

PURCHASE AND SALE AGREEMENT

by and between

CITY OF DOVER, NEW HAMPSHIRE

and

HOT ROD CITY, LLC

Dated as of October 30, 2013

99 Oak Street

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is dated as of October 30, 2013 and is made by and between **CITY OF DOVER, NEW HAMPSHIRE**, a body corporate and politic, and a political subdivision of the State of New Hampshire (the "City") and **HOT ROD CITY, LLC**, a limited liability company organized under the laws of the State of New Hampshire (the "Buyer").

RECITALS

The City is the owner of certain property identified as Map 25, Lot 43A, said property consisting of 5.5 acres, more or less, located at 99 Oak Street, containing a former "Armory Building" and 12-bay Storage Building, said site described more fully at Exhibit A (the "Parcel"). The Parcel is currently used as municipal storage.

The Buyer submitted a letter of interest for the Parcel dated August 22, 2013, and following due consideration, the City has determined that the proposal by the Buyer is an appropriate proposal in light of the City's Master Plan, and its intentions for the further development and enhanced vitality of the City's Economic condition, and therefore is in the public interest.

The Buyer and the City wish to enter into an agreement pursuant to which the City shall convey the Parcel to the Buyer.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the receipt and adequacy of which is hereby acknowledged by both parties hereto, the City and the Buyer agree, as follows:

ARTICLE I

DEFINITIONS

The following terms shall have the meanings ascribed to them in this Article I for purposes of this Purchase and Sale Agreement. Unless otherwise defined below, capitalized terms used herein shall have the meaning as set forth in this Agreement.

"*Buyer*" means HOT ROD CITY, LLC, a New Hampshire limited liability company with an address of 390 Sixth Street, Dover, New Hampshire, 03820, and its successors and assigns, where the context of this Purchase and Sale Agreement permits.

"*City*" means the City of Dover, New Hampshire having an address of 288 Central Avenue, Dover, New Hampshire 03820.

"*City Council*" means the City Council for the City of Dover.

"*City Manager*" means the City Manager for the City of Dover.

"Deposit" shall mean the Sixty Five Thousand Dollars (\$65,000.00) sum delivered to the City, as described in Article 4.03 of this Purchase and Sale Agreement.

"Person" means an individual, a corporation, a limited liability company, a partnership, a limited liability partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated organization or a government or any agency or political subdivision thereof.

"Parcel" means Map 25, Lot 43A, said property consisting of 5.5 acres, more or less, located at 99 Oak Street, Dover, New Hampshire.

"Purchase and Sale Agreement" or "Agreement" means this Purchase and Sale Agreement, by and between the City and the Buyer, as amended or supplemented from time to time.

"Purchase Price" shall have the meaning set forth in Section 4.01 of this Purchase and Sale Agreement.

"Underground Storage Tank" shall mean a Three thousand (3,000) gallon +/- underground steel storage tank located on the northwest portion of the Parcel.

ARTICLE II

CONDITION PRECEDENT

Section 2.01 City Council Approval Required.

The parties acknowledge that unless and until the Dover City Council approves this Purchase and Sale Agreement, pursuant to a duly noticed and authorized vote of the Council, this Purchase and Sale Agreement is not binding on the City. The failure or refusal of the Council to approve this Purchase and Sale Agreement shall mean that such Agreement is null and void and of no force or effect. The parties acknowledge that the Dover City Council approved this transaction pursuant to a duly noticed and authorized vote of the Council on September 25, 2013.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 3.01 Representations, Covenants and Warranties of the Buyer.

The Buyer represents warrants and covenants for the benefit of the City as follows:

(a) *Organization.* The Buyer is a limited liability company duly organized and validly existing under the laws of the State of New Hampshire and has the power and

authority to own its properties and assets and to carry on its business in the State as now being conducted and as hereby contemplated.

(b) *Authority.* The Buyer has the power and authority to enter into and to perform its obligations under this Purchase and Sale Agreement, and has taken all action necessary to cause this Purchase and Sale Agreement to be executed and delivered, and this Purchase and Sale Agreement has been duly and validly executed and delivered by the Buyer.

(c) *Binding Obligation.* This Purchase and Sale Agreement is a legal, valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms, subject to bankruptcy and other equitable principles.

(d) *No Conflict.* The execution and delivery by the Buyer of this Purchase and Sale Agreement and compliance with the provisions hereof, do not and will not in any material respect conflict with or constitute on the part of the Buyer a breach or default under any agreement or instrument to which it is a party or by which it is bound.

(e) *Litigation.* As of the date of this Purchase and Sale Agreement, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best of its knowledge, threatened by or against the Buyer: (i) in any way questioning the due formation and valid existence of the Buyer; (ii) in any way contesting or affecting the validity of this Purchase and Sale Agreement or the consummation of the transactions contemplated hereby; (iii) which would have a material adverse effect upon the financial condition of the Buyer or any of its principals, or its ability to perform its obligations under this Purchase and Sale Agreement.

(f) *Compliance with Laws.* The Buyer shall not, with knowledge, commit, suffer or permit any act to be done in, upon the Parcel in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the Parcel.

Section 3.02 Representations of the City.

The City represents and warrants to the Buyer as follows:

(a) *Organization.* The City is a body corporate and politic and a political subdivision of the State of New Hampshire and has the full legal right, power and authority to enter into this Purchase and Sale Agreement, and to carry out and consummate the transactions on its part.

(b) *Authority.* Upon execution of this Purchase and Sale Agreement by the City Manager, the City, by all necessary official action of the City, shall have duly authorized and approved the adoption, execution and delivery by the City of, and the performance by the City of the obligations on its part contained in this Purchase and Sale Agreement, such authorizations and approvals shall be in full force and effect and shall not have been amended, modified or rescinded, and this Purchase and Sale Agreement shall have been duly executed and

delivered and is enforceable against the City, subject to bankruptcy and other equitable principles.

(c) *Litigation.* There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best of its knowledge, threatened by or against the City: (i) in any way contesting or affecting the validity of this Purchase and Sale Agreement or the consummation of the transactions contemplated hereby; or (ii) in any way affecting the timely construction of the Project.

Section 3.03 No Implied Approvals by City.

Nothing contained in this Purchase and Sale Agreement shall constitute, be deemed to constitute or imply that the City Council, or any City board, department, office, or agency, officer, or employee of the City approves, authorizes, or consents to any action or activity within or required for the the Buyer's intended use of the Parcel, whether now or in the future, including any land use approval, requirements for the provision of public utilities or services, or any administrative, judicial, quasi-judicial, or legislative action, unless and until such respective authorizations, approvals or consents are duly and properly issued by the City Council, and/or its respective board, department, office, agency, officer or employee.

Section 3.04 No Waiver of Ordinances, Rules or Regulations.

Nothing herein shall be construed as affecting the City's or the Buyer's rights or duties to perform their respective obligations and fulfill their respective responsibilities under any zoning ordinances, use regulations, building codes, or subdivision requirements, or any other laws, regulations, rules, codes or statutes relating to the Buyer's intended use of or improvements for the Parcel.

ARTICLE IV

BUYER'S ACQUISITION OF PARCEL

Section 4.01 Acquisition Terms; Purchase Price

Upon satisfaction of the conditions set forth in this Article IV, the Buyer shall purchase and the City shall sell the Parcel. The purchase price for the Parcel is Six Hundred Fifty-six Thousand, Five Hundred Dollars (\$656,500.00) (the "Purchase Price"), to be paid at the Closing via a bank or certified check. The City shall convey the Parcel by quitclaim deed, conveying the Parcel "as is", "where is", and "with all faults", as to its physical condition, and subject to any easements of record, including utility easements, as well as a City sewer line and related infrastructure, including catch basins, located on the Parcel.

The deed shall include:

- (a) A covenant benefiting the City prohibiting the Buyer, and its successors and

assigns from conveying, transferring or assigning all or any portion of the fee ownership of the Parcel, including units created pursuant to any subdivision or condominiumization of the Parcel, to a party exempt from ad valorem property taxation without the consent of and upon such terms and conditions as are acceptable to the City, in its sole discretion; and

- (b) A covenant, benefiting the City and abutting properties, prohibiting the Buyer and its successors and assigns from removing natural vegetation within fifty (50) feet of the existing southerly property line of the Tax Assessor's lot 25-43A; for a distance of approximately 476 feet from the Oak Street Right of Way to the northeast corner of Tax Assessor's lot 25-37, and requiring maintenance of the natural vegetation in said described area. Cutting shall be permitted for monumentation of lot boundaries and for the removal of vegetation which presents a hazard to person or property.

The Buyer acknowledges that the City has made no representations or warranties, express or implied, as to the Parcel, including but not limited to title, survey, physical condition, suitability or fitness for an particular purpose, building or zoning restrictions, value, or the presence or absence of hazardous substances.

Section 4.02 Closing Date and Location.

The closing date for the conveyance of the Parcel shall be at a date/time mutually agreed to by the parties and shall occur within thirty (30) days following the satisfaction of all contingencies in Article IV, but in any event no later than November 27, 2013, TIME BEING OF THE ESSENCE (the "Closing Date"). If the Buyer is not in default of its obligations under this Agreement and is diligently performing all of its duties and obligations hereunder, the Closing Date may be extended in 30-day segments to a date mutually agreeable to the parties, not to exceed ninety (90) days. The Buyer shall pay the City the sum of Ten Thousand Dollars (\$10,000.00) for each 30-day extension. The \$10,000.00 paid by the Buyer to the City for the first 30-day extension shall be applied to the Purchase Price at Closing. Any payment(s) from the Buyer to the City for the second and/or third 30-day extension shall be non-refundable and not applicable to the Purchase Price or to any other obligations of the Buyer pursuant to this Agreement. The Closing shall take place at City Hall in Dover, New Hampshire unless otherwise agreed to by the parties.

Section 4.03 Deposit.

The Buyer shall provide a deposit to the City in the amount of Sixty Five Thousand Dollars (\$65,000.00) (the "Deposit") upon execution of this Purchase and Sales Agreement. The Deposit shall be paid via a bank or certified check and shall be held by the City in an account bearing no interest for either party and shall be applied to the Purchase Price at the Closing in the event of a purchase of the Parcel. In the event that the Buyer fails to close on the Parcel, the Deposit shall be retained by the City and not be refunded to the Buyer, except: (a) in the event of a breach of this Purchase and Sale Agreement by the City that results in a failure to close on the Parcel, or (b) in the event of a contingency set forth herein which allows the Buyer to terminate

(f) *Underground Storage Tank.* Prior to the Closing the City shall remove the Underground Storage Tank located on the Parcel in accordance with the standards of the New Hampshire Department of Environmental Services, the cost of said removal to be paid by the Buyer at Closing as part of the Purchase Price. In the event that soil and/or groundwater contamination is discovered upon removal of the tank, or is created as a result of such removal, as confirmed by the City's environmental consultant, the Buyer may terminate this Agreement and the Buyer's deposit will be returned to the Buyer minus the City's \$1,500.00 cost of removal of the Underground Storage Tank - the Buyer to bear no costs or responsibility for the clean-up of such contamination. The City and the Buyer may agree to proceed with a clean-up of any contamination discovered, the costs of which shall be paid by the Buyer as a deduction from its deposit by the City. Any amount(s) deducted from the Buyer's deposit by the City for contamination clean-up shall be non-refundable and not thereafter be credited toward and/or applied to the Purchase Price at Closing under Section 4.03. Nothing in this Agreement shall obligate the City or the Buyer to clean-up any such contamination if discovered.

(g) *Financing.* This Agreement is contingent upon Buyer obtaining SBA 504 financing for 90% of the Purchase Price, If, after good faith efforts, the Buyer is unable to obtain such financing, then at the Buyer's option, the Buyer may terminate this Agreement upon written notice to the City and the Buyer's deposit shall be returned to Buyer minus the City's \$1,500.00 cost of removal of the Underground Storage Tank.

(h) *Septic System.* The Parcel is served by a septic system and is not connected to the City's Public Sewer System. Prior to closing the City shall inspect and pump out the septic system and provide documentation of the same to the Buyer. Should the septic system fail within a five (5) year period from the date of the Closing, the City shall provide the labor and equipment necessary to connect the Armory Building on the Parcel to the City's Public Sewer System; the Buyer shall bear the cost of materials for said sewer connection. In connecting to the City's Public Sewer System, the City anticipates that it would connect the Armory Building to the water main on Oak Street and use an existing water line easement to connect the Armory Building to the Sewer System on Cross Street; the Buyer shall bear the cost of materials for said new water connection. The City shall waive the impact fees normally charged for a new sewer connection. The City's obligation to connect the Armory Building to the City's Public Sewer System under this paragraph shall only be triggered if the Buyer provides the City with written documentation confirming that the septic system has been inspected, pumped, and maintained no less than annually from the date of the Closing, by an individual/entity licensed by the New Hampshire Department of Environmental Services.

ARTICLE V

MISCELLANEOUS

Section 5.01 Agreement Termination.

In instances throughout this Purchase and Sale Agreement where a right of termination of this Agreement is provided, and unless otherwise stated in this Purchase and Sale Agreement, termination must be accomplished by a writing provided by the Buyer to the City within the

deadlines set forth in the Purchase and Sale Agreement. Upon any such termination, neither party shall have any further rights or obligations hereunder except those obligations that expressly survive such termination.

Section 5.02 Release and Indemnification.

The Buyer releases the City, the members of the City Council and the City's respective officers, attorneys, agents and employees, from, agrees that the City, the members of the City Council and the City's respective officers, attorneys, agents and employees, shall not be liable for and indemnifies the City, the members of the City Council and the City's respective officers, attorneys, board members, agents and employees against, all liabilities, claims, costs and expenses, including out-of-pocket and incidental expenses and legal fees, imposed upon, incurred or asserted against the City, the members of the City Council and the City's respective officers, attorneys, agents and employees, arising, directly or indirectly, in whole or in part, out of the negligence or willful act or omission of the Buyer, its agents or anyone who is directly employed by Buyer in connection with the Buyer's performance of its duties and obligations under this Purchase and Sale Agreement, including any due diligence or inspections that the Buyer undertakes with respect to the Parcel until the Closing Date; provided that, such release or indemnification shall not apply to any actions or claims brought as a result of any material breach of this Purchase and Sale Agreement, willful misconduct or fraudulent action of the City, the members of the City Council and/or the City's respective officers, attorneys, agents and employees.

In case any claim or demand is at any time made, or action or proceeding is brought, against or otherwise involving the City, any member of the City Council or any officer, attorney, board member, agent or employee of the City, in respect of which indemnity may be sought hereunder, the person seeking indemnity promptly shall give notice of that action or proceeding to the Buyer, and the Buyer upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceedings with counsel acceptable to both parties. An indemnified party may employ separate counsel and participate in the defense, but the fees and expenses of such counsel shall be paid by the indemnified party unless (i) the employment of such counsel has been specifically authorized by the Buyer in writing, or (ii) the Buyer has failed to assume the defense and to employ counsel or (iii) the named parties to any such action (including any impleaded parties) include both an indemnified party and the Buyer, and such indemnified party may have one or more legal defenses available to it which are different from or additional to those available to the Buyer, in which case, if the indemnified party notified the Buyer in writing that it elects to employ separate counsel at the Buyer's expense, the Buyer shall not have the right to assume the defense of such action on behalf of such indemnified party and the Buyer shall be responsible for payment of the fees and expense of such separate counsel.

The indemnifications set forth above are intended to and shall include the indemnification of all affected officials, attorneys, agents, board members, officers and employees of the City, respectively, and each and all of their successors and assigns. Those indemnifications and any other indemnifications provided for herein are intended to and shall be enforceable by each and every indemnified party to the full extent permitted by law and shall survive the termination of this Purchase and Sale Agreement.

Section 5.03 Notices.

Any notice, payment or instrument required or permitted by this Purchase and Sale Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

City: City Manager
City of Dover, New Hampshire
City Hall
288 Central Avenue
Dover, New Hampshire 03820-4169

With a copy to: General Legal Counsel
City of Dover, New Hampshire
City Hall
288 Central Avenue
Dover, New Hampshire 03820-4169

Buyer: HOT ROD CITY, LLC
390 Sixth Street
Dover, New Hampshire 03820

With a copy to: Christopher E. Ratte, Esq.
98 Portsmouth Ave.
Stratham, New Hampshire 03885

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

Section 5.04 Severability.

If any part of this Purchase and Sale Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Purchase and Sale Agreement shall be given effect to the fullest extent possible.

Section 5.05 Successors and Assigns.

This Purchase and Sale Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Assignment of this Agreement by the Buyer shall not be permitted without the prior written consent of the City. In connection with any such consent of the City, the City may condition its consent upon the acceptability of the financial

condition of the proposed assignee, upon the assignee's express assumption of all obligations of the Buyer hereunder or upon any other reasonable factor which the City deems relevant in the circumstances. In any event, any such assignment of this Agreement shall be in writing, shall clearly identify the scope of the rights and obligations assigned and shall not be effective until approved by the City.

Section 5.06 Waiver.

Failure by a party to insist upon the strict performance of any of the provisions of this Purchase and Sale Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Purchase and Sale Agreement thereafter.

Section 5.07 Merger.

No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Purchase and Sale Agreement shall be binding.

Section 5.08 Parties in Interest.

Nothing in this Purchase and Sale Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City and the Buyer any rights, remedies or claims under or by reason of this Purchase and Sale Agreement or any covenants, conditions or stipulations hereof, and all covenants, conditions, promises and agreements in this Purchase and Sale Agreement contained by or on behalf of the City or the Buyer shall be for the sole and exclusive benefit of the City and the Buyer.

Section 5.09 Amendment.

This Purchase and Sale Agreement may be amended, from time to time, by written supplement hereto and executed by both the City and the Buyer.

Section 5.10 Time is Of the Essence.

The parties acknowledge that TIME IS OF THE ESSENCE in the timely performance of such duties and obligations under this Agreement.

Section 5.11 Force Majeure.

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reasons of strikes, lockouts, inability to procure materials, loss of utility services, restrictive governmental laws or regulations, riots insurrection, war, acts of God, or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, then performance of any such act

shall be extended for a period equivalent to the period of such delay.

Section 5.12 Counterparts.

This Purchase and Sale Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 5.13 Effective Date.

This Purchase and Sale Agreement shall be effective as of the date of this Purchase and Sale Agreement.

Section 5.14 Default.

In the event of a default by a party, and unless otherwise specified in this Purchase and Sale Agreement, the non-defaulting party shall have any and all rights and remedies under this Agreement, at law or in equity, including the right of specific performance.

Section 5.15 Broker.

Neither party has employed the services of a broker, finder or other person in connection with the transactions contemplated pursuant to this Purchase and Sale Agreement, and each party agrees to indemnify and hold the other harmless on account of any loss, expense, liability or damage, including reasonable attorney's fees, incurred by reason of its breach of this paragraph.

[Signature Page follows]

IN WITNESS WHEREOF, the parties have executed this Purchase and Sale Agreement as of the day and year first above written.

CITY OF DOVER, NEW HAMPSHIRE

By: 

Name: J. Michael Joyal, Jr

Title: City Manager

HOT ROD CITY, LLC

By: 

Name: SEAN LA ROSE

Title:

(Duly Authorized)


DAVID R. BUCHANAN

Exhibit A
Property Description
(See attached)

WARRANTY DEED

That The State of New Hampshire, Adjutant General's Department (Grantor) with an address of the State Military Reservation, 4 Pembroke Road, Concord, County of Merrimack and State of New Hampshire, for consideration paid, grant to the City of Dover (Grantor), with an address of 288 Central Avenue, Dover, County of Strafford and State of New Hampshire

A certain tract or parcel of land situated on the Westerly side of Oak Street Extension, so called, bounded and described as follows:

Beginning on the West side of Oak Street at a steel stake, with cap marked "Davis Engr., Dover, N.H.", at the Northeast corner of land, now or formerly, owned by Georgianna Corson; (For further reference see Strafford County Registry Book 710, Page 407); thence running along the Westerly side of the right of way of said Oak Street North 0° 29' West seven hundred (700) feet to a stake; thence South 89° 31' West three hundred sixty (360) feet along land of the City of Dover to a stake; thence running South 6° 57' West five hundred fifteen and seven one-hundredths (515.07) feet along land of the City of Dover to a steel stake on the Northwest corner of land, now or formerly, owned by Cornelius Tucker, said steel stake is also situated at the Northeast corner of land, now or formerly, of Marion B. Adams; thence running South 66° 34' East four hundred sixty-six and eighty one-hundredths (466.80) feet along land of said Tucker land, now or formerly of Anna Beaulieu, Mary Louise Batchelder, John Perry Lawry, Daniel McDevitt and land of Georgianna Corson, to the point begun at.

Meaning and intending to convey the same premises conveyed to the State of New Hampshire by deed of the City of Dover dated December 14, 1960 and recorded at the Strafford County Registry of Deeds at Book 728, Page 385 AND CORRECTIVE DEED dated April 29, 1961 recorded at the Strafford County Registry of Deeds at Book 731, Page 417.

IN WITNESS WHEREOF, I, Stephanie L. McLeuder duly authorized on behalf of The State of New Hampshire, Adjutant General's Department have hereunto set my hand this 24 day of April, 2013.

THE STATE OF NEW HAMPSHIRE
ADJUTANT GENERAL'S DEPARTMENT

Dated: April 24, 2013.

By: Stephanie L. McLeuder
Duly Authorized

THE STATE OF NEW HAMPSHIRE
Merrimack, ss.

On the 24 day of APRIL, 2013 the undersigned officer, personally appeared STEPHANIE L. MILENDER on behalf of The State of New Hampshire, Adjutant General's Department known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.

Helen Champa
Notary Public

HELEN CHAMPA, Notary Public
My Commission Expires February 11, 2014

