

PURCHASE AND SALE AGREEMENT

1. **Information and Definitions**

(a) **DATE OF AGREEMENT:** January 2, 2024

(b) **PREMISES:** A parcel of land, with all improvements thereon, located at 71 Sandy Pond Road, Ayer, containing 2.29 acres, more or less, being Tax ID Map 29-0-1, and described in a deed recorded with the Middlesex South District Registry of Deeds in Book 81572, Page 347

(c) **SELLER:** **North Country Developers LLC**

Address: 186 Littleton Road, Ayer, MA 01423

Seller's Attorney: Peter E. Knox, Esq., Commonwealth Legal Associates, P.C., 280 Great Road, Shirley, MA 01464

Phone: (978) 425-0340 **Fax:** (978) 425-4072

Email: attyknox@comcast.net

(d) **BUYER:** **Town of Ayer**

Address: Ayer Town Hall, 1 Main Street, Ayer, MA 01432

Buyer's Attorney: Katharine Lord Klein, Esq., KP Law, P.C., 101 Arch Street, Boston, MA 02110

Phone: (617) 654-1834 **Fax:** (617) 654-1735

Email: kklein@k-plaw.com

(e) **PURCHASE PRICE:** The total purchase price for the Premises is Seven Hundred Thousand Dollars (\$700,000.00), which is to be paid (subject to adjustments) at the time of delivery of the deed by certified, Town Treasurer's check, bank check or by wire transfer, at BUYER's discretion.

(g) **CLOSING DATE:** Sixty (60) days from satisfaction of the conditions precedent listed at Section 14, at 10:00 a.m.. Time is of the essence.

- (h) PLACE: Middlesex South District Registry of Deeds, or a closing by mail, at BUYER's election.
- (i) TITLE: Quitclaim Deed.

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

3. Buildings, Structures, Improvements, Fixtures. The Premises will consist of vacant land, after Seller's demolition and removal of the improvements thereon, in accordance with Section 14(c) of this Agreement.

4. Title Deed. Said Premises are to be conveyed by a good and sufficient quitclaim 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) such taxes for the then current year as are not due and payable on the date of the delivery of such deed, except as provided in Section 13;
- (c) any liens for municipal betterments assessed after the date of this Agreement; any betterments assessed before the date of this Agreement shall be paid by SELLER in full; and
- (d) easements, restrictions and/or reservations of record, if any, provided the same do not interfere with access to or use of the Premises for conservation and active recreation purposes.

5. Deed; Plans. SELLER shall prepare the deed. If said deed refers to a plan necessary to be recorded therewith, SELLER shall, at its sole cost and expense, prepare a survey plan acceptable to BUYER and adequate for 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, 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 (subject to Section 14(c) hereof), (b) not in violation of building and zoning laws, and (c) in compliance with provisions of 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 clause.

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 up to thirty (30) calendar days.

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, or if at any time during the period of this Agreement or any extension thereof, the holder of a mortgage on said Premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this Agreement shall be forthwith refunded 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 therefore 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. Use of Money to Clear Title. To enable SELLER to make conveyance as herein provided, SELLER may, at the time of delivery of this deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed, or, for institutional mortgages only, within a reasonable time thereafter in accordance with customary Massachusetts conveyancing practices.

13. Adjustments. Taxes on the Property for the then-current fiscal year shall be apportioned as follows: if taxes are outstanding as of the closing date, taxes will be apportioned as of the closing date in accordance with G.L. c. 59, §72A; if, however, SELLER has paid taxes through and past the closing date, such payments shall not be refunded, it being acknowledged that BUYER has no funds to refund SELLER for such taxes paid and BUYER, being tax exempt, has no obligation to pay taxes upon acquisition of the Premises.

14. Buyer's Contingencies. BUYER's obligation to perform under this Agreement is subject to the following conditions, at BUYER's option:

- (a) Ayer Town Meeting shall have approved the acquisition of the Premises on the terms set forth herein and appropriated the purchase price therefor;
- (b) Compliance with the provisions of G.L. c.30B (the Uniform Procurement Act) for acquisition of real property, if applicable;

- (c) SELLER shall have demolished and removed the building(s) at the Premises, leveled the ground, and loamed and seeded the Premises;
- (d) SELLER shall have waived any rights SELLER may have to relocation benefits under the provisions of G.L. c. 79A, and SELLER shall sign and shall have obtained waivers of relocation benefits under G.L. c. 79A and CMR 27.03 from all tenants or occupants, if any, of the Premises or any portion thereof. SELLER shall represent and warrant in writing at closing that all such waivers have been provided as to all occupants. SELLER shall defend, indemnify and hold harmless BUYER as to any claim for relocation benefits brought against BUYER by any tenant or occupant of the Premises and pay any costs incurred by BUYER resulting from any such claim. The provisions of this paragraph shall survive the delivery of the deed;
- (e) BUYER shall have inspected the condition of the Premises, including the demolition and removal of the buildings, pursuant to Section 14(c), and SELLER's title to the Premises, and be satisfied with the same, in its sole and absolute discretion, notwithstanding anything herein to the contrary; and
- (f) Compliance by BUYER and SELLER with any other requirements of Massachusetts General or Special Laws or regulations relative to the acquisition of real property by the BUYER, and BUYER and SELLER agree to diligently pursue full compliance with said laws and regulations.

Provided, however, that if any of the conditions are not satisfied by the Closing Date, BUYER shall have the right to extend the closing for up to sixty (60) days by giving SELLER written notice thereof prior to the Closing Date, and shall inform SELLER of the new closing date at least seven (7) days prior to the Closing.

15. 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 and all means of access to the Premises shall not encroach upon or under any property not within the lot lines of the Premises; and (d) the Premises abut a public way, duly laid out or accepted as such by the municipality in which the Premises are located, or the Premises have an express access and utility easement leading from the Premises to a public way on terms acceptable to BUYER, in its discretion.

16. Affidavits, etc. Simultaneously with the delivery of the deed, SELLER shall execute and deliver: (a) affidavits and indemnities under oath with respect to 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, and SELLER shall indemnify and hold harmless the title insurance company for any losses, costs, or damages sustained as a result of issuing a policy without exceptions covered by such representations; (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; (d) an updated certification of the warranties and representations contained herein; (e) a Disclosure of Beneficial Interest form, as required under G.L. c.7C, §38; (f) a waiver of relocation assistance under G.L. c.79A; and (g) such additional and further instruments and documents as may be consistent with this Agreement and customarily and reasonably required by BUYER and/or BUYER's title insurance company to complete the transactions described in this Agreement.

17. 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 for Massachusetts at the time for delivery of the deed shall be covered by said title standard or practice standard to the extent applicable.

18. Representations. SELLER represents to the best of SELLER's knowledge to BUYER, effective as of the date of this Agreement and also effective as of the date of closing (subject to any subsequent notice from SELLER as hereinafter set forth), that:

- (a) SELLER holds good and clear, record and marketable title to the Premises in fee simple subject to exceptions of record;
- (b) SELLER has not granted or entered into any options, rights of first refusal, or other contracts which give any other party a right to purchase or acquire any interest in the Premises;
- (c) SELLER has not entered into leases, licenses, or other occupancy agreements (whether written or oral) in effect with respect to any part of the Premises;
- (d) SELLER's execution of this Agreement does not violate any other contracts, agreements, or any other arrangements of any nature whatsoever that SELLER has with third parties that could affect the Premises;
- (e) SELLER has the right, power and authority to enter into this Agreement and to sell the Premises in accordance with the terms and conditions hereof. This Agreement, when executed and delivered by SELLER, will be a valid and binding obligation of SELLER in accordance with its terms;
- (f) SELLER is not a party to any litigation affecting the Premises, and SELLER knows of no litigation or threatened litigation affecting the Premises, or affecting SELLER, or any basis for any such litigation, which would either enjoin SELLER's performance under this Agreement or adversely impact the Premises;

- (g) To the best of SELLER's knowledge: (i) no Hazardous Waste (defined in Section 19) has been generated, released, or disposed of at or from the Premises; (ii) there has been no release of any Hazardous Waste from the Premises; (iii) there are no underground storage tanks or other subsurface facilities currently in use or previously abandoned on the Premises, and (iv) chlordane has not been used as a pesticide on the Premises. Nothing herein shall affect BUYER's right to terminate this Agreement under the provisions of Section 19;
- (h) SELLER has not received written notice from any governmental authority or agency having jurisdiction over the Premises of any environmental contamination, or the existence or release of any Hazardous Waste (defined in Section 19), at or near the Premises; and
- (i) No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under Federal or State bankruptcy laws is pending against or contemplated by SELLER.

SELLER will not cause nor, to the best of SELLER's ability, permit any action to be taken which would cause any of SELLER's representations or warranties to be false as of closing, and in any event shall notify BUYER promptly of any change in these representations and warranties. SELLER shall confirm these representations and warranties at closing, which will survive the same.

19. Inspection Rights. BUYER and its agents, employees, consultants, contractors or licensees shall have the right, upon at least twenty-four (24) hours' prior notice to SELLER, which notice may be oral notice, to enter the Premises at BUYER's own risk for the purposes of conducting such inspections, surveys, tests and analysis as BUYER deems advisable, including, without limitation, environmental site assessments. In accomplishing BUYER's inspection of the Premises to determine evidence of oil, hazardous waste or hazardous materials, BUYER, at BUYER's expense, may accomplish a transaction screening environmental study. SELLER or its agents may choose to accompany BUYER and/or BUYER's agents. BUYER shall, as soon as practicable, restore the Premises to substantially the same condition as prior to such entry if the closing does not occur. BUYER'S performance hereunder is expressly conditional, at BUYER's option, upon BUYER being satisfied with the condition of the Premises, including, without limitation, on not having found on the Premises any oil, hazardous waste or hazardous materials, as such terms are used in G.L. c.21E and any applicable federal and/or state laws, rules, and regulations ("Hazardous Waste"). In the event Hazardous Waste is found, or the BUYER is not satisfied with the condition of the Premises, BUYER shall have the right, to be exercised in its sole and absolute discretion, to terminate this Agreement, whereupon all the rights and obligations of the parties shall cease except those that are stated herein to survive such termination. Nothing herein shall affect BUYER's rights under this Agreement to walk through and inspect the Premises at any time prior to the delivery of the deed.

20. 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 BUYER and SELLER agree, to the extent permitted by law, to defend, indemnify each other against and hold

the other harmless from any claim, loss, damage, costs or liabilities for any brokerage commission or fee which may be asserted against BUYER or SELLER by any broker in connection with this transaction. The provisions of this Section shall survive delivery of the deed.

21. Closing. The deed and other documents required by this Agreement are to be delivered and the Purchase Price, less the permitted adjustments, 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. BUYER's proceeds may be in the form of a Town Treasurer's check, and the check shall be held in escrow by BUYER's attorney who shall release the check to SELLER only following the recording of the deed.

22. Condition of Premises at Closing. SELLER agrees to deliver the Premises in a condition substantially similar to their condition on the date of this Agreement, removing all improvements, in accordance with Section 14(c) and all of SELLER's personal property therefrom which is not being sold to BUYER, or left for its benefit, as consented to by it.

23. Taking; Casualty. Notwithstanding anything herein to the contrary, in the event of a taking of all or part of the Premises or access thereto by eminent domain by any entity other than BUYER, or in the event that the Premises are damaged or destroyed by fire, vandalism or other casualty, the BUYER may, at its sole option, terminate this Agreement without recourse. All risk of loss shall stay with the SELLER until the recording of the deed.

24. 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: (a) when delivered by hand, or (b) when sent by Federal Express or other similar courier service, or (c) when mailed by certified mail, return receipt requested, or (d) upon electronic transmission (e-mail, provided that any e-mail sent after 5:00 p.m. on a business day shall be deemed received on the following business day), to the party's attorney at the addresses set forth in Section 1.

25. 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 and scanned signatures shall be construed as original.

26. 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 six (6) months 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. The provisions of this Section shall survive the closing and delivery of the deed.

27. 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. If two or more persons are named herein as SELLER, their obligations hereunder shall be joint and several. Any claims arising under this Agreement shall be brought in the courts of the Commonwealth of Massachusetts.

28. 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.

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