

## REVISED PURCHASE AND SALES AGREEMENT

This **PURCHASE AND SALES AGREEMENT** ("Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016 by and between the City of Concord, a New Hampshire municipal corporation, with a principal place of business at 41 Green Street, Concord, New Hampshire 03301 (referred to the "Seller" or "the City") and Kate W. Ackerson and Ryan W. Kibbee, wife and husband, with a principal place of residence at 126 Liberty Street, Concord, New Hampshire, 03301 (referred to the "Buyer") and referred to collectively as the "Parties".

### RECITALS

This Agreement relates to the sale of +/- 1,200 square feet of real estate identified by Map/Block/Lot (MBL) number 52/7/14 located on Liberty Street in Concord, New Hampshire (the "Premises").

This Agreement is entered into upon the basis of the following facts and intentions of the Parties:

- I. The Seller owns certain real estate known by MBL 52/7/14 in Concord, New Hampshire "Exhibit 1", as well as a deed recorded at the Merrimack County Registry of Deeds (the "MCRD") at Book 520, Page 215, as, and attached hereto as Exhibit 2;
- II. The Buyer, subject to the contingencies set forth within this Agreement, desires to acquire the Premises (MBL 52/7/1) to resolve an illegal encroachment by the Buyer on the Seller's property.
- III. All Parties signatory to this Agreement are willing to proceed upon the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

### 1. DESCRIPTION OF PREMISES AND REAL ESTATE TRANSACTION:

- 1.1. **General:** Pending the results of the Buyer's due diligence and the other conditions in this Agreement, the Seller intends to sell to the Buyer, and the Buyer intends to acquire from the Seller, the Premises, consisting of +/- 1,200 square feet of land identified by MBL 52/7/14.
- 1.2. **Purchase Price:** The purchase price for the Premises shall be six hundred dollars (\$600).
- 1.3. **Deposit:** No deposit is required for this transaction.

- 1.4. **Payment of Purchase Price:** The Purchase Price shall be paid in full by the Buyer to the Seller at Closing in the form of bank treasurer's check, wire funds transfer, or other immediately available funds satisfactory to the Seller.
- 1.5. **Access to Premises:** The Seller hereby grants authorization to the Buyer, its employees, representatives, consultants, and agents to enter the Premises for the purpose of completing due diligence and for all other purposes necessary to carry out the terms of this Agreement.

The Buyer and the Seller shall coordinate all access to the Premises by third parties working on behalf of the Buyer as part of the Buyer's due diligence.

The Buyer shall indemnify, defend, and hold harmless the Seller from and against any and all claims, actions, damages or losses arising out the Buyer's activities pursuant to this paragraph during its inspection and subsequent tasks related thereto which are caused solely by the Buyer's negligence. The Buyer shall require any and all contractors who are retained for the purpose of completing due diligence or for any other purpose necessary to carry out the terms of this Agreement, and who will need to access the Premises, to obtain a certificate of insurance in the amount of \$2 million in the aggregate, \$1 million per occurrence naming the Seller as an additional insured.

- 1.6. **Closing:** Closing shall occur no later than December 30, 2016. The Parties agree that all Closing documents, including the Quitclaim Deed for conveyance of the Premises, easement deeds (if applicable) and other Closing documents, shall not be recorded at the Merrimack County Registry of Deeds and that the purchase price shall not be exchanged between the Parties until all of the Buyer's Contingencies, as set forth in Articles 2.1 and 2.2, have been achieved or satisfied.
- 1.7. **Title:** The Seller shall convey the Premises by Quitclaim Deed.
- 1.8. **Transfer Taxes and Recording Fees:** The Buyer shall pay all recording fees and transfer taxes customarily associated with real estate transactions. The parties acknowledge that the Seller is exempt from the Real Estate Transfer Tax pursuant to RSA 78-B:2, I. To the extent the Buyer is not exempt from the real estate transfer tax; the Buyer hereby agrees to pay its respective half of the transfer tax in the customary fashion.
- 1.9. **Prorating of Property Taxes and Utility Costs:** At the time of recording of the Deed, the Buyer shall be required to pay all property taxes (as applicable) for the Premises through the date of Closing.

- 1.10. **Delivery of Premises, Removal of Tenants, Property to be Retained by Seller.** The Seller shall deliver possession of the Premises to the Buyer in its "AS IS, WHERE IS" condition, free and clear of all tenants and third parties.
  - 1.11. **Real Estate Broker's Fees & Commissions:** The Parties hereby confirm that neither party is represented by a real estate broker for this transaction. To the extent either party may come to be represented by a real estate broker, said party shall be solely responsible for paying its broker any fees or commissions owed resulting from this transaction. Any claims for a brokerage fee, agent's commission or other compensation shall be handled and paid by the party whose actions or alleged commitments form the basis for such claim. Each party shall indemnify and hold harmless the other party from all claims of any person claiming a brokerage fee, agent's commission or other compensation, by, through or under the indemnifying party.
  - 1.12. **Seller's Disclosures:** The Seller makes no warranties or representations regarding environmental contamination or sub-surface conditions at the Premises. Notwithstanding the foregoing, the Seller has no actual knowledge of any environmental contamination conditions at the Premises.
  - 1.13. **Casualty and Condemnation:** In the event that the Premises, prior to Closing, are damaged by fire, flood, collapse, or other casualty, or is subject to an eminent domain proceeding, the Buyer at any time after the occurrence of such damage or casualty may elect to terminate this Agreement by written notice, in which event all other obligations of the Parties hereunder shall cease and this Agreement shall thereupon be void and of no further force or effect.
2. **BUYER'S CONTINGENCIES:** The Buyer's obligation to close on acquisition of the Premises shall be subject to the following contingencies, the failure to satisfy any one of which shall give the Seller the right to withdraw from this Agreement, after which the Seller shall have no further obligation to the Buyer.
    - 2.1. **Acceptance of Costs.** Any and all fees related to the transaction, including but not limited to Merrimack County transfer taxes and Department of Revenue Administration forms for both the Seller (Grantor) and the Buyer (Grantee) will also be at the Buyer's expense. All documents prepared in conjunction with this project are subject to review and approval by the City.

2.2. **Acceptance of Deed Restriction.** The Premises are conveyed to rectify encroachments onto the Premises (Map 52, Block 7, Lot 14) that are the result of improvements partially constructed by the Grantee on its property located at 126 Liberty Street (Map 52, Block 7, Lot 1). This deed shall be subject to the restrictive covenant that the Grantee shall not convey either Map 52, Block 7, Lot 1 or the Premises (Map 52, Block 7, Lot 14) separate from the other, or alternatively, the properties shall be merged. This restrictive covenant is “in-gross” and shall run to and be enforceable by the City of Concord and this restrictive covenant shall run with the Premises and shall be enforceable against the grantees, their heirs, successors, agents, and assigns.

### 3. **REPRESENTATIONS AND WARRANTIES**

3.1. **Representations and Warranties of the Seller.** The Seller hereby represents and warrants to the best of its knowledge and belief that:

- 3.1.1. The execution and delivery of this Agreement and the performance of the Seller's obligations hereunder have been duly authorized by such municipal action as necessary, and this Agreement constitutes the legal, valid and binding agreement of the City, enforceable against the City in accordance with its terms subject only to the conditions set out in this Agreement.
- 3.1.2. Subject to the conditions set out in this Agreement, neither the execution or delivery by the City of this Agreement, the performance by the City of its obligations in connection with the transactions contemplated hereby, nor the fulfillment by the City of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the City, or conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the City is a party or by which the City or any of its properties or assets are bound, or constitutes a default there under.
- 3.1.3. Except as set forth in this Agreement, no approval, authorization, order or consent of, or declaration, registration or filing with, any federal, state or local authority (a “Governmental Authority”) is required for the valid execution and delivery of this Agreement by the City, except such as have been duly obtained or made or disclosed in this Agreement.
- 3.1.4. There is no action, suit or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority, pending or threatened against the City, wherein an unfavorable decision, ruling or finding would materially adversely affect the

performance by the City of its obligations hereunder or the performance by the City of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby.

3.2. **Representations and Warranties of the Buyer.** The Buyer hereby represents and warrants to the best of its knowledge and belief that:

- 3.2.1. The Buyer has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and all necessary action has been taken to authorize the execution, delivery and performance by it of this Agreement. This Agreement will, upon execution and delivery thereof by the Buyer, constitute valid, legal and binding obligations of the Buyer enforceable against the Buyer in accordance with the respective terms thereof.
- 3.2.2. Neither the execution or delivery by the Buyer of this Agreement, the performance by the Buyer of their obligations in connection with the transactions contemplated hereby, nor the fulfillment by the Buyer of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Buyer, or conflicts with, violates or result in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Buyer are a party or by which the Buyer or any of its properties or assets are bound, or constitutes a default there under.
- 3.2.3. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by the Buyer, except such as have been duly obtained or made.
- 3.2.4. There is no action, suit or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority, pending or threatened against the Buyer, its principal(s), affiliate(s), or entities controlled by its principal(s), wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Buyer of their obligations hereunder or the performance by the Buyer of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Buyer in connection with the transactions contemplated hereby.

#### 4. GENERAL PROVISIONS

- 4.1. **Cooperation**: The Buyer and the Seller agree to cooperate with each other in order to achieve the purposes of this Agreement and, in connection therewith, to take such further actions and to execute such further documents as may reasonably be requested by the Seller, the Buyer, or their representatives, agents, and consultants.
- 4.2. **Entire Agreement; Amendments**. This Agreement embodies the entire agreement and understanding between the Parties hereto relating to the subject matter herein and supersedes all prior agreements and understandings between the Parties. This Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument in writing signed by each of the Parties hereto or by the Party against which enforcement is sought. Any change, modification or amendment, which requires the consent or approval of a Governmental Authority, shall be effective only upon receipt of such approval.
- 4.3. **Binding Effect; Successors and Assignors**. The terms and provisions of this Agreement and the respective rights and obligations of the Parties hereunder shall be binding upon, and inure to the benefit of, their respective heirs, successors, assigns, and nominees.
- 4.4. **Headings**. The headings to the sections and subsections of this Agreement have been inserted for convenience of reference only and shall not modify, define, limit or expand the express provisions of this Agreement.
- 4.5. **Exhibits**. All exhibits referred to in this Agreement are hereby incorporated by reference and expressly made a part hereof.
- 4.6. **Governing Law**. This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire.
- 4.7. **Enforceability**. Any provision of this Agreement that is determined to be illegal or unenforceable by a court of competent jurisdiction, shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof; and the Parties agree to negotiate in good faith to amend the Agreement to provide for each party to the Agreement the same relative rights and obligations existing prior to such determination of illegality or unenforceability.
- 4.8. **Consent to Jurisdiction and Venue**. The Buyer and Seller submit to the jurisdiction of the courts of the State of New Hampshire and the courts from which an appeal from such trial venue may be taken or other relief

may be sought for purposes of any action or proceeding arising out of this Agreement or any related agreement. All legal actions taken by the Parties shall be commenced in Merrimack County New Hampshire Superior Court. Both Parties hereby waive their right to a jury trial.

- 4.9. **Independent Parties.** The Buyer and Seller are independent parties under this Agreement, and nothing in this Agreement shall be deemed or construed for any purpose to establish between any of them or among them a relationship of principal and agent, employment, partnership, joint venture, or any other relationship other than independent parties.
- 4.10. **Survival of Agreement.** The agreements, covenants, indemnities, representations and warranties contained herein shall survive the execution and delivery of this Agreement and Closing.
- 4.11. **Waivers.** Failure on the part of any Party to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall not be deemed to be a waiver of any such Party's rights hereunder. No waiver at any time of any provision hereof by any Party shall be construed as a waiver of any other provision hereof or a waiver at any subsequent time of the same provision.
- 4.12. **No Rights Conferred Upon Others.** Except as expressly set out herein, nothing in this Agreement shall be construed as giving any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government, other than the Parties hereto, their successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.
- 4.13. **Preservation of Rights.** Nothing herein or in any related agreement shall limit or be construed to limit in any way rights or remedies the City may have for the collection of real property taxes under law, unless expressly set forth herein.
- 4.14. **Time of the Essence.** The Parties agree that time is of the essence in performance of their respective obligations under this Agreement.
- 4.15. **Good Faith and Fair Dealing.** Unless expressly stated otherwise in this Agreement, whenever a party's consent or approval is required under this Agreement, or whenever a party shall have the right to give an instruction or request another party to act or to refrain from acting under this Agreement, or whenever a party must act or perform before another party may act or perform under this Agreement, such consent, approval, or instruction, request, act or performance shall be reasonably made or

done, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be.

- 4.16. **Municipal Approvals.** This Agreement is specifically contingent upon the City Council (1) authorizing the City Manager to proceed with Closing upon satisfaction of contingencies set forth within this Agreement. In the event the City Council does not authorize the City Manager to proceed to Closing, this Agreement shall be null and void, with no further force or effect. The execution of this Agreement does not preempt or supersede the review process or powers of any City or other governmental Board, Committee, Commission, or Department, or excuse the parties from the requirement to apply for and receive all necessary permits and approvals from all applicable City or other governmental Boards, Committees, Commissions, or Departments.
- 4.17. **Warranties and Representations:** The Buyer and Seller each acknowledge that they have not been influenced to enter into this transaction or relied upon any warranties or representations not specifically set forth or incorporated into this Agreement.
- 4.18. **Saving Clause:** In the event that any of the terms or provisions of this Agreement are declared invalid or unenforceable by any court of competent jurisdiction or any Federal or State Government Agency having jurisdiction over the subject matter of this Agreement, the remaining terms and provisions that are not effected thereby shall remain in full force and effect.
- 5.19 **Default by Buyer.** If the Buyer shall fail to fulfill its obligations hereunder, then the Seller shall have the right to terminate this Agreement whereupon neither party shall have any further rights against the other under this Agreement.
- 5.20 **Default by Seller.** If the Seller shall fail to fulfill its obligations hereunder, then the Buyer shall have the option to (a) give notice that it is terminating this Agreement, and neither party shall have any further rights against the other under this Agreement; or (b) pursue its rights at law and in equity to address any such breach, including, but not limited to, the remedy of specific performance.

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## LIST OF EXHIBITS

- Exhibit 1      Aerial photo map of 126 Liberty Street and City Property identified as MBL  
52-7-14 (*Source: City of Concord Geographic Information System*)
- Exhibit 2      City Deed recorded in Book 520, Page 215 at the Merrimack County  
Registry of Deeds

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Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**SELLER**

**CITY OF CONCORD**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Thomas J. Aspell, Jr., City Manager  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, personally appeared **THOMAS J. ASPELL, JR.**, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he executed said instrument for the purposes therein contained as his free and voluntary act and deed.

\_\_\_\_\_  
Justice of the Peace/Notary Public

**BUYERS**

**RYAN W. KIBBEE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Ryan W. Kibbee  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, personally appeared \_\_\_\_\_, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he executed said instrument for the purposes therein contained as his free and voluntary act and deed.

\_\_\_\_\_  
Justice of the Peace/Notary Public

**KATE W. ACKERSON**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Kate W. Ackerson  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, personally appeared \_\_\_\_\_, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he executed said instrument for the purposes therein contained as his free and voluntary act and deed.

\_\_\_\_\_  
Justice of the Peace/Notary Public