



CITY OF DOVER

CITY OF DOVER - RESOLUTION

Agenda Item#12B-4:

Resolution Number: **R – 2007.09.12 -134**
Resolution Re: Authorization to Sell Surplus Property Located at
35 Third Street

WHEREAS: The City previously identified and was given City Council approval to sell three (3) pieces of City property, one of which is the “Senior Center” located on the corner of Third Street and Grove Street; and

WHEREAS: Via a Request for Proposal (RFP) solicitation, a real estate brokerage firm was engaged to help facilitate the timely and most financially advantageous disposition of this property; and

WHEREAS: A negotiated offer has been received from KAB Realty Management, LLC of Dover, NH for the purchase of said property; and

WHEREAS: Based on the current assessed value, the property constraints and limited use for which it may be used, this offer is considered a reasonable one and it is recommended by the City Manager that it be accepted.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND DOVER CITY COUNCIL THAT:

The City Manager be authorized to execute and deliver a Quitclaim Deed and all closing documents to KAB Realty Management, LLC of Dover, NH for the agreed upon amount. A further contingency should be added to the agreement requiring the Buyer to provide a performance bond, or other similar surety, in the additional amount of \$50,000 over the initial deposit of \$50,000 to insure the completion of the renovations.

AUTHORIZATION

Approved as to Funding: Daniel Lynch
Finance Director

Sponsored by: Mayor Scott Myers
By request

Approved as to Legal Form: Allan B. Krans, Sr.
City Attorney

Recorded by: Valerie French
Interim City Clerk



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DOCUMENT ACTIONS:

Regular Meeting held September 12, 2007.
Hindle moved to adopt, seconded by Ciotti.
Ciotti moved to amend by adding verbage to “Now, Therefore,” Section,
Seconded by DeDe. Motion passed on a 7-2 vote, Keays and Scott opposed.
Cheney moved to table, seconded by Scott. Motion failed on a 4-5 vote,
Keays, Cheney, Scott and Turner in favor.
Motion to adopt as amended:

VOTING RECORD		
Date of Vote: 09/12/07	YEA	NAY
Mayor Scott Myers	X	
Deputy Mayor Jason Thomas Hindle, At Large	X	
Councilor Robert Keays, Ward 1		X
Councilor Douglas DeDe, Ward 2	X	
Councilor David Scott, Ward 3		X
Councilor Dean Trefethen, Ward 4	X	
Councilor Catherine Cheney, Ward 5		X
Councilor Harvey Turner, Ward 6	X	
Councilor Dennis Ciotti, At Large	X	
Total Votes:	6	3
RESOLUTION PASSES		

RESOLUTION BACKGROUND MATERIAL:

The City has received a Purchase and Sales agreement offer for the purchase of the former Senior Center building in Third Street. The property has been listed with a local realtor for an extended period of time. The purchaser intends to seek a variance to allow the construction of offices.



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PURCHASE AND SALES AGREEMENT AND DEPOSIT RECEIPT
New Hampshire Association of REALTORS® Standard Form



1. **THIS AGREEMENT** made this 30th day of AUGUST, 2007, between
of CITY OF DOVER ("SELLER")
City DOVER County of STRAFFORD
State - NH, Zip 03820 and KAB REALTY MANAGEMENT, LLC ("BUYER")
of 686 CENTRAL AVE, City DOVER County of STRAFFORD
State - NH, Zip 03820

2. **WITNESSETH:** That SELLER agrees to sell and convey, and BUYER agrees to buy certain real estate located in City/Town
of DOVER known as or described as 35 THIRD STREET, A CITY OWNED PARCEL
CURRENTLY ZONED RM-8 AND ON APP. 14,375 SQ. FT. OF LAND
County STRAFFORD Book 1 Page 1 Date _____ ("PROPERTY").

3. The **SELLING PRICE** is THREE HUNDRED THOUSAND Dollars \$ 300,000.00.
DEPOSIT, receipt of which is hereby acknowledged in the form of CHECK, is to
be held in an escrow account by THE MASIELLO GROUP ("ESCROW AGENT"), in the sum of \$ 50,000.00.
ADDITIONAL DEPOSIT will be paid on or before _____, in the sum of \$ _____.
CASH, CERTIFIED CHECK OR BANK DRAFT will be paid on the date of transfer of title in the sum of \$ 250,000.00.

4. **DEED:** Marketable title shall be conveyed by a WARRANTY deed, and shall be free and
clear of all encumbrances except usual public utilities serving the PROPERTY.

5. **TRANSFER OF TITLE:** On or before MAY 31, 2008 at THE MASIELLO GROUP, DOVER or
some other place of mutual consent as agreed to in writing.

6. **POSSESSION:** Full possession and occupancy of the premises with all keys shall be given upon the transfer of title free of
all tenants and occupant's personal property and encumbrances except as herein stated. Said premises to be then in the
same condition in which they now are, reasonable wear and tear excepted. SELLER agrees that the premises will be
delivered to BUYER free of all debris and in "broom clean" condition. Exceptions: N/A

Buyer reserves the right to conduct a walk through inspection upon reasonable notice to SELLER's AGENCY within N/A
hours prior to time of closing to ensure compliance with the terms of this Agreement.

7. **AGENCY:** The undersigned SELLER(S) and BUYER(S) acknowledge the roles of the agents as follows:
PETER RUSSELL of THE MASIELLO GROUP is a seller agent buyer agent non-agent disclosed dual agent
JEFFREY PAOLINI of THE MASIELLO GROUP is a seller agent buyer agent non-agent disclosed dual agent
"If agent(s) are acting as disclosed dual agents, SELLER and BUYER acknowledge prior receipt and signing of a Dual Agency Informed Consent Agreement."

8. **INSURANCE:** The buildings on said premises shall, until full performance of this Agreement, be kept insured against fire, with
extended coverage by SELLER. In case of loss, all sums recoverable from said insurance shall be paid or assigned, on delivery
of deed, to BUYER, unless the premises shall previously have been restored to their former condition by SELLER; or, at the
option of BUYER, this Agreement may be rescinded and the DEPOSIT refunded if any such loss exceeds \$ 10,000.00.

9. **TITLE:** If upon examination of title it is found that the title is not marketable, SELLER shall have a reasonable time, not to
exceed thirty (30) days from the date of notification of defect (unless otherwise agreed to in writing), to remedy such defect.
Should SELLER be unable to provide marketable title within said thirty (30) days, BUYER may rescind this Agreement at
BUYER'S sole option, with full deposit being refunded to BUYER and all parties being released from any further obligations
hereunder. SELLER hereby agrees to make a good faith effort to correct the title defect within the thirty (30) day period
above prescribed once notification of such defect is received. The cost of examination of the title shall be borne by BUYER.

SELLER(S) INITIALS [Signature] BUYER(S) INITIALS [Signature]
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10. TAXES, condo fees, special assessments, rents, water and sewage bills and fuel in storage shall be prorated as of time and date of closing or _____ N/A _____

11. PROPERTY INCLUDED: All Fixtures _____ AS SHOWN. _____

12. In compliance with the requirements of RSA 477:4-a, the following information is provided to BUYER relative to Radon Gas and Lead Paint:

RADON GAS: Radon gas, the product of decay of radioactive materials in rock may be found in some areas of New Hampshire. This gas may pass into a structure through the ground or through water from a deep well. Testing can establish its presence and equipment is available to remove it from the air or water.

LEAD PAINT: Before 1978, paint containing lead may have been used in structures. The presence of flaking lead paint can present a serious health hazard, especially to young children and pregnant women. Tests are available to determine whether lead is present.
Disclosure Required YES NO

BUYER ACKNOWLEDGES PRIOR RECEIPT OF SELLER PROPERTY DISCLOSURE FORM ATTACHED HERETO AND SIGNIFIES BY INITIALING HERE: _____

13. DUE DILIGENCE: The BUYER is encouraged to seek information from professionals normally engaged in the business regarding any specific issue of concern. SELLER'S AGENCY makes no warranties or representations regarding the condition, permitted use or value of the SELLER'S real or personal property. This Agreement is contingent upon the following inspections, with results being satisfactory to the BUYER:

TYPE OF INSPECTION:	YES	NO	RESULTS TO SELLER	TYPE OF INSPECTION:	YES	NO	RESULTS TO SELLER
a. General Building	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within 10 days	f. Lead Paint	<input type="checkbox"/>	<input checked="" type="checkbox"/>	within _____ days
b. Sewage Disposal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	within _____ days	g. Pests	<input type="checkbox"/>	<input checked="" type="checkbox"/>	within _____ days
c. Water Quality	<input type="checkbox"/>	<input checked="" type="checkbox"/>	within _____ days	h. Hazardous Waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within 10 days
d. Radon Air Quality	<input type="checkbox"/>	<input checked="" type="checkbox"/>	within _____ days	i. _____	<input type="checkbox"/>	<input type="checkbox"/>	within _____ days
e. Radon Water Quality	<input type="checkbox"/>	<input checked="" type="checkbox"/>	within _____ days	j. _____	<input type="checkbox"/>	<input type="checkbox"/>	within _____ days

The use of days is intended to mean calendar days from the effective date of this Agreement. All inspections will be done by professionals normally engaged in the business, to be chosen and paid for by BUYER. If BUYER does not notify SELLER that the results of an inspection are unsatisfactory within the time period set forth above, the contingency is waived by BUYER. TIME IS OF THE ESSENCE. If the results of any inspection specified herein reveal significant issues or defects, which were not previously disclosed to BUYER, then:

(a) SELLER shall have the option of repairing or remedying the unsatisfactory condition(s) prior to transfer of title, so long as BUYER and SELLER both agree on the method of repair or remedy; or

(b) If SELLER is unwilling or unable to repair or remedy the unsatisfactory condition(s) or BUYER and SELLER cannot reach agreement with respect to the method of repair or remedy, then this Agreement shall be null and void, and all deposits will be returned to BUYER in accordance with the procedures required by the New Hampshire Real Estate Practice Act (N.H. RSA 331-A:13); or

(c) BUYER may terminate this Agreement in writing and all deposits will be returned to BUYER in accordance with the procedures required by the New Hampshire Real Estate Practice Act (N.H. RSA 331-A:13).

SELLER(S) INITIALS _____

BUYER(S) INITIALS _____

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Notification in writing of SELLER'S intent to repair or remedy should be delivered to BUYER or BUYER'S Agent within five (5) days of receipt by SELLER of notification of unsatisfactory condition(s). In the absence of inspection mentioned above, BUYER is relying upon BUYER'S own opinion as to the condition of the PROPERTY.

BUYER HEREBY ELECTS TO WAIVE THE RIGHT TO ALL INSPECTIONS AND SIGNIFIES BY INITIALING HERE: _____

This Agreement is contingent upon BUYER'S review of the following:

- | | | | | | |
|------------------------------------|-------------------------------------|-------------------------------------|--|-------------------------------------|-------------------------------------|
| | YES | NO | | YES | NO |
| a. Restrictive Covenants of Record | <input checked="" type="checkbox"/> | <input type="checkbox"/> | d. Condominium documentation per N.H. RSA 356-B:58 | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b. Easements of Record/Deed | <input checked="" type="checkbox"/> | <input type="checkbox"/> | e. Co-op/PUD/Association Documents | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c. Park Rules and Regulations | <input type="checkbox"/> | <input checked="" type="checkbox"/> | f. Availability of Property/Casualty Insurance | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

If such review is unsatisfactory, BUYER must notify SELLER in writing within 10 days from the effective date of the Agreement failing which such contingency shall lapse.

14. LIQUIDATED DAMAGES: If BUYER shall default in the performance of their obligation under this Agreement, the amount of the deposit may, at the option of SELLER, become the property of SELLER as reasonable liquidated damages. In the event of any dispute relative to the deposit monies held in escrow, the ESCROW AGENT may, in its sole discretion, pay said deposit monies into the Clerk of Court of proper jurisdiction in an Action of Interpleader, providing each party with notice thereof at the address recited herein, and thereupon the ESCROW AGENT shall be discharged from its obligations as recited therein and each party to this Agreement shall thereafter hold the ESCROW AGENT harmless in such capacity. Both parties hereto agree that the ESCROW AGENT may deduct the cost of bringing such Interpleader action from the deposit monies held in escrow prior to the forwarding of same to the Clerk of such court.

15. PRIOR STATEMENTS: Any verbal representation, statements and agreements are not valid unless contained herein. This Agreement completely expresses the obligations of the parties.

16. FINANCING: This Agreement (is) (is not) contingent upon BUYER obtaining financing under the following terms:

AMOUNT _____ TERM/YEARS _____ RATE _____ MORTGAGE TYPE _____

For the purposes of this Agreement, financing is to be demonstrated by a conditional loan commitment letter, which states that BUYER is creditworthy, has been approved and that the lender shall make the loan in a timely manner at the Closing on specified customary conditions for a loan of the type specified above. BUYER is responsible to resolve all conditions included in the loan commitment by the Closing date.

The existence of conditions in the loan commitment will not extend either the Financing Deadline described below or the closing date.

BUYER hereby authorizes, directs and instructs its lender to communicate the status of BUYER'S financing and the satisfaction of lender's specified conditions to SELLER and SELLER'S/BUYER'S AGENCY.

TIME IS OF THE ESSENCE in the observance of all deadlines set forth within this financing contingency.

SELLER(S) INITIALS [Signature]

BUYER(S) INITIALS [Signature]

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BUYER agrees to act diligently and in good faith in obtaining such financing and shall, within _____ N/A _____ calendar days from the effective date, submit a complete and accurate application for mortgage financing to at least one financial institution currently providing such loans, requesting financing in the amount and on the terms provided in this Agreement.

If BUYER provides written evidence of inability to obtain financing to SELLER by _____ N/A _____ ("Financing Deadline"), then:

- (a) This Agreement shall be null and void; and
- (b) All deposits will be returned to BUYER in accordance with the procedures required by the New Hampshire Real Estate Practice Act (N.H. RSA 331-A:13) ("The Deposit Procedures"); and
- (c) The premises may be returned to the market.

BUYER may choose to waive this financing contingency by notifying SELLER in writing by the Financing Deadline and this Agreement shall no longer be subject to financing.

If, however:

- (a) BUYER does not make application within the number of days specified above; or
- (b) BUYER fails to provide written financing commitment or written evidence of inability to obtain financing to SELLER by the Financing Deadline,

Then SELLER shall have the option of either:

- (a) Declaring BUYER in default of this Agreement; or
- (b) Treating the financing contingency as having been waived by BUYER.

If SELLER declares BUYER in default, in addition to the other remedies afforded under this Agreement:

- (a) SELLER will be entitled to all deposits in accordance with the Deposit Procedures; and
- (b) This Agreement will be terminated; and
- (c) The premises may be returned to the market for sale.

If SELLER opts to treat the financing contingency as waived or relies on a conditional loan commitment and BUYER subsequently does not close in a timely manner, SELLER can then declare BUYER in default. SELLER then, in addition to the other remedies afforded under this Agreement:

- (a) Will be entitled to all deposits in accordance with the Deposit Procedures; and
- (b) This Agreement will be terminated; and
- (c) The premises may be returned to the market for sale.

BUYER shall be solely responsible to provide SELLER in a timely manner with written evidence of financing or lack of financing as described above.

SELLER(S) INITIALS _____

BUYER(S) INITIALS _____

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17. ADDITIONAL PROVISIONS:

1. Dover City Council approval on September 12, 2007.
2. Seller will escrow the deed to property.
3. Contingent upon receiving a zoning variance for office use, to be achieved on or before December 31, 2007. The contingency period shall cease on the date of zoning variance approval.
4. Closing on or before May 31, 2008. Time is of the essence.
5. Buyer to provide construction/renovation schedule with progress bench marks at 2 and 4 months, after receiving possession and termination of the contingency period.
6. City shall have construction/renovation progress monitored by its representative. If in the expert opinion of the City's representative, Buyer is not making satisfactory progress, the buyer shall be required to increase the deposit in escrow by \$10,000 at each bench mark. All deposits shall be applicable to the purchase price.
7. Possession will be given when all contingencies are waived and deposit becomes non-refundable.
8. Buyer must be KABI Realty Management, or an entity that the Buyer creates to take title.

18. EFFECTIVE DATE: This is a binding contract and the effective date is when signed and dated, whether by electronic transfer or original, and all changes initialed and dated, by SELLER and BUYER.

Each party is to receive a fully executed duplicate original of this Agreement. This Agreement shall be binding upon the heirs, executors, administrators and assigns of both parties.

PRIOR TO EXECUTION, IF NOT FULLY UNDERSTOOD, PARTIES ARE ADVISED TO CONTACT AN ATTORNEY.

[Signature] 9/30/07 /
 BUYER KABI REALTY MANAGEMENT DATE TIME BUYER DATE TIME

686 CENTRAL AVE DOVER, NH 03820
 ADDRESS ADDRESS

CITY | STATE | ZIP CITY | STATE | ZIP

SELLER accepts this offer and agrees to deliver the above-described PROPERTY at the price and upon the terms and conditions set forth.

[Signature] 9/16/07
 SELLER CITY OF DOVER DATE TIME SELLER DATE TIME

DOVER, NH 03820
 ADDRESS ADDRESS

CITY | STATE | ZIP CITY | STATE | ZIP

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DUAL AGENCY INFORMED CONSENT AGREEMENT
New Hampshire Association of REALTORS® Standard Form



1. This AGREEMENT is entered into among KAB REALTY MANAGEMENT LLC ("BUYER"), whose principal address is: 888 CENTRAL AVE DOVER, NH 03820 and CITY OF DOVER ("SELLER") whose principal address is: DOVER, NH 03820 and ERA THE MASJELLO GROUP ("AGENCY") whose principal address is: 233 CENTRAL AVE DOVER, NH 03820 and its specific to the property owned by SELLER at: 36 THIRD STREET DOVER, NH 03820 ("PROPERTY"). BUYER and SELLER agree that AGENCY shall act as a Dual Agent in the sale of PROPERTY to BUYER and hereby confirm their informed consent to this dual representation for the PROPERTY.

2. DUAL AGENT'S ROLE. Because Dual Agent is acting as agent for both BUYER and SELLER in this transaction, Dual Agent shall make every reasonable effort to remain impartial to BUYER and SELLER. SELLER and BUYER acknowledge that, prior to the time this Agreement was entered into, AGENCY has acted as the exclusive agent of both parties individually and in those separate roles may have obtained information which, if disclosed could harm the bargaining position of the party providing such information to Dual Agent. Unless specific disclosure is required by law or consented to in writing, BUYER and SELLER agree that Dual Agent shall not be liable to either party for refusing or failing to disclose Confidential Information. "Confidential Information" includes, but is not limited to: 1) the BUYER'S and SELLER'S personal motivation for buying or selling; 2) the amount of any prior offers or counteroffers by BUYER or SELLER; 3) that BUYER is willing to pay more than the amount offered, or that SELLER is willing to accept less than the asking price. Nothing contained in this Agreement shall prevent Dual Agent from disclosing to BUYER any known pertinent information about the PROPERTY or any other matter that must be disclosed by law. In the event that a purchase and sale provided for in this Agreement does not close as set forth in this Agreement, the dual agency described herein shall automatically terminate.

3. SELLER'S AND BUYER'S ROLES. Because of AGENCY'S dual agent relationship, BUYER and SELLER acknowledge that they understand that they have the responsibility of making their own decisions as to what terms are to be included in offers and or agreements. BUYER and SELLER also acknowledge that they are aware of the implications and consequences of AGENCY'S dual agent role and that they have determined that the benefits of entering into this transaction with Dual Agent acting as agent for both of them outweigh such implications and consequences.

4. The duties of a licensee acting as a disclosed dual agent include:
- a. Performing according to the terms of this Dual Agency Informed Consent Agreement made with the parties.
 - b. Presenting in a timely manner all offers or agreements to and from the parties on real estate of interest.
 - c. Accounting in a timely manner, during and upon termination, expiration, completion, or performance of the brokerage agreement for all money and property received in which the parties have or may have an interest.
 - d. Informing the parties of the laws and rules regarding real estate condition disclosures.
 - e. Preserving confidential information received from the parties that is acquired during the written disclosed dual agency relationship, or from any prior brokerage agreement. This obligation continues beyond the termination, expiration, completion, or performance of the fiduciary relationship. Confidentiality shall be maintained unless:
 - 1. The party to whom the information pertains grants written consent to disclose the information;
 - 2. The information is made public from a source other than the licensee;
 - 3. Disclosure is necessary to defend the licensee against an accusation of wrongful conduct in a judicial proceeding before a court of competent jurisdiction, the commission, or before a professional committee; or
 - 4. If otherwise required by law.

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CITY OF DOVER

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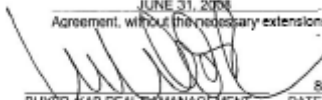
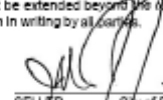
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- 5. Both parties understand and agree, that it has been disclosed in connection with this transaction that the AGENCY will collect fees in accordance with the previously executed brokerage agreements.
- 6. BUYER and SELLER recognize and agree that this document does not replace those documents signed earlier, i.g. the Buyer Agency Agreement signed by BUYER on _____, and the Listing Agreement signed by SELLER on _____. However, in any areas where this document contradicts or conflicts with those documents, this Dual Agency Consent Agreement shall supersede. This Agreement shall expire on JUNE 31, 2008 and shall not be extended beyond the term of the Buyer Agency or the Listing Agreement, without the necessary extensions agreed upon in writing by all parties.

 BUYER: KAB REALTY MANAGEMENT	8/30/07 DATE	 SELLER: City of Dover	9/6/07 DATE
_____ BUYER	_____ DATE	_____ SELLER	_____ DATE
_____ ERA THE MASIELLO GROUP AGENCY	_____ DATE	_____ ERA THE MASIELLO GROUP AGENCY	_____ DATE
_____ BY: SELLING LICENSEE	8/30/07 DATE	_____ BY: LISTING LICENSEE	_____ DATE