



Scott Mitchell Real Estate, LLC

321D LAFAYETTE ROAD HAMPTON, NH 03842 PHONE: 603.926.7770

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (the "Agreement") is made this 7th day of March 2013 by and between the Town of Durham of 15 Newmarket Road Durham NH (the "Seller") and Scott Mitchell Real Estate, LLC a New Hampshire limited liability company, of 321D Lafayette Road, Hampton, New Hampshire 03842 or its Nominee or Assignee (the "Buyer").

For and in consideration of the mutual agreements herein contained and the consideration herein expressed, Seller and Buyer agree as follows:

1. **PURCHASE AND SALE OF REAL ESTATE.** Subject to the terms of this Agreement, the Seller agrees to sell to the Buyer and the Buyer agrees to purchase from the Seller .95 acres of land, more or less, located at 15 Newmarket Road, Durham, NH, known as Durham Tax Map/Block/Lot 05/04/10 with any improvements located thereon, and appurtenances thereto, and the Sellers' rights, easements or other interests, if any, in and to adjacent streets, alleys and rights-of-way abutting such real property (collectively, the "Premises") for the construction of a retail building at buyer's sole design subject to the approval of Durham's local land use boards in accordance with local zoning. (the "Project"). Scott Mitchell Real Estate, LLC has the right to terminate this contract should the design of the building not be acceptable to the Buyer's tenant.
2. **PURCHASE PRICE.** The purchase price for Premises is One Million Two Hundred Thousand (\$1,200,000.00) DOLLARS payable as follows.

Upon the signing of this Agreement the Buyer shall deliver a deposit in the amount of Five Thousand Dollars (\$5,000.00) (the "Deposit") to be held in a non-interest bearing escrow account by Buyer's attorney Hinckley, Allen & Snyder, LLP 11 South Main Street, Suite 400 Concord, NH 03301

- A. The Deposit will be credited to the Purchase Price at Closing.
 - B. The Purchase Price, less the Deposit, shall be payable at Closing by bank certified check or wire transfer to the settlement agent pursuant to the mutually agreed to written settlement statement and correlating wire instructions.
3. **PLACE OF CLOSING.** The closing hereunder shall be held at such location as may be designated by Buyer's lender or otherwise at the law office of Hinckley Allen & Snyder, LLP, or such other place as the parties mutually agree upon.

4. DATE OF CLOSING. The closing shall be no later than thirty (30) days from the date on which Buyer notifies Seller that all the Buyer Contingencies, contained in Section 8 of this Agreement have been successfully completed or waived by the Buyer, and the Seller notifies the Buyer that all the Seller's Contingencies, contained in Section 9 of this Agreement have been successfully completed or waived by the Seller (the "Closing Date"). In addition to the customary instruments of conveyance, at the Closing:

- A. The Seller shall deliver any and all existing permits, plans and approvals, including but not limited to certificates of occupancy, building permits, architectural and engineering plans and renderings, as-built plans and surveys, and vendor, contractor and subcontractor warranties for the Premises and the building, fixtures and appurtenances located on the Premises, and shall execute such reasonable assignment or transfer documentation to accomplish the transfer and assignment of the Seller's rights in and to the same to the Buyer.
- B. Each party shall deliver such reasonable documentation evidencing that the transactions contemplated by this Agreement have been duly authorized by each party, including the execution and delivery of the deed to the Buyer, and that all signatories signing on behalf of a party have been duly authorized.

5. DEED.

- A. The Seller shall convey good, clear, record and marketable fee simple title to the Premises by Warranty Deed in proper form under New Hampshire law, free and clear of all encumbrances except as stated in Exhibit A. The Seller shall sign all customary affidavits necessary to permit the Buyer to obtain such title insurance as may be required by the Buyer's lender.
- B. Within one hundred twenty (120) days following the execution of this Agreement (the "Due Diligence Period"), the Buyer shall perform a title examination of the Premises, and must be reasonably satisfied that title to the Premises is good, marketable and insurable. In the event that the title to the Premises is not good, marketable and insurable, the Buyer shall provide written notice of its objections to Seller within the Due Diligence Period. Thereafter, the Seller shall be provided a reasonable period of time, not to exceed thirty (30) days, within which to resolve such title defects. The Seller shall provide its proposed resolutions to the title objections, in writing, within thirty (30) days of Buyer's written notice. The Buyer shall have ten (10) days from the date of the Seller's written proposed resolutions to object, in writing, failing which the Buyer shall be deemed to have consented to such resolutions. In the event that such defects cannot be resolved pursuant to the resolutions agreed to by the parties within the time periods identified above, the Buyer, at its sole option, may terminate this Agreement in which event its Deposit shall be returned, and the parties shall have no further obligation to one another

under this Agreement. In the event that the BUYER has not received corporate approval BUYER shall have the right to extend this time frame one time for 60 days or this contingency shall be deemed waived.

6. POSSESSION. At the time of the closing, the Seller shall convey and transfer possession of the Premises free of all tenants, personal property liens and encumbrances except as set forth in Exhibit A.
7. PRORATIONS. Real estate taxes, special assessments, water and sewage bills and any fuel in storage shall be prorated as of the date of closing. Seller is exempt from transfer taxes as it is a NH municipality however, Buyer shall be responsible for its half of transfer taxes.
8. BUYER'S CONTINGENCIES. The Buyer shall have the following contingencies the failure to satisfy any one of which shall give the Buyer, at its option, the right to rescind this Agreement, in which event the Escrow Agent shall refund the Deposit to Buyer forthwith and without further need of documentation, upon which this Agreement shall be null and void.
 - A. Sellers' Delivery of Specified Documents. Copies of the following information (the "Property Information") relating to the Premises in the possession of Seller have been delivered, or will be delivered within Fifteen (15) business days after the date of this Agreement, to Buyer: (i) the latest property tax bills and value renditions from all taxing authorities; (ii) any environmental reports, permits and correspondence with applicable government; (iii) all existing plans, architectural plans and drawings, floor plans, specifications, permits, approvals (and any applications for permits or approvals), maps and surveys (including, without limitation, archaeological, boundary, topographic, subsurface water and tree surveys); (iv) any subdivision reports; (v) any existing title report, commitment or policy; (vi) any soils, mineral, geologic and/or engineering reports; (vii) any written notices, reports, citations, orders, decisions, correspondence, or memoranda from any governmental authority (including, but not limited to, copies of any zoning letters) in the possession of Seller; (viii) all agreements with, permits from or applications to any governmental authority with respect to any zoning modification, variance, exception, platting or other matter relating to the zoning, use, development, subdivision or platting of the Premises in the possession of Seller; (ix) copies of all agreements, studies, reports, correspondence and other documents relating to the presence or absence of any endangered species or environmentally sensitive areas on the Premises; (x) any contracts or agreements relating to the Premises or services being provided or to be provided to the Premises; (xi) any material correspondence with tenants; and (xii) any material correspondence, reports, plans or other documentation related to the condition of the Premises and improvements, including, but not limited to, structural, electrical, plumbing, sprinkler system, septic and well water systems, telephones and underground or above ground storage tanks. Seller shall provide to Buyer any material documents coming into Seller's

possession of or produced by Seller after the initial delivery above and shall continue to provide same during the pendency of this Agreement. For each day delay in the delivery to Buyer of the Property Information, the Due Diligence Period will be extended by the same number of days.

- B. Investigation Period. The Buyer shall have through the last day of the Due Diligence Period to conduct any and all tests, investigations, studies, assessments, inspections, and surveys of the Premises, in Buyer's sole and absolute discretion, including, but not limited to an inspection of the Premises, environmental site assessments and such other reasonable examinations and inquiries to ensure that the Premises may be used for the purposes intended by the Buyer, at Buyer's sole cost and expense. Notwithstanding anything to the contrary in this Agreement, Buyer may terminate this Agreement by giving written notice of termination to Seller on or before the end of the last day of the Due Diligence Period. If Buyer elects to terminate this Agreement on or before the end of the Due Diligence Period, then the Deposit will be returned to Buyer, and neither party will have any further obligations hereunder.
- C. Access to Premises. Buyer and its agents, employees, and representatives shall have a continuing right of reasonable access to the Premises during the Due Diligence Period. The Buyer will provide Seller with at least twenty-four (24) hours advance notice of any Due Diligence requiring access to the Premises, and Seller shall coordinate such access for the Buyer. Buyer's contractors entering the Premises during the Due Diligence Period shall be licensed and insured. Following the exercise of its Due Diligence rights, the Buyer shall leave the Premises in its original condition, reasonable wear and tear excepted. BUYER has agreed to defend and indemnify SELLER from any claims made against the town which arise out of the actions of the BUYER'S contractors.
- D. Tenant's Approval. Buyer shall have received approval of the real estate transaction for this Project from Buyer's anticipated tenant ("Tenant Approval") within the Due Diligence Period. In the event Buyer has not received such approval by the end of said period Buyer shall have the right to one sixty (60) day extension of the Due Diligence Period for the purpose of obtaining Tenant Approval, provided that the Buyer notifies Seller of such election within the Due Diligence Period, or this contingency shall be deemed waived. If Buyer does not receive the Tenant's Approval within the Due Diligence Period, as it may be extended, then this Agreement may be rescinded at the option of the Buyer, upon written notice to Seller, in which event its Deposit shall be returned, and the parties shall have no further obligation to one another under this Agreement.
- E. Approvals/Rezoning. Buyer shall have received all necessary permits, non-appealable approvals and zoning relief required to complete the Project within three hundred sixty (360) days after the expiration of the Due Diligence Period, as it may be extended (the "Initial Permitting

Term"). The Buyer shall submit all necessary applications for said permits and approvals in a timely manner. Seller agrees to cooperate with Buyer in completing applications and making submissions in connection with obtaining necessary permits, approvals and rezoning under this subparagraph E. The Buyer agrees to pay all costs associated with the local, state and federal approval process. In the event that Buyer has not received all necessary permits, non-appealable approvals and zoning relief required to complete the Project within the Initial Permitting Term, but is diligently pursuing same, then Buyer may extend Initial Permitting Term for up to three (3) additional sixty (60) day periods by giving written notice to Seller prior to the expiration of the then current term. If Buyer does not receive all permits, non-appealable approvals and zoning relief required to complete the Project within the Initial Permitting Term, as it may be extended, then this Agreement may be terminated at the option of either the Buyer or Seller, upon written notice to Seller, in which event its Deposit shall be returned, and the parties shall have no further obligation to one another under this Agreement.

- F. Assemblage. Buyer shall have acquired, or will concurrently with Closing acquire, any and all additional parcels of land to be included in the development of the Project along with any necessary consents, permits and approvals to record a consolidated plat/parcel (the "Additional Property"). Seller acknowledges that the Additional Property is material to Buyer's development of the Premises and that, but for the acquisition of fee simple title to both the Premises and the Additional Property, Buyer would not otherwise acquire the Premises. If Buyer cannot acquire the Additional Property, then Buyer may terminate this Agreement and be refunded any Deposit paid.

9. **SELLER'S CONTINGENCIES:** The Seller shall have the following contingencies the failure to satisfy any one of which shall give the Seller, at its option, the right to rescind this Agreement, in which event the Escrow Agent shall refund the Deposit to Buyer forthwith and without further need of documentation, upon which this Agreement shall be null and void.

- A. The Seller must be able to purchase the People's United Bank parcel located at 8 Newmarket Road, Durham, NH and complete construction and occupation of a new town hall in that location.
- B. Approval of the design for the redevelopment on the Town Office lot by Durham's local land use boards in accordance with local zoning.
- C. Receipt of confirmation from Buyer within the Due Diligence Period that Buyer has acquired, or has contracts in place to acquire concurrently with closing, fee simple title to any Additional Property necessary to complete the Project.

10. **BUYER'S REPRESENTATIONS AND WARRANTIES.** The Buyer hereby warrants and represents the following:

- A. The Buyer has full power and authority to enter into and perform the obligations described in this Agreement, and the Buyer agrees to be bound by the terms and conditions of this Agreement.
- B. There is no suit, action or proceeding, pending or threatened, against the Buyer which raises or would raise any question concerning the validity or enforceability of this Agreement or the transactions contemplated herein.

11. SELLER'S REPRESENTATIONS AND WARRANTIES.

- A. The execution and delivery of this Agreement is binding upon the Seller, and is not in violation of any laws, decrees, or orders with which the Seller must comply.
- B. The Seller is not aware of any violations, orders, penalties, assessments, or other administrative or judicial actions or proceedings, either pending or threatened, which affect the Premises in any way, including, but not limited to, any zoning, subdivision, health, fire, life/safety, or other violations, and violations of any applicable federal, state and local environmental laws.
- C. The Seller holds good, marketable and insurable title to the Premises. The Premises are not subject to any contracts, agreements or interests of any third parties, except as otherwise disclosed herein.
- D. The Seller has full power and authority to enter into and perform the obligations described in this Agreement.
- E. There is no suit, action or proceeding, pending or threatened, against the Seller, which raises or would raise any question concerning the validity or enforceability of this Agreement or the transactions contemplated herein.
- F. Except as otherwise disclosed in this Agreement, there are no liens or encumbrances upon the Premises, or if they do exist, they shall be satisfied in full as of the Closing Date.

12. RISK OF LOSS. The Seller shall bear the risk of loss for the Premises until the Closing Date, and shall keep the Premises insured against loss in such amounts and upon such terms as are commercially reasonable for structures and improvements similarly situated in the area to the Premises, but in any event, not less than the replacement cost for the improvements on the Premises. In the event that the Premises or any portion thereof are lost or damaged as a result of a casualty between the date of execution of this Agreement and the Closing Date, and the loss is in excess of Twenty Thousand Dollars (\$20,000.00), the Buyer shall have the right to terminate this Agreement. Likewise, in the event that eminent domain proceedings are instituted against the Premises, the Buyer shall have the right to terminate this Agreement. In the event of such terminations, the

Seller shall return the Deposit to the Buyer, and this Agreement shall be null and void and of no further force and effect.

13. FURTHER COOPERATION/FURTHER DOCUMENTATION. Seller and Buyer agree to cooperate with one another on and after the execution of this Agreement by furnishing any additional information and by executing and delivering any additional document as may be reasonably required by each party or by their respective counsel in order to fully implement this transaction.
14. BROKER'S DISCLOSURE. All of the parties have been made aware that Scott Mitchell, a principal of the BUYER, is a licensed real estate broker in the State of New Hampshire and in the Commonwealth of Massachusetts. The Seller is not responsible for any brokerage commissions to him, but is responsible for the payment of any commissions owing to any broker or agent the SELLER has engaged.
15. DEFAULT.
 - A. In the event of Buyer's default in the performance of its obligations under this Agreement, Seller shall have the right to terminate this Agreement, in which event the Deposit shall be paid over to Seller's as Seller's sole remedy against Buyer at law or in equity.
 - B. In the event of Seller's default in the performance of its obligations under this Agreement, except as may be otherwise specifically provided for herein, Buyer shall have the right to either: (a) bring suit to specifically enforce this Agreement or (b) pursue any remedies at law or in equity against Seller for Buyer's expenditures relating to the Project and other damages, and (c) receive the Deposit.
16. EXPENSES. Except where otherwise specifically provided herein, each party shall pay its own expenses incurred by or on its behalf in connection with the authorization, preparation, execution and performance of this Agreement including, without limitation, all fees and expenses of agents representatives, counsel and accountants.
17. ASSIGNMENTS OR AMENDMENTS. This Agreement may be assigned by Buyer to a single purpose limited liability company but in no other event can this agreement be amended, modified, altered or changed in any respect whatsoever except by a further agreement in writing duly executed by both parties hereto.
18. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties and may not be orally amended or modified. All understandings and agreements heretofore existing between the parties are merged into this Agreement and this Agreement alone fully and completely expresses the agreement of the parties hereto.

19. SUCCESSORS. This Agreement shall be binding on and for the benefit of the parties hereto and their respective heirs, assigns, successors or personal representative(s).

20. NOTICES. All notices required or provided for under this Agreement shall be deemed to have been delivered when hand-delivered or when mailed by certified mail, return receipt requested, or when sent by receipted or otherwise traceable overnight delivery service to the following:

1) For the SELLER:

Todd I. Selig, Administrator
15 Newmarket Road
Durham, NH 03824

With a copy to:

Mitchell Municipal Group, P.A
25 Beacon Street East
Laconia, NH 03246

2) For the BUYER

Scott Mitchell Real Estate, LLC
321D Lafayette Road
Hampton, NH 03842

With a copy to:

Richard Y. Uchida, Esq.
Hinckley, Allen & Snyder, LLP
11 South Main Street, Suite 400
Concord, NH 03301

21. SURVIVAL. The respective promises of the parties here under shall survive the closing and transfer of title, except for such matters as are merged in the deed of transfer or otherwise provided for herein.

22. CONTINGENT OFFERS. Seller acknowledges that it is expressly prohibited from negotiating, signing and delivering any contract for the purchase, lease or the placing of any restrictive encumbrance for the Premises, which Buyer contemplates acquiring under the terms of this Agreement, while this Agreement is in full force and effect. Notwithstanding the above, the Seller may negotiate with another prospective buyer One Year after the expiration of the due diligence period.

23. SELLER'S REUSE OF SITE MATERIALS. Seller shall have the right to remove landscaping, granite curbing, building fixtures, and any and all other reusable materials from the property prior to closing, at Seller's sole discretion.

IN WITNESS WHEREOF we have herein set our hands effective the date first above written.


SELLER:

~~Town of Durham, NH~~

J. Berry
Witness

Witness

Town of Durham, NH

 3/7/13

Todd I. Belg, Administrator

Todd I. Selig, Administrator

Authorized Signatory

BUYER:

Scott Mitchell Real Estate, LLC

Witness

By: Ali
Name:
Title:

Name: _____

Title:

EXHIBIT A
PERMITTED ENCUMBRANCES

NONE