


CERTIFICATION OF PURCHASE AND SALE AGREEMENT FOR 432 WHITNEY STREET, NORTHBOROUGH, MA

The undersigned, Santo Anza, Trustee of 0 Whitney Street Realty Trust, the Seller of the land located at 432 Whitney Street, Northborough, Massachusetts, hereby **certifies** under oath that attached hereto is a true and correct copy of the Purchase and Sale Agreement for said land and dated as of November 28, 2023 which agreement is signed by the undersigned and by the Buyer, Howland Development Corporation.

December 5, 2023

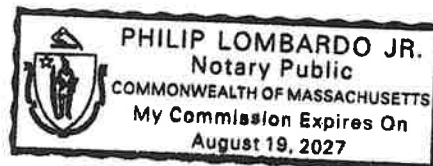

Santo Anza, Trustee of 0 Whitney Street
Realty Trust

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

On this 5th day of December, 2023, before me, the undersigned notary public, Santo Anza, Trustee of 0 Whitney Street Realty Trust personally appeared, proved to me through satisfactory evidence of identification, which were personal knowledge, to be the person who signed the preceding or attached document in my presence and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.


Notary Public
My Commission Expires: 8/19/27



PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("Agreement") is dated as of November 28, 2023.

1. PARTIES AND MAILING ADDRESSES:

0 Whitney Street Realty Trust u/d/t dated October 27, 1986 and recorded with the Worcester District Registry of Deeds in Book 921, Page 181

hereinafter called the SELLER. agrees to SELL and

Howland Development Corporation, its nominee or assigns, with a principal place of business at 155 West Street, Suite 9, Wilmington MA 01887

hereinafter called the BUYER or PURCHASER, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

• DESCRIPTION OF PREMISES:

The parcel of land with the buildings thereon located at 432 Whitney Street in Northborough, Worcester County, Massachusetts, shown as Lot 327 on the plan entitled: "Plan of Land in Northborough, Mass. Owned By M. Gordon Erlich & Lawrence I. Silverstein, Trustees u/d/t 12/28/79" dated March 16, 1984 and recorded in Plan Book 526, Plan 80 and all rights, easements and other appurtenances therein (the "Property" or "Premises"). Said lot contains 23.7678+/- acres according to said plan.

For Seller's title, see deed recorded in the Worcester District Registry of Deeds in Book 44712, Page 129.

3. TITLE DEED:

The Premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven days before the deed is to be delivered as herein provided, 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;
- (c) Any liens for municipal betterments assessed after the date of this Agreement;
- (d) Easements, restrictions, reservations and matters of record, if any, so long as the same do not interfere with Buyer's intended use of the Property.

All reference to the "then current year" and like references with respect to real estate taxes payable in respect of said premises shall be construed to mean the then current fiscal tax period within which such taxes are payable;

4. PURCHASE PRICE:

The agreed purchase price for said premises is One Million, Seven Hundred Thousand and 00/100 Dollars (\$1,700,000.00), of which:

(i) Fifty Thousand (\$50,000.00) Dollars to be paid at the time of the signing of the Purchase and Sale Agreement;

(ii) Starting on the first day of the month following five (5) months after Seller records a waiver of the Town of Northborough's Right of First Refusal (if obtained) waiving the right to purchase the property pursuant to Massachusetts General Laws Chapter 61A (or on the first day of the month following five (5) months after the lapse of the Town's right to exercise same), Buyer shall make an additional deposit of Five Thousand (\$5,000.00) Dollars and shall make further deposits of \$5,000.00 on or about the same day of each month thereafter to be paid directly to the Seller and, in addition to the initial deposit paid hereunder, shall be nonrefundable except in the event of Seller's failure to complete the sale of the premises or to perform its obligations under this Agreement. Failure by the Buyer to make timely deposits as required herein (after receipt of written notice from Seller, followed by a failure to make the required deposit within seven (7) days) shall constitute a default of this Agreement by Buyer. Seller shall not be required to notify Buyer of a failure to timely pay a deposit hereunder more than two (2) times in any 12-month period;

(iii) All deposits are attributable to the purchase price and the remaining balance of the Purchase Price will be paid at closing.

If the Town of Northborough, Massachusetts waives its right of first refusal pursuant to Massachusetts General Laws Chapter 61A (or the Town's right to purchase under the Statute lapses), Buyer may apply for permits/approvals to develop the property for a commercial use consistent with applicable zoning, but this Agreement is not in any way conditioned upon Buyer's receipt of such permits and approvals. Seller shall cooperate with Buyer regarding any submissions for permits and approvals buyer desires to make, including signing all applications.

5. TIME FOR PERFORMANCE; DELIVERY OF DEED

The time for performance shall be no later than the two-year anniversary of the date of recording of the above-referenced waiver (or the 2 year anniversary of the lapse of the Town's right to purchase) or such earlier date that the Buyer may set forth in a written notice to Seller given at least twenty-one (21) days in advance. The performance by the parties shall occur at the offices of Greenwald and Greenwald, LLP, 409 Fortune Boulevard, Milford, MA, pursuant to Paragraph 4 above. It is agreed that time is of the essence of this Agreement. Seller need not attend the closing in person so long as the Deed is signed personally by Seller and delivered to Buyer in escrow at least one (1) business day prior to the closing.

6. SELLER DELIVERABLES

At the Closing, Seller shall duly execute and deliver the following closing documents (the "Seller Documents"):

- (1) a Massachusetts quitclaim deed conveying the Real Property in form reasonably acceptable to Buyer and its title insurer;

(2) such affidavits as the Buyer's title insurer shall reasonably require in order to issue, without extra charge, an owner's policy of title insurance free of any exceptions for unfiled mechanics' or materialmen's liens for work performed by Seller prior to Closing, or for rights of parties in possession;

(3) a Non-Foreign Affidavit as required by the Foreign Investors in Real Property Tax Act ("FIRPTA"), as amended;

(4) such authority documents as are reasonably necessary for Seller to convey title; and,

(5) such other customary instruments and documents reasonably requested by Buyer, Buyer's lender, and/or Buyer's title insurance company, and reasonably required to effectuate the transaction contemplated by this Agreement.

7. SELLER COVENANTS

Seller covenants that between the date of this Agreement and the Closing:

- a. Seller shall not, without Buyer's written consent, which consent may be withheld in Buyer's sole and absolute discretion, enter into any lease, license, occupancy agreement or other agreement or covenant relating to possession or occupancy or any right to use the Property.
- b. Seller shall not, without Buyer's written consent, enter into any new contract respecting the Property which shall be binding upon Buyer. Seller shall cause all contracts affecting the Property to be terminated effective as of the Closing Date.
- c. Seller shall not encumber the Property with any matter except such as may be approved by Buyer in its sole and absolute discretion.
- d. Seller shall, within twenty-four hours of Seller's discovery, give Buyer reasonably detailed notice of: (1) any materially adverse change with respect to the Property which Seller obtains knowledge; (2) any actual or proposed condemnation (or proceeding in lieu thereof) of which Seller obtains knowledge; (3) any written notice received by Seller claiming environmental contamination regarding the Property; and (4) any written notice received by Seller concerning any pending or threatened litigation or administrative proceeding affecting the Property. In the event of the occurrence of any of the above, Buyer shall have the option of terminating this Agreement by notifying the Seller thereof in writing within ten (10) days of receipt of notice, in which event all deposits made by the Buyer hereunder shall be forthwith refunded to Buyer and this Agreement shall be null and void and without recourse to the Parties hereto, failing which the Buyer shall be deemed to have accepted the premises notwithstanding the condition or occurrence set forth in Seller's notice; and
- e. Seller shall not take any action or fail to take any action that will cause the Real Property to not be permitted to be used for its current use under applicable zoning regulations and codes.

8. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM

If the 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, the 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, in which event the Seller shall give written notice thereof to the Buyer at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for such period of time not to exceed thirty (30) days as Seller may need to clear any defects in title, or deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be. Seller need not expend more than \$10,000.00 in rendering the Premises conforming with the provisions hereof.

9. BUYERS ELECTION TO ACCEPT TITLE

The Buyer shall have the election, at either the original or any extended time for performance, to accept such title as the Seller can deliver to the said premises in their then condition and to pay therefore the purchase price without deduction, in which case the Seller shall convey such title.

10. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, ETC.

If at the expiration of the extended time the 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, then, at Buyer's option, 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.

11. ACCEPTANCE OF DEED

The acceptance and recording of a deed by the Buyer or his 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. BROKER'S FEE

A Broker's fee under a separate agreement for professional services as agreed is due from the Seller to Duncan Chapman of Keller Williams Commercial and Raj Sedhn, if, as, and when the deed is recorded in accordance with the terms of this Agreement and the Seller has received the full Purchase Price. Each party hereto hereby states that there is no other real estate broker, other than Duncan Chapman of Keller Williams and Raj Sedhn in connection with this transaction and that, to the best of each such party's knowledge and information, no brokerage commission will be due as a result of this transaction except as stated in this Section 12, and hereby agrees to indemnify the other against any claim, loss, or liability for a real estate broker's fee which may arise as a result of their statement herein not being true and correct. The provisions of this Section 12 shall survive the delivery of the deed.

13. DEPOSIT

The initial \$50,000 deposit made hereunder shall be held in escrow by Greenwald & Greenwald, as escrow agent, in an IOLTA account subject to the terms of this Agreement and shall be duly

accounted for at the time for performance of this Agreement. In the event of any disagreement between the parties, the escrow agent shall retain all deposits made under this agreement pending instructions mutually given by the Seller and the Buyer, or final order of a court of competent jurisdiction. The Buyer shall provide the escrow agent with a signed W-9 and any interest shall be applied to the Purchase Price for the benefit of Buyer or paid to Buyer if this Agreement is terminated under circumstances entitling the Buyer to a return of the deposit, otherwise, interest shall be paid to the Seller. The subsequent deposits paid hereunder shall be made to the Seller who shall account for the same at closing.

14. DEFAULT; DAMAGES.

If the Buyer shall fail to fulfill the Buyer's agreements herein, all deposits made hereunder by the Buyer shall be retained by the Seller as liquidated damages, and all obligations of the parties shall cease and this Agreement shall become null and void and without recourse to the parties hereto either at law or in equity, except that Buyer may terminate this Agreement by giving Seller written notice thereof within ninety (90) days after the recording of the waiver of the town's right of first refusal (or within ninety (90) days after the lapse of the Town's right to exercise same), in which case all deposits with interest thereon, shall be promptly returned to Buyer and all other obligations of the parties hereto shall cease and this Agreement shall be void and without recourse to the parties hereto.

In the event Seller breaches or fails, without legal excuse permitted herein, to complete the sale of the Premises or to perform its obligations under this Agreement, Buyer may, as its sole remedy therefor, either (i) enforce specific performance of this Agreement against Seller or (ii) terminate this Agreement in which case the Deposit and all interest accrued thereon will immediately be returned to Buyer and Seller shall promptly reimburse Buyer for all amounts paid by Buyer to third parties for services performed related to the property for its possible future use. These expenses shall include but not be limited to engineering and legal fees; or (iii) elect to accept title as provided under Section 11 herein. If Buyer is unable to obtain specific performance because of acts or omissions of Seller, in addition to the return of the Deposit and all interest accrued thereon to Buyer, Seller shall promptly reimburse Buyer for all amounts paid by Buyer to third parties for services performed related to the property for its possible future use. These expenses shall include but not be limited to engineering and legal fees.

15. ACCESS

Buyer and Buyer's agents shall have the right of access to the premises, upon notice to the Seller, prior to closing for the purpose of inspecting the premises, showing the premises to prospective mortgage lenders, taking measurements, inspections, testing and any other purpose related to Seller's intended use of the property, provided that Buyer shall provide to Seller evidence of reasonably satisfactory insurance covering injury to persons and property and naming Seller as an additional insured party. Buyer shall provide to Seller reasonable advance notice of any inspection of the Premises. Buyer shall indemnify Seller and hold Seller harmless from all actions, suits, claims, liabilities, losses, damages, and costs, including reasonable attorney's fees, arising from (a) personal injury suffered by Buyer, their contractor, subcontractor or agents, on or about the premises, or any other person on the Premises under Buyer's, or any of Buyer's contractor, subcontractor or agent's request or direction, in connection with such visit; or (b) property damage to the premises.

16. NOTICES

All notices required or permitted to be made under this Agreement shall be in and delivered in hand, sent by certified mail return receipt requested or sent by United States Postal Service overnight Express Mail or other overnight delivery service, or by email addressed to the Buyer or Seller as provided herein. Such notice shall be effective when sent, provided that the sender has evidence of delivery, which may include written receipt, written evidence of attempted delivery or confirmation of receipt. Acceptance of any notice, whether by delivery or mail, shall be sufficient if accepted or signed by a person having express or implied authority to receive same. Such notices shall be addressed as follows:

if to BUYER, to: Wayne Finnegan

Howland Development Corp.
155 West Street, Suite 9
Wilmington, MA 01887
wfinnegan@howlanderdevelopment.com

With a copy to:

Steven Greenwald, Esq.
Greenwald & Greenwald, LLP
409 Fortune Boulevard
Milford, MA 01757
Phone: 508-478-8611 x. 220
Cell: 508-498-2083
Fax: 508-634-3959
Email: sg@gglaw409.com

If to SELLERS to:

Santo Anza, Trustee
24 Reservoir Street
Northborough, MA 01532

With a copy to:

Philip Lombardo Esq.
41 North Road, Suite 203
Bedford, MA 01730
Phone: 781 538 6894
Fax: 81 538 6831
Email: plombardo@pclombardolaw.com

17. MISCELLANEOUS

Each party shall be responsible for its own legal, advisory and miscellaneous expenses associated with the completion of this transaction. Documentary stamps and closing costs shall be apportioned per local custom (i.e., Seller pays for Documentary stamps and Buyer pays for recording of the Deed), and real estate taxes shall be apportioned as of the Date of Closing with Buyer paying conveyance/rollback taxes under MGL c.61A.

. 18. 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 cancelled, modified or amended only by a written instrument executed by both the Seller and the Buyer. The captions are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it. This Agreement shall be deemed to have been prepared jointly and shall not be strictly construed against either party.

19. ELECTRONIC AND FACSIMILE SIGNATURES

This Agreement may be executed by and through electronic signature technology which is in compliance with Massachusetts law governing electronic signatures. Electronic signatures shall be considered as valid and binding as original, "wet" signatures. Signatures, originally signed by hand, but transmitted via e-mail or facsimile machine shall also be deemed valid and binding original signatures.

20. DEDUCTIONS FROM SELLER'S PROCEEDS

Unless paid by Seller by separate check, there shall be deducted from the balance due Seller at the Closing the following:

- (a) Massachusetts state and any county deed excises;
- (b) Cost of recording discharges and releases of monetary encumbrances and any title and curative documents;
- (c) Amounts required to discharge outstanding mortgages shortly after the later of the Closing or the deed to Buyer is recorded; and
- (d) Lender's or Buyer's reasonable and customary attorneys' fee for procuring discharges of outstanding mortgages.

21. POST-CLOSING ADJUSTMENTS

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 hereof is given within two months of the Closing to the party to be charged, then such party agrees to make a payment to correct the error or omission.

22. TITLE AND PRACTICE STANDARD

Any matter or practice arising under or relating to this Agreement which is the subject of a practice or title standard of the Massachusetts Real Estate Bar Association shall be governed by such standard to the extent applicable.

23. MGL c.61A.

The Buyer acknowledges that the premises are covered by the provisions of MGL c.61A and this Agreement is subject to, among other things, the right of the Town of Northborough (the "Town") to purchase the premises as set forth in said Statute. Within 5 business days of the full execution of this Agreement, Seller shall submit to the Town a notice of intent to sell as provided under MGL c.61.A. The Buyer shall cooperate with Seller regarding its submission to the Town, as required by the Statute, including provision of a Statement of Intended Use to satisfy the requirements of the Statute. Should the Town exercise such right of refusal, this Agreement shall terminate and all deposits paid shall be promptly refunded to the Buyer. If the Town waives or does not timely exercise its first refusal option to purchase the land (and in the case of any such timely failure to properly exercise such right, Seller, and Seller alone, shall be entitled to raise any objection as to the Town's compliance or lack thereof with the provisions of the Statute in exercising its first refusal option to purchase the land or otherwise complying with the provisions of the Statute, and Buyer hereby waives any rights with respect to same, it being Seller's intention that any litigation as to such matters concerning c.61A and the Town's conduct thereunder be in the complete control of Seller. If the Town concludes that this Agreement does not comply with MGL c.61A, Buyer and Seller shall use good faith efforts to modify the Agreement to bring it into compliance.

If and when the closing occurs, following the Town's waiver of its right of refusal (or failure to exercise same in a timely manner), the Buyer shall pay any conveyance or rollback taxes due with respect to the sale and change of use of the premises.

The parties agree that a copy of this agreement shall be submitted to the Town of Northborough as required by MGL c.61A. However, Buyer shall not record this Agreement or any memorandum or notice thereof with any other governmental agency and Buyer may not assign this Agreement without the consent of Seller which it may withhold in its sole discretion.

Within forty-five (45) days after the recording of the Town's right of first refusal (or within forty-five (45) days after the lapse of the Town's right to exercise same), Buyer shall give Seller written notice of any way in which the title to the property does not comply with the requirements of Paragraph 3 above. Other than issues raised in said notice and title matters occurring after the date of such notice, Buyer will be deemed to have accepted the condition of the title.

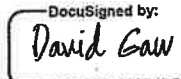
Within ninety (90) days after the recording of the Town's right of first refusal (or within ninety (90) days after the lapse of the Town's right to exercise same), Buyer shall give Seller written notice of any objection to the condition of the premises such as the presence of oil or hazardous materials on or about the premises. Other than issues raised in said notice and inspection matters occurring after the date of such notice, Buyer will be deemed to have accepted the condition of the premises.

EXECUTED AS A SEALED INSTRUMENT AS OF THE DATE FIRST ABOVE WRITTEN

SELLER:
0 WHITNEY STREET REALTY TRUST

By: 
Santo Anza, Trustee

BUYER:
HOWLAND DEVELOPMENT CORPORATION
or its nominee or assigns

By: 
David Gaw, Vice President 11/30/2023 | 2:22 PM PST