Reviewed for Code Compliance
Inspections Division
Approved with Conditions

Date: 06/11/13

# CONTRACT FOR THE SALE OF COMMERCIAL REAL ESTATI

RECEIVED from Kevin Butterfield or his assigns (hereinafter called "Purchaser"), this _2 February, 2013, the sum of [redacted] as earnest money deposit tov and sale of certain real estate owned by Mercy Hospital (hereinafter called "Seller) and I State Street in the City of Portland, County of Cumberland State of Maine, a three story, brick commercial building more particularly described on the City of Portland Tax Assessor's Maps as Map 45, Block B, Lots 23~~,~~-24 and 50 Winter Street in the City of Portland, County of Cumberland, State of Maine a .126 +/- acre vacant parcel of land more particularly described on the City of Portland's Tax Assessor's Maps as Map 45, Block F, Lots 2-3, upon the terms and conditions indicated below.

1. PERSONAL PROPERTY: The following items of personal property are included in this sale. NONE

2. PURCHASE PRICE: The total Purchase Price is [redacted] Dollars with payment to be made as follows:

   Earnest money to be delivered within 3 days of the Effective Date~~full execution of this Contract~~ [redacted]

   Balance due at closing, in immediately available funds: [redacted]

3. EARNEST MONEY/ACCEPTANCE: NAI The Dunham Group ("Escrow Agent") shall hold the earnest money in a non-interest bearing account and act as escrow agent until closing. This offer shall be valid until- Friday March 15, 2013 at 5 pm. In the event of Seller's non-acceptance of this offer, the earnest money shall be returned promptly to Purchaser.

4. TITLE: Within __~~30~~45~~75~~_____ days of the Effective Date (the "Title Review Period"), Purchaser shall notify Seller in writing (the "Title Objection Notice") of any matters affecting title to the property that are objectionable to Purchaser in Purchaser's sole discretion ("Title Defects"). Purchaser shall be deemed to have waived the right to object to any matter affecting title as of the Effective Date, except for any mortgage, tax lien, mechanics' lien, judgment lien, or other liens, encumbering the property (for which no objection is required), if Purchaser fails to specifically identify such matters in the Title Objection Notice, (each matter not objected to being a "Permitted Encumbrance"). Within seven (7) days of Seller's receipt of the Title Objection Notice, Seller shall notify Purchaser in writing whether or not Seller elects to cure any of the matters identified in the Title Objection Notice. If Seller elects to cure certain Title Defects, Seller shall use good faith efforts to cure such Title Defects and shall have a period of not more than thirty (30) days after notice of Seller's election within which to cure any such Title Defects (the "Title Cure Period"), and the Closing Date shall be extended until five (5) days after the expiration of the Title Cure Period. Seller agrees that, after the Effective Date, it shall not permit or suffer encumbrance of the property with any liens, easements, leases or other encumbrances without Purchaser's prior written consent except that Purchaser shall not unreasonably withhold or delay its consent to new leases. On or before the Closing Date, Seller shall remove at its sole cost any such matters affecting the title to the property suffered or created by or consented to by Seller after the Effective Date that are not approved by Purchaser. If Seller elects not to cure any Title Defects or if Title Defects which Seller elects to cure are not cured within the Title Cure Period, Purchaser shall elect, by written notice to Seller on or before the Closing Date, as the same may be extended, either (i) to accept title to the property subject to such uncured Title Defects without reduction of the purchase price and without any liability on the part of Seller therefore, in which case such Title Defects shall be Permitted Encumbrances, or (ii) to terminate this

 Purchaser's Initials: KB Seller's Initials: _____

Contract, whereupon the earnest money immediately shall be returned to Purchaser an shall have any further obligations under this Contract.

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5. DEED: In return for payment in full of the Purchase Price, Seller shall convey the p _____7_____ days of the expiration of the Approval Period referenced in Section "Closing Date") to Purchaser by Maine Statutory Short-Form Quit Claim Deed with "Deed"), and the parties agree to execute and deliver on the Closing Date such other documents that are customary and/or reasonably necessary to complete the conveyance. It is a condition to Purchaser's obligations hereunder that title to the property shall be free and clear of all liens and encumbrances except for the following matters and otherwise in compliance with the requirements of this Contract: (i) zoning restrictions and land use laws and regulations and permits and approvals issued pursuant thereto; (ii) current taxes and assessments attributable to periods from and after the Closing, which Purchaser shall be liable to pay (iii) any Permitted Encumbrance.

6. POSSESSION/OCCUPANCY: Possession/occupancy of property shall be given to Purchaser on the Closing Date.

7. RISK OF LOSS: Until transfer of title, the risk of loss or damage to the property by fire or otherwise is assumed by Seller unless otherwise agreed in writing. The property shall at closing be in substantially the same condition as of the Effective Date, excepting reasonable use and wear. If the property is materially damaged or destroyed prior to closing, Purchaser may either terminate this Contract and be refunded the earnest money deposit, or close this transaction and accept the property in its as-is condition together with an assignment of the Seller's right to any insurance proceeds relating thereto, if any, and to the extent assignable.

8. PRORATIONS: The following items shall be prorated as of the Closing Date:

   a. ~~Real Estate Taxes based on the municipality's current tax year. Seller is responsible for any unpaid taxes for prior years.~~

   Fuel.

   b. Metered utilities such as water, sewer and electricity shall be paid by the Seller through the date of closing.
   c. Purchaser and Seller shall each pay one-half of the transfer tax as required by the laws of the State of Maine.

9. DUE DILIGENCE: Purchaser is advised to seek information from professionals regarding any specific issue of concern. ~~Purchaser acknowledges receipt of disclosure form attached hereto.~~ Neither Seller nor the Real Estate Licensees identified below make any representations or warranties regarding the condition, permitted use or value of Seller's real or personal property. Purchaser's obligation to close under this Contract is conditioned upon Purchaser's satisfaction with its investigations of the property, which may without limitation include survey, environmental assessment, engineering studies and wetlands or soils studies all prior to _____14 ~~calendar~~ days from the Eeffective dDate of this contract_____, (the "Due Diligence Time Period")

   All investigations will be done by professionals chosen and paid for by Purchaser. If the result of an investigation is unsatisfactory to Purchaser, Purchaser may declare this contract null and void by notifying Seller in writing within the specified time period set forth above, and said earnest money shall be returned to Purchaser. If Purchaser does not notify Seller that Purchaser's investigations are unsatisfactory within the time period set forth above, this contingency is waived by Purchaser. In the absence of any investigation(s) mentioned above, Purchaser is relying completely upon Purchaser's own opinion as to the condition of the property. Purchaser agrees to restore any disturbance to the

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property caused by Purchaser's investigations, and Purchaser agrees to indemnify an harmless for any claims, damages, losses or costs, including without limitation reasona fees, incurred or suffered by Seller as a result of Purchaser's investigations of the pr indemnification obligation shall survive termination or closing under this Contract.

In the event all Seller is not informed of any unsatisfactory due diligence results w period referenced above and Purchaser has not terminated the Contract, the earnest money deposit shall become non-refundable and shall be applied to the Purchase Price or retained by Seller in the event the Property is not transferred to Purchaser.

The acceptance of the Deed by Purchaser at the Closing shall be deemed to be the full performance and discharge of every agreement, obligation and representation made on the part of Seller, except as expressly set forth herein or in such Deed. No provisions, agreements or representations herein shall survive the Closing except as specifically stated herein. The Property is being sold and will be conveyed "as is" without any representation or warranties as to habitability, merchantability, fitness, condition or otherwise.

10. CITY OF PORTLAND APPROVALS: Purchaser shall have 60 days from the expiration of the Due Diligence Time Period referenced in Section 9 above to obtain permits and approvals from the City of Portland (the "Approval Period") to operate a 10 unit apartment complex.

11. FINANCING: NONE

12. AGENCY DISCLOSURE: Purchaser and Seller acknowledge that Kirk Butterfield of Investcomm ("Selling Agent") is representing the Purchaser and that Frank O'Connor of NAI The Dunham Group ("Listing Agent") is representing the Seller.

13. DEFAULT: If the sale of the property as contemplated hereunder is not consummated solely by reason of Purchaser's default hereunder, provided that Seller is then ready, willing and able to consummate the sale of the property as contemplated by this Contract ~~and provided further that all conditions to Purchaser's obligation to consummate such purchase have been satisfied or waived by Purchaser~~, Seller shall be entitled to either (i) pursue any and all legal and/or equitable remedies or (ii) terminate this Contract and receive the earnest money as full and complete liquidated damages for the breach. Liquidated damages are difficult to ascertain and/or prove and the earnest money is a reasonable estimate and forecast of such actual damages. The parties acknowledge that the payment of the earnest money is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages to Seller. In the event of an undisputed default by either party, the Escrow Agent may deliver the earnest money to the party entitled to it under this Contract, with written notice to both parties pursuant to Maine Real Estate Commission regulations. If a dispute arises between Purchaser and Seller as of the existence of a default hereunder and said dispute is not resolved by the parties within thirty (30) days, the Escrow Agent may elect to file and action in interpleader and deposit the earnest money in the court to resolve said dispute, or otherwise disburse the earnest money pursuant to Maine Real Estate Commission regulations. Purchaser and Seller, jointly and severally, shall indemnify Escrow Agent for all costs, losses, expenses, and damages, including reasonable attorneys' fees, incurred by the Escrow Agent in connection with said action and/or in connection with any dispute relating to this Contract and/or the earnest money.

14. MEDIATION: Any dispute or claim arising out of or relating to this Contract or the premises addressed in this Contract shall be submitted to mediation in accordance with the Maine Residential

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Real Estate Mediation Rules of the American Arbitration Association. This clause sl closing of this transaction.

15. PRIOR STATEMENTS: This Contract sets forth the entire agreement between the pa are no other representations, agreements or understandings with respect to the subject Contract. This Contract shall be construed according to the laws of the State of Maine.

16. HEIRS/ASSIGNS: This Contract shall extend to and be obligatory upon heirs, personal representatives, successors, and permitted assigns of the respective parties. Purchaser may assign his rights under this Contract to a limited liability company or other entity of which Purchaser owns a majority interest.

17. COUNTERPARTS: This Contract may be signed on any number of identical counterparts, including telefax copies and electronically transmitted copies with the same binding effect as if all of the signatures were on one instrument.

18. EFFECTIVE DATE: This Contract is a binding contract when signed by both Seller and Purchaser and when that fact has been communicated to all parties or to their agents. Time is of the essence of this Contract. Seller or Licensees are given permission by the parties to complete the Effective Date blank below with the date of the last signature of the parties, and that date shall be the Effective Date for all purposes under this Contract, and if that blank is not completed then the Effective Date shall be the date of the last signature of the parties. Except as expressly set forth to the contrary in this Contract, the use of the term "days" in this Contract, including all addenda made a part hereof, shall mean calendar days. Deadlines in this Contract, including all addenda, expressed as "within x days" or the like shall be counted from the Effective Date, unless another starting date is expressly set forth, beginning with the first day after the Effective Date, or such other established starting date, and ending at 5:00 pm, Eastern Time, on the last day counted.

19. CONFIDENTIALITY: Buyer and Seller authorize the disclosure of the information herein to the real estate licensees, attorneys, lenders, appraisers, inspectors, investigators, and other involved in the transaction necessary for the purpose of closing this transaction. Buyer and Seller authorize the lender and/or closing agent preparing the closing statement to release a copy of the closing statement to the parties and their licensees prior to, at and after the closing.

20. A copy of this Contract is to be received by all parties and, by signature, receipt of a copy is hereby acknowledged. If not fully understood, consult an attorney.

21. ADDENDUM: This Contract has an addendum containing additional terms and conditions which is attached hereto and made a part hereof.

**The parties agree that none of the above are collateral agreements. It is the intent of the parties that except as expressly set forth in this Contract, all covenants, representations, statements and obligations of both parties herein shall not survive closing.**

Kevin Butterfield or his permitted assigns
Legal Name of Purchaser

Signature

 Purchaser's Initials: Seller's Initials:

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Seller accepts Purchaser's offer and agrees to deliver the premises at the price and upon conditions set forth above and agrees to pay the Brokers the commission for services ac terms of the listing agreement. ~~In the event the earnest money is forfeited by Purchaser, it distributed between (1) Licensees and (2) Seller; provided, however, that the Brokers' pe exceed the full amount of the commission specified.~~

Signed this 15 day of MARCH 2013.

 Purchaser's Initials: Seller's Initials: uc

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Mercy Hospital
Legal Name of Seller

By: _____ EILEEN F. SKINI Date: 06/11/13
Signature Name/Title, there unto duly authorized

NAI The Dunham Group
Legal Name of Escrow Agent

Frank O'Connor, Designated Broker/ Partner
Name/Title, thereunto duly authorized

By: _____
Signature

**EFFECTIVE DATE OF CONTRACT:** 3/15/ , 2013.

The Parties to the Contract also agree as follows:

Seller will be permitted to rent 10 parking spaces located in the 50 Winter Street pa
6am – 6pm, Monday – Friday for a period of 4 years following the Closing Date; p
however, Purchaser is~~the Buyers are~~ not mandated by the City of Portland, through
of receiving approval for permitting 91 State Street as a 10 unit building, to maintain a number of
parking spaces at 50 Winter Street which would negate its ability to lease 10 spaces to the Seller.
In this instance, Buyers will lease as close to 10 spaces as may be permitted. Seller may
terminate this parking arrangement at any time during the 4-year period by providing Purchaser
with 90 days prior notice of its intent to terminate. [redacted] Purchaser shall maintain the parking lot at its sole cost and expense, including snow plowing and snow and ice removal. The details of this arrangement will be further outlined in a separate Parking Agreement to be entered into and mutually agreed upon by the Parties prior to the Closing Date.

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 Purchaser's Initials: Seller's Initials: WP