance with the provisions of G.L. c. 30B;
- (b) SELLER shall have complied with the disclosure provisions of G.L. c.7C, §38, and SELLER and BUYER agree to diligently pursue full compliance with said statute. BUYER hereby agrees to execute a "Disclosure of Beneficial Interests in Real Property Transaction" certificate as required by G.L.c.7C, §38;
- (c) Compliance with any other requirements of the Massachusetts General or Special Laws relative to the sale of the Premises by SELLER;
- (d) BUYER's receipt of all necessary permits and authorizations as is further described in Paragraph 24 below.

19. Title to Premises. Notwithstanding anything herein contained, the Premises shall not be considered to be in compliance with the provisions of this Agreement with respect to title unless:

- (a) no building, structure or improvement of any kind belonging to any person or entity encroaches upon or under the Premises from other Premises;
- (b) title to the Premises is insurable, for the benefit of BUYER, by a title insurance company acceptable to BUYER, in a fee owner's policy of title insurance at normal premium rates, in the American Land Title Association form currently in use;
- (c) all structures and improvements on the Premises shall not encroach upon or under any property not within the lot lines of the Premises; and
- (d) the Premises abut a state public way.

20. Affidavits, etc. Simultaneously with the delivery of the deed, SELLER shall execute and deliver: (a) Affidavits and indemnities with respect to due authority, parties in

possession and mechanic's liens to induce BUYER'S title insurance company to issue lender's and owner's policies of title insurance without exception for those matters; (b) An affidavit, satisfying the requirements of Section 1445 of the Internal Revenue Code and regulations issued thereunder, which states, under penalty of perjury, SELLER'S United States taxpayer identification number, that SELLER is not a foreign person, and SELLER'S address (the "1445 Affidavit"); (c) Internal Revenue Service Form W-8 or Form W-9, as applicable, with SELLER'S tax identification number, and an affidavit furnishing the information required for the filing of Form 1099S with the Internal Revenue Services and stating Seller is not subject to back-up withholding; and (d) such additional and further instruments and documents as may be consistent with this Agreement and customarily and reasonably required by BUYER and/or the BUYER'S title insurance company to complete the transactions described in this Agreement.

21. Title Standards. Any matter or practice arising under or relating to this Agreement which is the subject of a title standard or a practice standard of the Real Estate Bar Association at the time for delivery of the deed shall be covered by said title standard or practice standard to the extent applicable.

22. Inspection; Hazardous Materials. BUYER acknowledges that BUYER has not been influenced to enter into this transaction and that it has not relied upon any warranties or representations not set forth in this Agreement. BUYER represents and warrants that it or its agents have conducted a full inspection of the Premises, and based upon BUYER'S investigation, BUYER is aware of the condition of the Premises and will accept the Premises "AS IS". BUYER acknowledges that SELLER has no responsibility for, and hereby releases and holds harmless SELLER from any and all damages, loss, costs expenses (including any and all attorneys' fees, and expenses of SELLER), claims, suits, demands or judgments of any nature whatsoever, related to any hazardous waste, oil, hazardous material or hazardous substances, as those terms are defined by any applicable law, rule or regulation, including, without limitation, the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G. L. c. 21E, the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. (herein collectively referred to as "Hazardous Waste"). **The provisions of this Section shall survive delivery of the deed.**

23. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and signed by the party or the party's attorney or agent and shall be deemed to have been given upon the earlier of: (i) two business days after deposit with the United States Postal Service, if sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one business day after deposit with an express courier service such as Federal Express; (iii) actual receipt, or (iv) facsimile transmission, receipt by addressee confirmed (provided such facsimile notice is promptly followed by other acceptable means of sending notice), addressed to the party and the party's attorney at the addresses set forth in Section 1.

24. Permitting. The BUYER shall have _____ days from the expiration of the Due Diligence Period to obtain all requisite and necessary permits and approvals/agreements required in order to construct the Proposed Use in accordance with the Development Schedule attached

hereto and made a part hereof. If at the end of this Permitting/Approval Period all necessary permits/approvals have not been received (and all appeal periods have expired without appeal having been taken), despite the BUYER's good faith, continuous and diligent efforts, then the BUYER shall have the right to extend the Permitting Period by up to _____ days. If after the expiration of the Permitting Period, as it may be extended by mutual agreement of the parties, Buyer has not secured all such requisite and necessary permits and approvals/agreements with all appeal periods having expired, then SELLER and BUYER shall each have the right to terminate this Agreement and thereafter, the entire Deposit shall be returned to the BUYER forthwith and this Agreement shall be terminated without further recourse to the parties hereto.

25. Closing. The deed and other documents required by this Agreement are to be delivered and the Purchase Price paid at the Date and Time of Closing and at the Place of Closing. All documents and funds are to be delivered in escrow subject to prompt rundown of title and recording, which term shall include registration in the case of registered land. Unless otherwise agreed, SELLER'S attorney may disburse the funds if no report has been received by 4:00 p.m. of the next business day following the date of the delivery of the deed that the documents have not been recorded due to some problem beyond the recording attorney's control.

26. Condition of Premises at Closing. SELLER agrees to deliver the Premises at the time of delivery of SELLER'S deed in a condition substantially similar to its condition at the time of the signing of this Agreement, removing all of SELLER'S personal property therefrom which is not being sold to BUYER, or left for its benefit, as consented to by it.

27. Casualty. Notwithstanding anything herein to the contrary, in the event that the Premises are substantially damaged by fire, vandalism or other casualty that is not the result of the negligence of BUYER, or its agents, employees, contractors and invitees, or in the event of a taking of all or part of the Premises by eminent domain by any entity, then at BUYER'S sole option, this Agreement may be terminated, whereupon all deposits made by BUYER under this Agreement shall be returned to BUYER.

28. Extensions. BUYER and SELLER hereby authorize their respective attorneys (as the case may be) to execute on their behalf any extensions to the time for performance and any change of location and/or time for delivery of the deed. BUYER and SELLER shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge before the execution or other consent to such extensions, that either party has disclaimed the authority granted herein to bind them. For purposes of this Agreement, facsimile signatures shall be construed as original.

29. Default. In the event that BUYER fails to fulfill its obligations hereunder for any reason, SELLER shall be entitled to terminate this Agreement, and retain all deposits made by BUYER in addition to any other remedies it may have available at law or in equity.

In the event that SELLER fails to fulfill its obligations hereunder for any reason, BUYER shall be entitled to terminate this Agreement, and receive a refund of the deposit. The foregoing shall be BUYER'S sole and exclusive remedy at law and in equity for any breach of this Agreement by SELLER.

30. Assignment. BUYER shall not assign this Agreement or any of its rights hereunder without prior written consent of SELLER, which may be withheld in SELLER'S sole and absolute discretion.

31. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts and any dispute or claim arising hereunder shall be brought in the courts of the Commonwealth of Massachusetts.

32. 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 SELLER and BUYER

33. Errors. 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 thereof is given within sixty days of the date of delivery of the deed to the party to be charged, then such party agrees to make payment to correct the error or omission.

34. Captions. The captions and headings throughout this Agreement are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this Agreement, nor in any way affect this Agreement, and shall have no legal effect.

35. Prior Agreements. All prior agreements of the parties are hereby superseded and shall have no further force and effect.

In Witness whereof, the parties hereto sign this Purchase and Sale Agreement under seal as of this _____ day of _____, 2016.

BUYER:

SELLER: Town of Sudbury,
By its Board of Selectmen

565032/SUDB/0001

Exhibit A

DEVELOPMENT SCHEDULE