

AGREEMENT OF SALE

AGREEMENT, made this _____ day of _____, 2015, by and between William Salas, an individual with a mailing address of 87 Packers Falls Road, Durham, New Hampshire 03824(hereinafter called the "Buyer") and the Town of Durham, a municipal corporation having an office at 8 Newmarket Road New Hampshire 03824(hereinafter called the "Seller").

WITNESSETH:

WHEREAS, the Seller is the owner of a certain parcel of real property and the improvements thereon located in the Town of Durham, Strafford County, State of New Hampshire, as more particularly described the former Town Offices at 15 Newmarket Road (the "Premises");

WHEREAS, the Buyer desires to purchase the Premises upon and subject to the terms and conditions herein set forth and the Seller is willing to sell the Premises upon such terms and conditions;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. Purchase and Sale.

1.01. The Seller shall sell and convey to the Buyer or his assigns, which shall be limited to a Limited Liability Corporation or other real estate holding entity which has William Salas a member, manager or principal owner, and the Buyer shall purchase the Premises from the Seller, upon and subject to the terms and conditions set forth herein.

2. Purchase Price, Deposit and Mode of Payment.

2.01. The purchase price for the Premises shall be Six Hundred Fifty Thousand (\$650,000) Dollars.

2.02. Upon the execution and delivery of this Agreement, Buyer shall deposit the sum of One Thousand (\$1,000.00) Dollars in cash or current funds (the "Deposit") to be held in an interest bearing escrow account by the Buyer's attorneys to secure the Buyer's obligations hereunder. All interest accruing in respect of such Deposit shall accrue for the benefit of and be payable to the Buyer hereunder. In the event of the occurrence or

non-occurrence of any event hereunder which requires the return of such deposit to the Buyer pursuant to the terms of this Agreement, then, in such event, such Deposit shall be returned to the Buyer together with all such accrued interest thereon.

2.03. The purchase price hereunder shall be payable to the Seller at the Closing (as hereinafter defined), as follows:

(a) The Deposit shall be released by the Escrow Agent and paid to the Seller;

(b) The Buyer shall pay the balance of the purchase price to the Seller in cash or certified or bank check or wire transfer payable to the order of the Seller.

3. Closing.

3.01. The Closing (the "Closing") hereunder shall take place at within sixty (60) days of the execution of this agreement. The Closing shall take place at the Durham Town Offices on such date and at such time, or such other date, time and place as the parties may agree upon in writing. The Buyer may accelerate the Closing by providing written notice to Seller at least ten (10) business days prior to the accelerated Closing Date hereunder. Time is of the essence in connection with the performance of this Agreement.

3.02. At the Closing, the Seller shall:

(a) convey the Premises to the Buyer by Warranty Deed, conveying good, clear record and marketable title to the Premises free from all liens, municipal betterments, assessments, easements, restrictions, encumbrances, title and interest of others, except as follows:

(i) provisions of existing building and zoning laws;

(ii) such real estate taxes for the then current tax year as are not yet due or payable on the day of the delivery of the deed;

(iii) any lien for municipal betterments assessed after the day of the delivery of the deed; and,

(iv) easements, conditions, restrictions, and other matters of record which do not materially interfere with the use or development of the Premises and which have been accepted by the Buyer, in its sole discretion, exercised by notice in writing to the Seller prior to the Closing.

(b) deliver to the Buyer:

(i) possession of the Premises, free from all tenants and other encumbrances, except for those encumbrances permitted hereby;

(ii) such other documents as the Buyer's title insurance company may reasonably require in order to issue a title insurance policy in accordance with the provisions of this Agreement; and

(iii) such other documents and instruments as are reasonably necessary in order to effectuate the intent of this Agreement.

3.03 At the Closing, the Buyer shall pay the purchase price as required by Article 2 above.

3.04 At the Closing, the Seller shall pay for the cost of recording any instruments required to clear title to the Premises. The Buyer shall pay any transfer stamp tax required to record the Deed. The Seller is exempt from payment of the transfer tax. Each of the Buyer and the Seller shall execute and file with the New Hampshire Department of Revenue Administration an appropriate Real Estate Transfer Tax Declaration of Consideration with respect to the transfer stamp tax payable hereunder.

4. Representations, Warranties, and Disclosures

4.01. The Seller represents, covenants and warrants to and agrees with Buyer as follows:

(a) The Seller has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and the execution and delivery of this Agreement and the performance by Seller of its obligations hereunder will not conflict with, or result in a breach of, any of the terms, covenants or provisions of any law or any regulation, order, judgment, writ, injunction or decree of any court or governmental authority or any agreement or instrument to which the Seller is a party or by which it is bound. The Town Administrator executing this Agreement has all necessary power and authority as the duly authorized agent of the Governing Body of the Seller to execute, deliver and perform this Agreement on behalf of the Seller. Execution and delivery of the Agreement by the Town Administrator is binding upon the Seller.

(b) There are no violations of any restrictive covenants affecting the Premises.

(c) There are no betterment assessments or other special assessments presently pending with respect to any portion of the Premises and the Seller has not received any notice (and is not aware) of any such special assessment being considered.

(d) There are no suits, actions or proceedings pending or, to the best of the Seller's knowledge, threatened against or affecting the Premises before any court or administrative agency or officer which, if adversely determined, would have a materially adverse affect upon the operation or condition, financial or otherwise, of the Premises, including, without limitation, any eminent domain proceedings, and to the best of the Seller's knowledge, Seller is not in default with respect to, nor has notice of any violation of, any judgment, order, writ, injunction, rule or regulation of any court or governmental agency or officer to which the Seller is subject in any way affecting the Premises or the transaction provided for herein.

(e) The Seller warrants and represents that the Seller has not at any time (and shall not at any time from the date of this Agreement have) caused or permitted the presence, use, generation, release, discharge, storage, disposal, or transportation of hazardous substances, wastes, or materials on, under, in, about, near, or to or from the Premises, or is Seller aware of any such presence, use, generation, discharge, storage, disposal, or transportation of any hazardous substance, wastes or materials by any other person other than those disclosed to Buyer on or about May 28, 2015. The Seller hereby further represents and warrants that there have been no past or present actions, violations, liabilities, or notice thereof, arising directly or indirectly out of any local, state or federal laws or regulations relating to the presence, use, generation, release, discharge, disposal, transportation, or abatement of any hazardous substances, wastes or materials on, under, in, about, near or to or from the Premises.

4.02. All of the Seller's warranties, covenants and representations made in this Agreement shall survive the delivery of the deed and it shall be a condition of the Buyer's obligation to close under this Agreement that all warranties and representations made by Seller hereunder are true, both as of the date hereof and as of the Closing. The Seller acknowledges that it has an affirmative obligation to disclose any material facts pertaining to this transaction in order to correct any misleading or false facts or statements, which the Buyer may have known or relied on in reference to this transaction. Without limiting the foregoing, in the event of any such breach of warranty, covenant or representation, Buyer may, in addition to any other remedy therefor, cancel this Agreement by written notice to Seller, in which event all Deposits hereunder shall be returned promptly to Buyer, with all interest earned thereon, and all obligations hereunder thereupon shall cease, and this Agreement thereupon shall be void without recourse to any party.

4.03. The Seller discloses as follows:

(a) Radon gas, the product of decay and radio active materials in rock may be found in some areas of New Hampshire. This gas may pass into a structure through the ground or through water from a deep well. Testing can establish its presence and equipment is available to remove it from the air or water. The town has no information regarding whether radon gas is present in the structure(s) being sold.

(b) Before 1978, paint containing lead may have been used in structures. The presence of flaking lead paint can prevent a serious health hazard, especially to young children and pregnant women. Tests are available to determine whether lead is present. The town believes there is lead paint in the structure(s) being sold.

(c) The property is serviced by town water and sewer.

5. Possession.

5.01. Possession and Condition of the Premises, free of all tenants, personal property (including all air conditioning units in the basement) and encumbrances, shall be delivered to the Buyer at the time of the Closing. At the time of the Closing, the Premises shall be (a) in the same condition as they are now in, reasonable wear and tear excepted, (b) free of all property not being acquired by the Buyer hereunder, and (c) in compliance with the provisions of each instrument of conveyance referred to herein. The premises will be delivered to the BUYER in "broom clean" condition, and the BUYER shall have the right to inspect the premises for compliance twenty-four (24) hours prior to closing.

6. Seller's Inability to Deliver Title; Buyer's Election.

6.01. In the event that (i) Seller shall be unable to convey good, clear record and marketable title to the Premises or to deliver possession of the Premises to the Buyer, all as herein provided, or (ii) at the time of the Closing, the Premises do not conform with the provisions hereof, then at the option of the Buyer, or the Seller, exercised on each occasion by notice in writing to the other, the Closing Date under this Agreement may be extended for a single period up to sixty (60) days, during which time period the Seller shall use reasonable efforts to remove any defect in title or to deliver possession as provided herein, or to make the Premises conform to the provisions hereof, as the case may be. If at the end of any such extension period, the Seller shall have failed to remove any such defect in title, deliver possession, or make the Premises conform, as the case may be, all as herein provided, then, at the Buyer's option, the Deposit shall be forthwith refunded to the Buyer with interest earned thereon in accordance with the provisions hereof, and all other obligations of the parties hereunder shall cease and this Agreement shall be void without any further recourse to the parties hereto.

6.02. 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 Premises in its then condition and to pay the full purchase price therefor, in which case the Seller shall convey such title, provided, however, that in the event of such conveyance in accordance with the provisions of this Section, and in the event that the Premises shall have been damaged by fire or other casualty insured against, then the Seller shall pay over or assign to the Buyer, on delivery of the deed, all amounts recovered or recoverable on account of such insurance.

6.03. In order to enable the Seller to convey the Premises as herein required, the Seller may, and if necessary shall, at the Closing, use the Purchase Price or any portion thereof to clear the title of any or all encumbrances or interests which are to be removed or eliminated by the terms hereof, provided that all instruments so procured are recorded at Seller's sole cost and expense, prior to or simultaneously with the delivery of the deed.

7. Actions Pending the Closing. During the period from the date hereof until the Closing, the following provisions shall govern the Seller's activities with relation to the Premises.

7.01. Access to Information and Property. The Seller will give the Buyer and its counsel, inspectors, engineers, accountants, and other representatives full access, during normal business hours, to the Premises and will furnish the Buyer and such representatives during such period with all such information and data concerning the construction, development and operation of the Premises as the Buyer or such representatives reasonably may request. The Buyer, at its expense, may take measurements, show the Premises to contractors, architects, insurers, banks and other lenders or investors, and prospective tenants, and conduct environmental tests, soil tests, borings, percolation tests, surveys, site analysis, structural tests, and such other tests, inspections or investigations with respect to the Property as the Buyer may desire. The Seller agrees to cooperate with the Buyer and assist the Buyer, provided that all inspections shall be conducted during normal business hours (or such other time as is reasonably necessary to conduct such inspections or tests) and shall not unreasonably interfere with the conduct of normal business of the Seller. The Seller agrees that the Buyer may discuss the Premises with and make inquiries of any state or local officials or authorities and may seek such variances, permits, certificates, consents and approvals as the Buyer deems appropriate. The Buyer agrees to repair any damage to the Premises resulting from such inspections and to hold in confidence any information gathered from its inspection of Seller's books and records. The Buyer shall, at its sole cost and expense, restore the Premises as nearly as possible to its original condition after conducting such studies and examinations. The Buyer shall indemnify and hold the Seller harmless from and against all loss, cost, claims, liability or expenses arising out of the performance of such engineering studies and surveys as are conducted under this Agreement.

8. Conditions of Sale.

8.01. Buyer shall not apply for tax relief pursuant to RSA 79-E.

8.02. Buyer shall deed to the Town of Durham, either as a reservation in the Warranty Deed conveying the premises or by separate instrument of equal date, a permanent easement to a 150' x 25' area to be used for parking spaces on the Courthouse side of the parking lot, as shown on the attached plan, along with an access easement allowing access to the parking spaces over and across the remaining Premises. Maintenance of the parking easement (plowing, paving, space striping) shall be the sole responsibility of the Town.

In recognition that the Buyer does not enjoy the right to use the Seller's parking easement area, this easement area shall not be assessed to the Buyer for purposes of property taxation, unless the buyer utilizes parking per section 8.03, in which case the amount of easement land corresponding with public spaces shall be taxed.

8.03 Prior to closing, Seller shall enter into a written agreement with the Buyer that Seller shall provide up to 10 on street business parking permits on Schoolhouse Lane at no cost for the benefit of Buyer's business, should there be a need for Buyer to have additional parking to accommodate its business expansion plans. This proviso is in recognition that Buyer is granting Seller an easement to use the equivalent of 9-10 parking spaces on the Property.

8.04. Prior to closing, Buyer shall enter into a written agreement to sell to or enter into a long term lease with George York to allow him to purchase or use at a minimum 14 spaces in the parking lot. This condition may be waived by the Town Council, in its sole discretion.

8.05. The Warranty Deed shall include a restriction that the existing building must remain a contributing structure to the Historic District.

8.06. The Warranty Deed shall include a restriction that if the Premises are conveyed to an owner who would otherwise be exempt from real estate taxation pursuant to RSA 72 or any other statute, the owner shall not apply for the permitted tax exemption; or, as a condition of the granting of any such tax exemption, the owner shall enter into a PILOT agreement with the Town of Durham to provide for full payment of all assessed taxes. This shall not affect any owner's right to seek a tax abatement based upon an alleged overassessment of the Premises.

8.07. Seller shall defend, indemnify and hold the Buyer and their successors and assigns, harmless from and against all claims, actions, losses, demands, judgments, damages or liabilities (including, without limitation, reasonable attorneys' fees, cost and disbursements), injuries, fines, payments, administrative orders, consent agreements, penalties, cost and expense of any kind whatsoever brought with respect to any and all environmental conditions and/or contamination proven to be caused by the Town, relating to the property but excluding the building. This provision shall be included in the deed for the Property. Seller shall have the right to select all experts involved in any such claims, including but not limited to, attorneys, engineers and environmental scientists; and shall have the right to direct any litigation, remediation, or other required actions in conformance with all state and/or federal requirements, provided that Buyers and his successors shall have input to and final approval of any settlement or remediation plan that would impair the utility of the property or the business operations thereon, such approval shall not be unreasonably withheld.

9. Brokerage.

9.01. The parties hereto acknowledge and agree that no broker brought about the sale contemplated by this Agreement.

10. Damage by Fire or Casualty; Eminent Domain.

10.01. In the event that the Premises shall be damaged by fire or other casualty, or shall be subject to an eminent domain proceeding, prior to the Closing hereunder, the Buyer at any time after the occurrence of such damage or other casualty or such taking up to the time of the Closing may elect to terminate this Agreement by written notice to the Seller, in which event the Deposit made by the Buyer hereunder together with all interest earned thereon shall be refunded promptly to the Buyer and all other obligations of the parties hereunder shall cease and this Agreement shall thereupon be void and of no further force or effect.

11. Liquidated Damages.

11.01. In the event that the Buyer shall default in the performance of its obligations hereunder, in addition to any other available remedy, all Deposits hereunder made by the Buyer and the interest thereon shall be paid to the Seller as liquidated and inclusive damages and not as a penalty.

12. Miscellaneous.

12.01. This Agreement shall be binding upon the parties hereto, their heirs, assigns and successors in interest.

12.02. This Agreement contains the entire agreement between the parties hereto. All prior understandings, oral or written, are merged herein. This Agreement may not be amended or modified except by a writing executed by the parties hereto.

12.03. This Agreement shall be governed and construed in accordance with the laws of the State of New Hampshire.

12.04. This Agreement may be executed in two or more counterparts each of which shall constitute an original but all of which taken together shall constitute one in the same instrument.

12.05. All notices required or permitted to be given hereunder shall be in writing and sent by certified, registered or express mail, postage prepaid, return receipt requested, or hand delivered, addressed as follows:

If to the Seller:

Town of Durham
Attention: Town Administrator
8 Newmarket Road

Durham, NH 03824

If to the Buyer:

William Salas
87 Packers Falls Road
Durham, NH 03824

Any party hereto may change the person or address to whom or which notices are to be given hereunder by notice duly given hereunder. Any notice hereunder shall be effective upon receipt thereof by the party to whom the notice is directed.

12.06. No delay or omission by any party hereto to exercise any right or power occurring upon any non-compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by any party hereto of any of the terms, covenants, conditions or agreements to be performed by the other party shall not be construed to be a waiver of any succeeding breach thereof or of any other term, covenant, condition or agreement contained herein.

12.07. The parties hereto agree that up to and after the date of the Closing, they shall do such things and execute, acknowledge and deliver any and all additional agreements, instruments and documents as either party may reasonably request in order to effectuate the purposes of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

TOWN OF DURHAM

Date: _____

Todd Selig, Town Administrator
Duly Authorized

WILLIAM SALAS

Date: 6/12/15

*under power of Attorney
for William Salas*