

PURCHASE, SALE AND DEVELOPMENT AGREEMENT
CENTRAL FIRE STATION, BRUNSWICK ME

THIS AGREEMENT is made and entered into as of 12/11/2023 by and between THE TOWN OF BRUNSWICK, ME, 85 UNION STREET, BRUNSWICK ME 04011 ("Seller") and **DEVELOPERS COLLABORATIVE PREDEVELOPMENT LLC**, a Maine limited liability company with a place of business in Portland, Maine and mailing address of 631 Stevens Ave, Suite 203, Portland, Maine 04103 (the "Buyer"):

WHEREAS, the Seller is the owner of certain land and buildings located at 21 Town Hall Place in Brunswick, Maine, known as the Central Fire Station, and being a portion of the property shown on the Town of Brunswick Tax Maps as Map U13, Lot 65A₂ and as generally depicted in the plan attached as Exhibit A and incorporated herein; and

WHEREAS, the Seller desires to sell the Premises and has published a certain request for proposals entitled "Redevelopment Opportunity of the Central Fire Station (the "RFP")," a copy of which is attached hereto as Exhibit B and incorporated herein; and

WHEREAS, the Buyer has submitted a proposal in response to the RFP, dated April 21, 2023 (the "Proposal"), a copy of which is attached hereto as Exhibit C and incorporated herein, and may be amended only as set forth in this Agreement; and

WHEREAS, Buyer desires to purchase and redevelop the Premises in accordance with the terms of the Proposal, preferably with Moderation Brewing on the ground floor and residential apartments for the local workforce on the second floor ("the Project"); and

WHEREAS, after reviewing the Proposal submitted in response to the RFP, staff and a Town Council appointed Advisory Committee has recommended the Buyer's Proposal, as amended by the Memorandum included in Exhibit C to this Agreement, and the Seller has selected the Buyer as the successful bidder;

WHEREAS, for the purposes of this Agreement, "Buyer" shall include any authorized assignee in accordance with Section 12;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties,

intending to be legally bound, hereby agree as follows:

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Property to be Sold. Seller agrees to sell and Buyer agrees to buy the Premises.
2. Purchase Price; Deposit. Buyer shall pay to Seller the sum of **Two Hundred Thousand Dollars (\$200,000.00)** (the "Purchase Price") in the manner provided in this Section.
 - a. Contemporaneously with the execution of this Agreement, Buyer shall pay to Seller the sum of **\$10,000.00** as a deposit (the "Initial Deposit"). Notwithstanding anything to the contrary elsewhere in this Agreement, the Deposit is refundable to the Buyer upon termination of this Agreement as provided for herein until **February 29, 2024**, at which time the Deposit shall become non-refundable, unless Seller defaults in its obligations hereunder, or there is a material change in the property as described in Section 10(b) below. The Deposit shall in all instances be credited against the Purchase Price at closing.
 - b. Not later than February 29, 2024, if Buyer has not terminated this Agreement, Buyer shall pay to Seller the sum of **\$10,000.00** as a supplemental deposit (the "Supplemental Deposit"). The Supplemental Deposit is non-refundable, unless the Seller defaults in its obligations hereunder, or there is a material change in the property as described in Section 10(b) below. The Supplemental Deposit shall in all instances be credited against the Purchase Price at closing. The Initial Deposit and the Supplemental Deposit shall be collectively known as the "Deposit." The Deposit shall be held by a third-party escrow agent.
 - c. At the closing, Buyer shall pay to Seller the balance of the Purchase Price by certified or bank cashier's check or wire transfer. The Deposit shall be credited against the Purchase Price.
3. Title. Seller shall convey the Premises to Buyer at the closing (the "Closing") in fee simple with good and marketable title, free and clear of all liens, claims and encumbrances other than as explicitly described in this Agreement. In the event that Seller is unable to convey title as aforesaid, Seller shall be given a reasonable period of time (not to exceed 30 days), after notice in writing, in which to remedy any title defects. In the event that said defects cannot be corrected or remedied or in the event that Seller elects not to remedy same, then the Deposit shall be returned to Buyer and this Agreement, and Seller's and Buyer's obligations hereunder, will terminate. Buyer may, at Buyer's option, elect to close notwithstanding such defects as may exist.
4. Closing. This transaction shall be closed on or before August 30, 2024 at 5 p.m. (the "Closing Date") at the offices of Buyer's lender, or if the Seller and Buyer shall mutually agree in advance at another time and place. At the Closing, Seller shall execute and deliver to Buyer, against payment of the balance of the Purchase Price, a Warranty Deed to the Premises and such customary affidavits and certificates as Buyer may reasonably request.

5. Risk of Loss, Damage, Destruction and Insurance. Before the Closing, Seller shall bear the risk of any loss to the Premises by fire or otherwise.

6. Representations and Warranties of Seller. Seller represents and warrants to Buyer as set forth in (a) through (c) below. Except as expressly set forth in this Agreement, the Premises are being conveyed AS-IS, WHERE-IS.

(a) Seller has received no written notice from any governmental body or agency alleging a violation of any environmental law, rule, regulation or ordinance. Buyer is encouraged to review the report titled "Phase 1 Environmental Site Assessment dated December 23, 2020 by Credere Associates for guidance regarding the former and/or current presence of fuel tanks on the Premises and to make independent inquiries as needed regarding the presence or effect of fuel tanks on the Premises.

(b) There is no litigation, administrative hearing, arbitration, investigation or any other proceeding pending or, to the knowledge of Seller, threatened against Seller with respect to the Premises, with respect to any violation of law, rule or regulation with respect to the Premises, or with respect to Seller's failure to obtain or maintain all necessary approvals and permits for the operation of the Premises.

7. Inspection. At all reasonable times upon reasonable prior notice, Buyer and any prospective lender or investor of Buyer's shall have the right to enter the Premises and perform, at Buyer's expense, any and all inspections, tests, surveys or other due diligence inquiries with respect to the Premises as Buyer deems necessary or appropriate. Buyer agrees to return the Premises as nearly as possible to their original condition after any of such tests and inspections. Buyer shall indemnify Seller for any property damage, bodily injury or death occurring by reason of such entry and/or testing. Seller shall cooperate with Buyer in such inspections. In the event Buyer is not satisfied for any reason by the results of such due diligence inspections, Buyer shall have the option of terminating this Agreement by written notice to Seller, whereupon the Deposit shall be refunded to Buyer; provided Buyer terminates this Agreement on or before February 29, 2024. After February 29, 2024 the Deposit shall be non-refundable unless the Seller defaults in its obligations hereunder, or there is a material change in the property as described in Section 10 below.

8. Possession. Seller shall deliver the Premises to Buyer at the Closing free and clear of all leases, tenancies and occupancies by any person. Seller shall remove any rubbish or personal property on the Premises before the Closing; if Seller fails to do so, Buyer may remove same and reduce the purchase price by the estimated cost of such removal.

9. Prorations; Costs. Real estate taxes and assessments shall be prorated as of the Closing. The recording fee for the deed and any expenses related to Buyer's financing will be paid for by Buyer. The parties shall share equally the cost of all real estate transfer taxes.

10. Conditions Precedent.

(a) Buyer's obligation to close hereunder is subject to Buyer's full and complete satisfaction with all of the following:

i. There shall have been no material adverse change in the condition of the Premises occurring after the conclusion of Buyer's inspections under Section 7 above, and the Premises shall be substantially in the same condition as they were at the time of the inspections, reasonable wear and tear excepted.

ii. As of the date hereof, and as of the date of Closing, all of Seller's representations and warranties shall be true and correct in all material respects.

If the conditions described in subsections (i) and (ii) above are not satisfied as of the dates specified, or if no date is specified, by the Closing Date, then Buyer shall have the option of terminating this Agreement in writing and shall be entitled to a full refund of the Deposit.

(b) Seller's obligation to close hereunder is contingent upon confirmation by Seller's duly authorized officials to confirm in Seller's sole reasonable discretion that Buyer has secured financing sufficient to purchase the Property and to complete all phases of the development as set forth in the Proposal, or as amended subject to Section 15 of this Agreement, and verification that the financials provided with the Proposal remain reasonably accurate and demonstrate the financial sustainability of the Proposal. Buyer shall deliver to Seller all materials reasonably necessary for Seller to complete this review. Seller shall deliver written notice to Buyer of its conclusions regarding this contingency in writing at least 30 days prior to the Closing Date.

11. Default and Remedies. In the event that Buyer defaults under this Agreement, Seller shall retain the Deposit as full and complete liquidated damages in lieu of any other legal or equitable remedy, whereupon this Agreement will terminate and neither party will be under any further obligation hereunder. In the event of Seller's default hereunder, Buyer shall have all remedies at law or in equity, including, without limitation, the remedy of seeking specific performance.

12. Assignment. Buyer may only assign this Agreement and its rights and the performance of its obligations hereunder to an entity incorporated and managed by Buyer, subject to approval by the Brunswick Town Manager. Assignment to any other entity shall not be permitted following execution of this Agreement and through the first five years following issuance of certificate(s) of occupancy, or through conclusion of the historic tax credit compliance period, whichever occurs later. No such assignment shall relieve the Buyer of obligations under this Agreement.

13. Brokers. The Buyer is not responsible for any real estate commissions due as a result of this transaction. Seller shall indemnify Buyer from and against the claims of any brokers arising from breach of the above representation, which indemnity shall survive the Closing and shall include reasonable costs of collection, including reasonable attorneys' fees.

14. Miscellaneous. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth at the beginning of this Agreement. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein. This Agreement constitutes the entire agreement between Seller and Buyer and there are no other agreements, understandings, warranties or representations between Seller and Buyer. Except as expressly stated herein, no obligations of the parties shall survive the Closing. This Agreement will inure to the benefit of and bind the respective successors and assigns of Seller and Buyer. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument. As used in this Agreement, the singular number shall include the plural, the plural the singular, and the use of the masculine shall include, where appropriate, the feminine and neuter. This Agreement shall be governed by and construed in accordance with the laws of the State of Maine. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

15. Conditions Regarding Development of the Premises. Seller is conveying the Premises to Buyer in furtherance of an economic development initiative to make beneficial redevelopment and use of the Premises for the betterment of the Town of Brunswick and its inhabitants. In furtherance of these purposes, the parties agree to the following terms and conditions which shall survive the Closing:

- (a) The Buyer shall make no conveyance of any portion of the Premises during the first five years following the deed of conveyance. This requirement shall be set forth in a covenant to be included within the deed to be granted to the property. For the purposes of this subsection, neither an admission of tax credit investor partners nor creation of a master lease structure, either or both for historic tax credit investment purposes, shall be considered a conveyance.
- (b) The Premises shall be redeveloped to comply with the National Park Service historic standards to allow for the syndication of historic tax credits to provide equity for the redevelopment of the property, and Buyer shall diligently pursue listing of the Premises on the National Register of Historic Places, and/or addition to the Brunswick Downtown Historic District
- (c) The deed of conveyance shall include a covenant prescribing the uses that may be made of the Premises during the first ten years following Closing. The Premises shall be developed and used in compliance with the terms and conditions of any grant or economic development benefit or award accepted and used in furtherance of the Proposal.
- (d) The Project will include provision of affordable housing units as described in the Proposal. However, if Buyer is unable to secure sufficient grants, subsidized or deferred loans, tax credits, or other financial incentives to make the affordable housing units a viable investment as proposed, Buyer may so inform the Town in writing within

the due diligence period set forth in Section 7 of this Agreement, and upon the Town's receipt of said notice, the due diligence period shall be extended by 90 days. During this 90-day extended due diligence period, (1) the Town shall not offer or sell the Premises to any other entity; and (2) Buyer may offer an alternative to the Proposal for consideration by the Brunswick Town Council and the two parties shall negotiate expediently and in good faith to determine whether mutually agreeable amendments to the Proposal and/or this Agreement may be reached. If amendments are not reached during the 90-day period, the parties may either (1) mutually agree to further extend the diligence period; or (2) terminate the agreement upon written notice by either or both parties.


- (e) In furtherance of the affordable housing described in subsection (d), the deed of conveyance shall include a covenant protecting for a period of a minimum of 30 years the affordability of housing units to be developed, with affordability to be defined as having the total housing cost (rent, utilities and fees) being affordable to a household earning no more than 80% of the Area Median Income.
- (f) The intended form of deed, with included covenants, is attached hereto as Exhibit D.
- (g) The Buyer shall make reasonable efforts to develop the property in accordance with the Proposal, as amended by the staff memorandum dated September 18, 2023, both of which are attached hereto as Exhibit C and incorporated herein by reference. The Buyer and Seller will in good faith work together as needed to pursue the following economic development incentives for the benefit of the Proposal, with the understanding that this Agreement is not contingent upon the receipt of any such incentive:
 - i. Historic preservation certification with the State of Maine and the National Park Service and utilizing historic preservation tax credits in financing the Project;
 - ii. Community Development Block Grant to be administered by the Town of Brunswick;
 - iii. Affordable housing subsidy to create upper floor workforce housing for people at or below 80% AMI, through Maine Housing and Cumberland County;
 - iv. A credit enhancement agreement to help offset operating costs of the workforce housing;
 - v. Grant funds through the Town of Brunswick Affordable Housing Support Fund;
 - vi. Other loan proceeds
- (h) The Buyer will develop the site with guidance from the *Master Plan for Downtown Brunswick & The Outer Pleasant Street Corridor* and the community survey conducted by the Central Fire Station Advisory Committee.
- (i) The Buyer will utilize sustainable building and energy efficiency practices and, unless proven not to be economically viable, use a well-insulated built-up roof, triple glazed windows, heat pumps, solar PV, electric charging stations, and the use of pervious paving materials, plantings, bicycle parking, and other sustainable building materials as stated in the Proposal
- (j) The Buyer will retain all green space and parking set forth in the Proposal.
- (l) The Buyer will bring the Project through development approval and will retain only as much parking as necessary to satisfy the Planning Board process and support operations (and in no event more than stated in the Proposal).
- (m) The Buyer shall provide the Town, within 60 days of Closing and in no event later than the start of work, with a performance guarantee (letter of credit, performance bond, or

other financial surety), enforceable by the Town, to ensure completion of all site work in accordance with Planning Board approvals, plus 50% of the total project cost in addition to the site work amount, for the development as approved by the Planning Board. As work is completed the Buyer shall be entitled to reductions in the performance guarantee (letter of credit, performance bond, or other financial surety) amount within one week of an e-mailed written request from Buyer's representative to the Town Manager supported by a request form agreed upon by Buyer and Seller and sufficient documentation of paid invoices to support the requested reduction from the Town Manager to the Bank. In no event shall the reduction request be refused as long as the requested reduction is appropriately supported and is no greater in proportion to the amount of the total performance guarantee than the proportion of the Project completed. If, prior to closing, the Buyer is required to modify plans described in 15 (e), such modification (if determined by the Town of Brunswick Town Manager to be material) shall be subject to approval by the Town Council and replacement or amendment of Exhibit C. Buyer and Seller agree that should the terms of this section be unacceptable to investors or lenders, then the terms can be revisited.

16. Buyer warrants that all representations made to the Town of Brunswick, its staff, officers, agents and committees in relation to the RFP and the award as set forth in this Agreement are true and accurate to the best of its knowledge.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date written above.


WITNESS:


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Michael D. Lyne

TOWN OF BRUNSWICK, SELLER
Town Manager

DEVELOPERS COLLABORATIVE
PREDEVELOPMENT LLC, Buyer

By: 

Kevin R. Bunker, its Manager