

## PURCHASE AND SALE AGREEMENT

This Agreement, made this 18<sup>th</sup> day of October 2018, by and between the Town of Arlington, a municipal corporation with an address of 730 Massachusetts Avenue, Arlington, Middlesex County, Massachusetts 02478 (hereinafter "Seller" or "Town") and DAVPOST1207, LLC (substantially the same ownership as "1211 Massachusetts Avenue Realty Trust"), having a business address of 1122 Massachusetts Avenue, Arlington, MA 02476 (hereinafter "Buyer").

### WITNESSETH:

In consideration of the mutual covenants set forth herein, the parties undertake and agree as follows, to wit:

#### **1. Recitals and Purposes.**

1.01 The Town owns the building and land located at 1207 Massachusetts Avenue, Arlington, Massachusetts, identified on Arlington Assessor's Map 57, Block 4, Lot 14 as Parcel 057.0-0004-0014.0, more particularly described in Plan (the "Plan"), recorded with the Middlesex South District Registry of Deeds as Plan No. 19 of Book 121 (the "Premises"), the deed conveying the property via tax title to the Town of Arlington (Book No. 5580, Page No. 547) and Notice of Disposal (Book No. 5873, Page No. 485).

1.02 The Town, acting through its Town Manager, upon the direction of the Board of Selectmen and with the authorization of the Arlington Town Meeting wishes to sell and Buyer wishes to buy the Premises.

1.03 The Town published a Request For Proposals No. 16-52 for the sale of 1207 Massachusetts Avenue (the "RFP").

1.04 Buyer submitted a Response to RFP 16-52 dated December 21, 2016 (the "Response to RFP"), which response was accepted by the Town as the winning proposal.

1.05 The Town has agreed to sell and Buyer has agreed to purchase the Premises subject to the terms and conditions set forth in this Agreement, the RFP and the Response to RFP incorporated herein by reference and attached hereto as Exhibits A & B respectively. To the extent any terms of this Agreement and the RFP and the Response to RFP are inconsistent or conflict, the terms of this Agreement shall govern the enforceability of such provisions unless otherwise specifically stated herein.

1.06 This Agreement shall be construed in a fashion consistent with the purposes set forth herein.

## **2. Purchase and Sale**

2.01 Expressly conditioned upon the other terms and conditions of this Agreement, the Town hereby agrees to sell and to convey to Buyer at Closing (as defined below), and Buyer agrees to purchase and take from Seller all of Seller's right, title and interest in and to the Premises.

## **3. Purchase Price, Deposit and Mode of Payment.**

3.01 The Purchase Price for the Premises ("Purchase Price") shall be *Seven Hundred and Fifty Thousand Dollars (\$750,000)*.

- (A) Buyer shall deposit the sum of Seventy-Five Thousand Dollars (\$75,000.00) in total upon the execution of this Agreement. The deposit shall be held in accordance with the Escrow Agreement, attached hereto as Exhibit "C", to be executed simultaneously herewith by the Buyer, Town, and Town Counsel.
- (B) Upon satisfaction or completion of all closing conditions and deliveries, and once the Deed is recorded, the Deposit and any accrued interest shall be credited to the Purchase Price and disbursed by the Escrow Agent to the Town
- (C) In the event of breach or default by Buyer, not cured in accordance with the terms hereof, the Deposit and any accrued interest shall be paid to Seller as complete liquidated damages arising from Buyer's breach, and this contract shall be deemed terminated and the obligations of the parties to one another hereunder shall cease forthwith. This shall be the Seller's sole and exclusive remedy both at law and in equity.

3.02 The Purchase Price shall be payable at Closing as follows:

- (A) by application of the Deposit; and
- (B) the balance of the Purchase Price, by bank or certified check or by wire.

## **4. Plans, Special Permit Application & Submissions for ARB Approval**

4.01 The Buyer, at its expense shall prepare the plans, the special permit application, and all other required submittals for review and approval of the Arlington Redevelopment Board ("ARB") for the mixed-use development of the Premises (in conjunction with the adjoin parcel owned by grantee located at ~~1205~~ Massachusetts Ave), as well as all requisite building permit applications for the Inspectional Services Division, except that the Town shall waive the filing fees associated with any such special permit application and building permits for the Premises. This paragraph shall survive the delivery of the deed.

1211 JD

4.02 An approval of a Special Permit for mixed-use development, including with any conditions deemed appropriate by the ARB and acceptable to the Buyer after the appeals period has concluded, shall constitute "Final Governmental Approval" for development of the Premises. Building Permits from the Inspectional Services Division shall not be required to constitute Final Governmental Approval. The Buyer shall use its best efforts to obtain all necessary approvals as soon as reasonably practicable. It is agreed that time is of the essence of all provisions of this Agreement.

4.03 If Final Governmental Approval has not been obtained within one year of the date of submission of Buyer's application for a Mixed-Use Special Permit, either party shall have the option to terminate this Agreement in writing. Further, in the event the conditions imposed by the ARB in any approval are unacceptable to Buyer, Buyer shall be entitled to terminate this Agreement with notice to Seller. If either party elects to terminate this Agreement, the Deposit with accrued interest shall be returned to Buyer and neither party shall have any further liability under this Agreement.

4.04. After the Closing, the Seller herein agrees on behalf of the Town, that the Buyer shall be entitled to demolish the existing building on the Premises without the need for further hearing, subject to the Town's ordinary safety protocols and permits for demolition. This provision shall survive delivery of the deed.

## **5. Closing and Obligations of the Parties.**

5.01 Closing shall be conducted within thirty (30) days of Buyer's receipt of Final Governmental Approval for development of the premises.

5.02 The deed for the Premises and all other instruments, documents and items required to be delivered in this Agreement are to be delivered and the consideration paid at the Office of the buyer's lender at Closing. The Closing shall be held at the offices of counsel for buyer's lender, which shall be in the Greater Boston Error.

5.03 At Closing, the Town shall convey the Premises to Buyer by deed reasonably acceptable to Buyer free from encumbrances except:

(A) Applicable provisions of existing building regulations and the Arlington Zoning Bylaws;

(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; and

(D) Any other Easements, restrictions and reservations of record, (except as otherwise provided in Sections 5.02 and 8.01 hereof).

5.04 The deed from the Town to the Buyer shall contain a 40-year deed restriction that restricts the use of the Premises to those mixed-uses as allowed by the Arlington Zoning Bylaws, substantially in the form contained in the Quitclaim Deed attached hereto as Exhibit D.

5.03 The Town shall also deliver at Closing such other documents and certificates: (a) as are required by this Agreement, or (b) as may reasonably be required by Buyer's counsel, title insurance company or financing bank to transfer title to the Premises in accordance with this Agreement, so long as such documents and certificates are reasonably acceptable to the Town.

5.05 At Closing, Buyer shall pay the Purchase Price required by Article 3 above.

#### **6. Occupancy and Condition of Premises.**

Buyer shall be entitled to occupancy on the date of Closing, free of all rights of use or possession by Town or by third parties. Seller shall deliver the Premises free of all tenants and personal property. Except as specifically provided otherwise herein, Buyer shall accept the Premises on a strictly "as-is" basis at Closing, without any warranty or obligation whatsoever on the part of Town as to the condition of the Premises.

#### **7. Access to Premises.**

From the date hereof to the date of the Closing, Buyer and its representatives shall be permitted access to the Premises upon prior written notice to Seller or Seller's agents for the purpose of inspecting the Premises. Any such access shall be in the presence of Seller or Seller's agents, unless otherwise permitted by Seller. In the course of any access to the Premises, Buyer shall not unreasonably interfere with the use of the Premises and shall cause no physical disruption or damage to the Premises. Any such access under this Article 7 shall be at Buyer's sole risk. Buyer hereby indemnifies and agrees to defend, protect and hold Seller harmless from and against any and all claims, losses, costs, damages or expenses resulting from any of said inspections, provided, however, that this indemnity shall not apply to any liability, loss, cost, damage or expense arising directly and primarily from any act of gross negligence or willful misconduct of Seller or Seller's agents, employees or contractors. The provisions of this section shall survive delivery of the deed or the termination hereof.

#### **8. Due Diligence and Environmental Assessment.**

8.01 Buyer shall be entitled to conduct the due diligence with respect to the Premises described below. Except as otherwise provided herein, the Town of Arlington makes no warranty or representation whatsoever as to its title or the condition of the Premises.

- (A) Buyer may, at its expense, undertake such title examinations as Buyer deems appropriate during the thirty (30) days following the date of this Agreement (the "Due Diligence Period"), and if Buyer determines that the title in any respect does not conform with the provisions of this Agreement, Buyer shall so notify Seller in writing on or before the end of the Due Diligence Period (the "Due Diligence Date"). Any notice of defect in title given by Buyer to Seller shall contain specifics of the alleged defect and the date of Buyer's title report. Upon the giving of Buyer's title notification then, except with respect to defects or objections listed in Buyer's title notification or arising from and after the date of Buyer's title report, Buyer shall be deemed to have waived any and all defects, objections or matters to the state of title existing as of the date of Buyer's title report, and any and all such defects, objections

or matters so waived shall constitute permitted encumbrances hereunder. In addition, if Buyer fails to deliver Buyer's title notification by the Due Diligence Date then, except with respect to defects or objections arising from and after the date of this Agreement, Buyer shall be deemed to have waived any and all defects, objections or matters to the state of title existing as of the date hereof, and any and all such defects, objections or matters so waived shall constitute permitted encumbrances under this Agreement.

- (B) If the Town has received from Buyer timely notification of any respect in which Town's title does not conform with the provisions of this Agreement, and if the title defect can be removed by the expenditure of amounts not exceeding \$10,000.00 (exclusive of amounts necessary to pay off and discharge financial encumbrances such as mortgages and taxes), the Town shall use reasonable and diligent efforts to remove any defect in title, in which event the Town shall give written notice thereof to Buyer as promptly as practicable after the cost of removing the title defect is determined by the Town. If the cost of removing the defect in title exceeds \$10,000.00 exclusive of amounts necessary to pay off and discharge financial encumbrances such as mortgages and taxes), the Town shall give written notice thereof to Buyer as promptly as practicable after the cost of removing the title defect is determined by Seller, and in that notice Seller shall either indicate Seller's intention to (i) use reasonable and diligent efforts to remove the title defect or (ii) elect to terminate this Agreement. Should Seller so elect to terminate, the termination shall become effective on the fifth (5th) day following the effective date of that notice, unless Buyer elects to remove, at its cost, the defect in title in which event the payment due at the time of delivery of the deed shall be reduced by a sum equal to the costs incurred by Buyer to remove the defect in title or \$10,000.00, whichever is smaller. If Seller, having undertaken to remove title defects under this provision, is unable within thirty (30) days of notice of the title defect to remove the title defect or to arrange for its removal at the Closing, Seller shall so notify Buyer and this Agreement shall terminate on the fifth (5th) day following the date of that notice unless Buyer makes an election to remove the title defect, as provided above.

- (C) The BUYER acknowledges and agrees that it has not been influenced to enter into this transaction and the Buyer has not relied upon any warranties or representations not set forth in this Purchase and Sale Agreement. The BUYER acknowledges that the SELLER has no responsibility for hazardous waste, oil, hazardous material or hazardous substances, as those terms are defined by any applicable law, rule or regulation, including, without limitation, the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G.L. c. 21E, the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. (hereinafter collectively referred to as "Hazardous Materials") on, in, under or emitting from the Property or for any other condition or defect on the Property. The provisions of this paragraph shall survive delivery of the deed.

However, Buyer, at its expense, may undertake such environmental testing necessary during a forty-five (45) day "Due Diligence Period," for the purposes of obtaining a

M.G.L. 21E assessment. Buyer may also be granted a one-time fifteen (15) day extension if so requested in writing by the Buyer's Licensed Site Professional for the purposes of a 21E inspection. If Buyer determines that the environmental conditions at the site are such that Buyer would incur liability under c. 21E, or that development of the site would not be feasible, Buyer shall so notify the Town in writing on or before the end of the Due Diligence Period (the "Due Diligence Date"). Any notice of a failure to pass 21E inspection from the Buyer to the Town shall contain specifics of the alleged oil and/or hazardous material condition. In the event of a failure to pass a Buyer's 21E inspection, the Town shall have exclusive option to conduct its own 21E assessment and/or undertake to remediate the conditions prior to closing, and/or terminate this agreement.

If Buyer fails to conduct a 21E assessment or deliver a written notification of failure to pass same by the Due Diligence Date then, Buyer shall be deemed to have waived any and all objections or matters to the environmental conditions of the property, and any and all such environmental conditions shall be deemed accepted under this Agreement.

- (D) If this Agreement is terminated under the provisions of this Section 8.01, the Deposit shall forthwith be refunded to Buyer (with interest), all other obligations of the parties shall cease and this Agreement shall be void and without recourse to the parties hereto.

8.02 If Seller is unable to remove any defects in title or mitigate environmental conditions as provided above, Buyer shall have the right (in addition to the title cure and rights described above), within five (5) days after the termination of this Agreement as provided in this Article 8, to elect to accept the Premises with such defects and conditions that Seller can deliver and to pay therefor the purchase price without deduction, in which case this Agreement shall be automatically reinstated and Seller shall convey the Premises to Buyer as provided herein. Any such election by Buyer shall be exercised by written notice from Buyer to Seller.

## **9. Obligations and Agreements.**

Buyer agrees to the following obligations and agreements which shall survive the Closing hereunder or the early termination hereof, as applicable:

9.01 Buyer shall release, defend, indemnify and hold Seller harmless from and against any and all claims, damages, losses, penalties, costs, expenses and fees (including without limitation reasonable legal fees) attributable to the physical and environmental condition of the Premises.

9.02 No member, officer, employee or other principal, agent or representative of the Town of Arlington or any other agency, board or commission associated with Seller shall ever be personally liable to Buyer, nor shall Seller ever be liable to Buyer for indirect, incidental or consequential damages.

9.03 On the date of Closing, Buyer must be current in taxes and all water and sewer liabilities on any and all real estate owned in the Town of Arlington.

**10. Broker.**

The parties stipulate that no broker or real estate agent is entitled to a commission from this transaction. The Buyer agrees to indemnify and hold the Seller harmless from all loss, cost, damage or expense arising out of or as a consequence of claims for brokerage commissions asserted by third parties. The Seller likewise agrees to indemnify and hold the Buyer harmless from all loss, cost, damage or expense arising out of or as a consequence of claims for brokerage commissions asserted by third parties.

**11. Seller's Covenants for Period Prior to Closing.**

Until Closing or the earlier termination of this Agreement in accordance with the terms and conditions hereof, Seller shall:

11.1 Keep the Premises insured under its current policies against fire and other hazards covered by extended coverage endorsement and commercial general liability insurance against claims for bodily injury, death and property damage occurring in, on or about the Premises.

11.2 Not enter into any lease or tenancy at the Premises or any portion thereof.

11.3 Not directly or indirectly transfer or market the Premises to others, employ or direct any agent with respect to the marketing or disposition of the Premises, directly or indirectly solicit, negotiate, accept or consider any offer or expression of interest with respect to the sale of the Premises."

**12. Representations.**

By Seller. Seller represents to Buyer as follows:

12.1 To Seller's actual knowledge, performance of this Agreement will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance upon the Premises under, any agreement to which Seller is a party.

12.2 To Seller's actual knowledge, there is no existing or pending litigation with respect to the Premises nor, to Seller's actual knowledge, have any such actions, suits, proceedings or claims been threatened or asserted, which could have an adverse effect on the Premises or Seller's ability to consummate the transaction contemplated hereby.

12.3 To Seller's actual knowledge, Seller has not received any written notice of violation of any governmental requirements (including Environmental Laws) for the Premises, which has not been remedied.

12.4 To Seller's actual knowledge, within the two (2) year period prior to the execution of this Agreement, Seller has not received, with respect to the Premises, written notice from any governmental authority regarding any condemnation proceedings.

12.5 There are no parties in possession, or any parties with a right to occupy the Premises.

12.6 No person, firm, corporation or other entity has any right or option to acquire the Premises or any part thereof, whether or not superior to Buyer's rights under this Agreement.

12.7 Seller has paid in full all invoices for material or labor furnished for the Premises. Seller shall indemnify and hold Buyer harmless from any claims, liabilities or expenses from nonpayment for material or labor furnished for the Premises, excluding any claims arising out of the acts or omissions of Buyer or its agents and representatives.

### **13. Costs and Prorations.**

13.1 Buyer's Costs. Buyer shall pay the following costs of closing this transaction:

13.1.1 The fees and disbursements of its counsel, architects and engineers, and any other consultants engaged by Buyer, if any;

13.1.2 All costs relating to obtaining a survey;

13.1.3 All Environmental Inspection Costs;

13.1.4 The cost to prepare the Title Commitment, any title search fees and any owner's and/or lender's title insurance policies; the cost of any extended coverage or special endorsements required by Buyer and of any cancellation charge(s) imposed by any title company in the event a title insurance policy is not issued; and

13.1.5 Any other expense(s) incurred by Buyer or its representative(s) in inspecting or evaluating the Premises or closing this transaction.

13.2 Seller's Costs. Seller shall pay the following costs of closing this transaction:

13.2.1 The fees and disbursements of Seller's counsel;

13.2.2 Any and all real estate transfer deed excise stamp or documentary taxes owed upon the recording of the Deed; and

13.2.3 Any recording fees for instruments required to delete Title Objections.

13.3 Prorations. Costs or charges of closing this transaction not specifically mentioned in this Agreement shall be paid and adjusted in accordance with local custom in the county in which the Premises is located. All prorations shall be made on a 365-day calendar year basis, based on the actual number of days in the applicable month, and if not set forth in this Agreement, shall otherwise be prorated in accordance with the Title Standards and Practice Standards of the Real Estate Bar Association of Massachusetts.

13.4 Purpose and Intent. Except as expressly provided herein, the purpose and intent as to the provisions of prorations and apportionments set forth in this section and elsewhere in this Agreement is that Seller shall bear all expenses of ownership and operation of the Premises and shall receive all income therefrom accruing through midnight at the end of the day preceding the Closing Date and Buyer shall bear all such expenses and receive all such income accruing thereafter.



#### **14. Damage, Destruction or Condemnation.**

14.1 Material Event. If, prior to Closing, the Premises is taken under power of eminent domain, or eminent domain proceedings are commenced, Buyer may elect to terminate this Agreement by giving written notice of its election to Seller within five (5) business days after receiving written notice from Seller of such taking or commencement or taking proceedings, as applicable. If Buyer does not give such written notice within such five (5) business day period, this transaction shall be consummated on the Closing Date and at the Purchase Price provided for herein, and Seller will assign to Buyer Seller's portion of any condemnation award; provided, however, in the case of a condemnation award, up to (but not greater than) the amount of the Purchase Price.

14.2 Termination and Return of Deposit. If Buyer elects to terminate this Agreement pursuant to this Section 14, the Escrow Agent shall return the Deposit to Buyer, and neither party shall have any further liability hereunder except for the obligations which survive the Closing or termination of this Agreement."

#### **15. Miscellaneous.**

15.01 This Agreement shall be binding upon the parties hereto, their heirs, assigns and successors in interest. This Agreement may not be assigned by Buyer.

15.02 All amendments to this Agreement, if any, shall be in writing and must be approved and signed by Seller.

15.03 In each and every respect, the provisions of this Agreement shall be construed in a fashion consistent with the purposes of this Agreement, as stated in Article 1.

15.04 This Agreement shall be governed by the laws of the Commonwealth of Massachusetts as such laws are applied to agreements between Massachusetts residents, business entities, and municipalities entered into and to be performed entirely within said state.

15.05 Prior to execution of this Purchase and Sale Agreement, (a) Buyer will execute a "Disclosure of Beneficial Interests in Real Property Transactions" certificate as required by G.L. c. 7, § 40J, (b) Buyer will file this form with the Massachusetts Division of Capital Asset Management, and (c) Buyer will deliver a date-stamped copy of said form to Seller.

15.06 In accordance with G.L. c. 62C, § 49A, Buyer hereby certifies, under the pains and penalties of perjury that Buyer has complied with all laws of the Commonwealth of Massachusetts relating to the payment of taxes. Such certification shall be made again and executed at the time of Closing.

15.07 This Agreement is solely for the benefit of the parties hereto, and nothing herein shall be deemed to create enforceable rights in third parties nor shall be referred to in interpreting independent rights and obligations of third parties.

15.08 The Buyer acknowledges that the Buyer has not been influenced to enter into this transaction nor has it relied upon any warranties or representations not set forth or incorporated in this Agreement or previously made in writing.

15.09 All applicable state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over real property transactions shall apply to this Agreement throughout, and they shall be deemed to be included in this Agreement the same as though herein written out in full.

15.10 Seller's performance hereunder is conditioned upon Buyer making a payment in lieu of taxes, at Closing, in an amount determined by Seller in accordance with M.G.L. c. 44, sec. 63A.

15.11 This Agreement, 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 canceled, modified or amended only by a written instrument executed by both the Seller and the Buyer or their respective counsels. The parties may rely upon facsimile copies of such written instruments. If two or more persons are named herein as Buyer and/or Seller, their respective obligations hereunder shall be joint and several. The captions and marginal notes 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.

15.12 Whenever notice must be given in writing under the provisions of this Agreement, such notice must be either hand delivered or sent by certified mail, return receipt requested,

If to Seller: Adam C. Chapdelaine, Town Manager  
Town of Arlington  
Town Hall Annex  
730 Massachusetts Avenue  
Arlington, MA 02476

With a copy to: Douglas W. Heim, Esq., Town Counsel  
Town of Arlington  
50 Pleasant Street  
Arlington, MA 02476

If to Buyer: James F. Doherty, Trustee  
DAVPOST1207, LLC  
1122 Massachusetts Av  
Arlington, MA 02474

With a copy to: Mary Winstanley-O'Connor., Esq.  
Krattemaker, O'Connor & Ingber, P.C.  
One McKinley Square, Fifth Floor  
Boston, MA 02109

Notice will be deemed to have been given when delivered by hand or on a date which is three (3) business days from the date of mailing when notice is sent via certified mail as provided above.

15.13 The parties to this Agreement represent and warrant that any and all actions necessary to authorize the undersigned to execute and deliver this Agreement have been completed and that this Agreement shall be enforceable against each party in accordance with the terms hereof. At the time of the execution of this Agreement, and as applicable, Buyer shall provide certificates of legal existence and good standing, a certificate evidencing the authorization of Buyer to transact business in Massachusetts, and, to Seller's reasonable satisfaction, a certificate evidencing the authority of Buyer to enter into and carry out the obligations of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Purchase and Sale Agreement to be executed as of the date first above written.

WITNESS

Pat Doherty

BUYER:

James F. Doherty  
Trustee

SELLER:

TOWN OF ARLINGTON

Adam W. Chapdelaine  
Town Manager

Duly authorized

Approved as to form:

Douglas W. Heim  
Town Counsel

**Exhibit A: RFP No. 16-52 for the sale of 1207 Massachusetts Avenue**

**Exhibit B: December 21, 2016 Response to RFP No. 16-52**

**Exhibit C**  
**ESCROW AGREEMENT**

WHEREAS, DAVPOST1207, LLC ("Buyer") and the Town of Arlington, acting by and through its Board of Selectmen ("Seller"), have entered into a Purchase and Sale Agreement dated March \_\_\_\_, 2018 (the "Purchase and Sale Agreement") for the sale of the land located at 1207 Massachusetts Avenue, Arlington, Massachusetts, identified on Arlington Assessor's Map 57, Block 4, Lot 14 as Parcel 057.0-0004-0014.0, more particularly described in Plan (the "Plan"), recorded with the Middlesex South District Registry of Deeds as Plan No. 19 of Book 121 (the "Premises"); and

WHEREAS, the parties have agreed to place the deposit of Seventy-Five Thousand (\$75,000 ) Dollars paid by the Buyer in conjunction with the execution of the Purchase and Sale Agreement (the "Escrow Sum") in escrow as set forth in Paragraph 3 of the Purchase and Sale Agreement;

WHEREAS, the parties have agreed to deposit the Escrow Sum with the law firm of Krattenmaker, O'Connor & Ingber, P.C. (the "Escrow Agent") in conjunction with the closing of the sale of the Premises;

NOW THEREFORE, the parties hereto hereby agree as follows:

1) Buyer, Seller and the Escrow Agent agree to comply with the terms of Paragraph 3 of the Purchase and Sale Agreement for the purposes hereof.

2) As provided in Paragraph 3 of the Purchase and Sale Agreement, the Escrow Sum shall be retained by the Escrow Agent in an interest-bearing escrow account. This deposit shall be held in accordance with the terms set forth below:

- a) In the event of a dispute relating to the Escrow Sum, the Escrow Agent shall have the right to retain all or any portion of the Escrow Sum pending the receipt of written instructions agreed to and signed by Seller and Buyer or receipt of a court order directing the distribution of the Escrow Sum after all appeals therefrom have been taken or appeals periods relating thereto have expired. In the alternative, the Escrow Agent may resign at any time by transferring the Escrow Sum to a successor escrow agent reasonably acceptable to Seller and Buyer, which successor agrees in writing to act as escrow agent.
- b) Buyer and Seller jointly and severally agree to indemnify and hold the Escrow Agent harmless for any and all costs and expenses, including reasonable attorney's fees, incurred in connection with any dispute concerning the Escrow Sum.
- c) The duties and responsibilities of the Escrow Agent shall be limited to those expressly set forth herein and in Article 3 of the Purchase and Sale Agreement, and the Escrow Agent shall not be subject to, nor obligated to recognize, any other agreement between, or direction or instructions of, any or all of the parties hereto.
- d) The Escrow Agent, in its sole discretion, may institute legal proceedings of any kind, including, but not limited to, a legal proceeding in any court of competent jurisdiction, to determine the obligations of the parties hereunder and to deposit the Escrow Sum in such court; and upon such deposit and institution of legal proceedings, the duties of the Escrow Agent shall be fully terminated and the Escrow Agent shall be fully discharged

from all such duties. The Escrow Agent shall not be required to institute or defend any administrative, arbitral, judicial or other action or legal process involving any matter referred to herein which in any manner affects it or its duties or liabilities hereunder unless and until it has received full indemnity as it shall in its sole discretion require against any and all claims, liabilities, judgments, attorneys' fees and other costs and expenses of any and every kind in relation thereto.

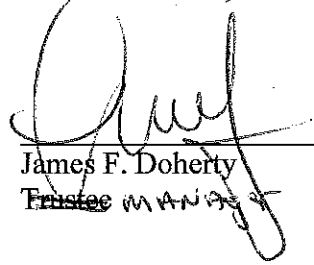
- e) In taking any action hereunder, the Escrow Agent shall be protected and may rely upon any notice, paper or document or signature believed by it to be genuine or upon any evidence deemed by it to be sufficient. In no event shall the Escrow Agent be liable for any act performed or omitted to be performed by it hereunder in the absence of gross negligence or willful misconduct, and in no event shall it be liable or responsible for any failure of any banking institution in which the Escrow Sum is deposited to pay such Escrow Sum at the Escrow Agent's direction.
- f) The Escrow Agent shall not be under a duty to give the property held hereunder a greater degree of care than the Escrow Agent gives its own similar property. The tax identification numbers of the parties hereto shall be furnished to the Escrow Agent on request.
- g) The rights and immunities of the Escrow Agent hereunder shall apply equally to its partners, of counsel, associates, employees, affiliates and agents.
- h) Seller and Buyer agree that Krattenmaker, O'Connor & Ingber's status as Escrow Agent shall not affect its ability to act as the Seller's counsel in the event a dispute arises regarding the Escrow Sum, or any other dispute under this Escrow Agreement or with respect to the sale of the Premises, and Seller and Buyer hereby waive any current or future conflict of interest which may result from the same.
- i) This Agreement sets forth exclusively the duties of Escrow Agent with respect to any and all matters pertinent hereto and no implied duties or obligations shall be read into this Escrow Agreement against Escrow Agent.

3) Buyer and Seller shall each execute and deliver to the Escrow Agent original IRS Form W-9s in the form attached hereto in order for the Escrow Agent to place the Escrow Sum in an interest-bearing account in accordance with the terms of Article 3 of the Purchase and Sale Agreement. The Escrow Agent shall have no obligation to obtain executed W-9 forms from the Buyer and Seller, no interest shall accrue unless fully executed, original W-9's are received by the Escrow Agent. Until that time, the Escrow Sum will be deposited in Escrow Agent's IOLTA account.

This document is executed under seal as of this 18<sup>th</sup> day of October, 2018.

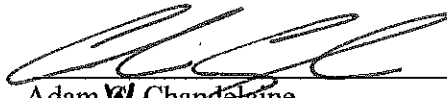
BUYER:

DAYPOST1207, LLC

  
James F. Doherty  
~~Trustee~~ *manager*

SELLER:

Town of Arlington

  
Adam ~~W.~~ Chapdelaine,  
Town Manager

Krattenmaker, O'Connor & Ingber, P.C., as Escrow Agent

By: Mary Winstanley-O'Connor, Esq.



## Exhibit D

### QUITCLAIM DEED

**TOWN OF ARLINGTON**, a Municipal Corporation in the Commonwealth of Massachusetts with a principal address at 730 Massachusetts Avenue, Arlington, Massachusetts 02476 acting by it's Board of Selectmen,

For consideration paid, and in full consideration of **Seven Hundred and Fifty Thousand Dollars (\$750,000)**,

Grants to

DAVPOST1207, LLC, with a principal address of 1122 Massachusetts Av  
Arlington, MA 02474.

**With Quitclaim Covenants**, the following described real estate, to wit:

The building and property known 1207 Massachusetts Avenue, a building and about 4,645 square feet of land, being lot numbered 6 Massachusetts Avenue shown on Plan of House Lots belonging to Warren A. Peirce, dated August 1899, recorded with Middlesex South District Deeds, Book of Plans 121, Plan 19.

The Grantor is hereby conveying the Premises and the Grantee is hereby accepting the Premises subject to the following restriction set forth in Exhibit "1" attached hereto, a 40-year deed restriction for the benefit of the Grantor which shall be binding on the Grantee and shall run with the land so that it is binding on the Grantee's successors and assigns as owners of the Premises.

The Premises are conveyed subject to: [ *applicable special permits to be listed* ], all of which are recorded herewith.

The Premises are conveyed subject to and with the benefit of restrictions, easements, covenants and agreements of record, if any there be, insofar as the same are now in force and applicable.

The Town of Arlington has fully complied with M.G.L. c. 44, §63A in conjunction with the transfer of the Premises.

No Massachusetts documentary stamps are affixed hereto as none are required by law because the Grantor is a municipal corporation established under the laws of the Commonwealth of Massachusetts.

The post office address of the property is:

**1207 Massachusetts Avenue Arlington, Massachusetts 02476**

Executed as a sealed instrument as of the                      day of                      ,2018

TOWN OF ARLINGTON

By its

BOARD OF SELECTMEN

---

Daniel J. Dunn, Chair

---

Diane M. Mahon, Vice Chair

---

Kevin F. Greeley

---

Joseph A. Curro

---

John V. Hurd

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ ss.

On this \_\_\_\_\_ Day of \_\_\_\_\_, 2018 before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose is signed o the attached document and acknowledged that he/she signed it voluntarily for its stated purpose on behalf of the Board of Selectmen of the Town of Arlington.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## **QUITCLAIM DEED EXHIBIT 1**

### **AGREEMENT FOR MIXED USE RESTRICTION**

Property Address: 1207 Massachusetts Avenue, Arlington, MA

This Agreement for Mix Use Restriction (this "Agreement") is entered in to this 18<sup>th</sup> day of October, 2018, by and between Buyer and Seller to impose covenants running with the Land which shall be binding upon Buyer and all subsequent owners of the Land for the purpose of insuring that, for the term of this Agreement, the Land, as hereinafter defined, will be restricted as set forth herein.

#### **Definitions**

**Buyer:** DAVPOST1207, LLC

**Land:** The land located at the property address specified above as more completely described in Exhibit A attached hereto and made a part hereof, together with all improvements, Including fixtures, now or hereafter situated thereon. For Buyer's title, see Deed which is to be recorded herewith.

**Land Records:** Middlesex (South) Registry of Deeds.

**Deed:** The deed from the Seller to the Buyer of the Land of even or near sate herewith and to be recorded herewith with the Land Records.

**Seller:** The Town of Arlington Massachusetts.

**Sellers Notice Address:** Town Manager, Town of Arlington, 730 Massachusetts Avenue, Arlington, MA 02476 with a courtesy copy to Town Counsel, 50 Pleasant Street, Arlington, Ma 02476

#### **Agreement**

To induce the Seller to sell the Land to the Buyer, for other good and valuable considerations the receipt and sufficiency of which are hereby acknowledged, and with the intent of being legally bound, the parties hereto agree as follows:

1. Mix Use Restriction. Borrower intends, declares and covenants, on behalf of itself and all future owners and operators of the Project during the term of this Agreement, that this Agreement and the covenants and restrictions set forth in this Agreement regulating and restricting the use, occupancy and transfer of the Project (i) shall be and are covenants running with the Land, encumbering the Land for the term of this Agreement, binding upon Buyer, Buyers successors in title and all subsequent owners and operators of the Project; (ii) are not merely personal covenants of Buyer, and; (iii) the benefits shall inure to Seller and its respective successors and assigns during the term of this Agreement, as defined below. Unless the covenants contained herein have been released by Seller in writing, they shall survive and be effective for the term of this Agreement.
2. Term of the Restriction. The term of the mixed-use restriction imposed by this agreement shall be forty (40) years from the date of the recording of this Agreement.
3. Restriction. During the entire term of this Agreement, the Land and the Project may be used only for mixed-use development as provided by the Town of Arlington Zoning Bylaws as approved by the Town of Arlington February 12, 2018 Special Town Meeting and the provision of all services ancillary thereto.
4. Transfer of Land. Prior to any transfer of ownership of the Land or any portion thereof, Buyer agrees to secure from the transferee a written agreement stating that transferee will assume in full Buyer's obligations and duties under this agreement. Such an assumption shall not be deemed to relieve the Buyer of its liabilities hereunder.
5. Enforcement. Upon violation of any of the provisions of this Agreement by Buyer, Seller may apply to any court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement, or for such other relief as may be appropriate, since the injury to Seller arising from the default under any terms of this agreement would be irreparable and the amount of damages cannot be ascertained and/or compensated by money alone. No act or omission by Seller other than a writing signed by it waiving a breach by Buyer, shall constitute a waiver thereof. Buyer agrees to pay all costs and expenses incurred by Seller in the enforcement of Seller's rights under this Agreement, including reasonable attorney's fees and costs (including the time of any in-house counsel of Seller charged at the same rate as comparable outside attorneys).
6. Notices. All notices, demands, and other communications made hereunder shall be in writing and given by hand; by telegram; by federal express, express mail, or any other nationally recognized overnight delivery service; by telecopier (provided a copy is also sent via first class mail); or by certified or registered first class mail, return receipt requested, postage prepaid; and addressed to the intended recipient's notice address specified above. Each of the foregoing addresses may be changed upon fifteen (15) days prior written notice given by any of the foregoing prescribed methods. All notices shall be deemed to have been given, delivered, and received on the earlier of (i) actual receipt; or (ii) the tender of delivery by one of the above prescribed methods during normal business hours at the specified address.
7. Severability. All rights, powers and remedies provided herein may be exercised only to

the extent that exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, illegal, unenforceable or not entitled to be recorded, registered or filed under applicable law. If any provision or part hereof shall be determined to be invalid, illegal or unenforceable, this Agreement shall be construed as if such invalid, illegal or unenforceable provision or part thereof has not been contained herein.

8. Governing Law This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

9. Recording. Buyer, at its cost and expense, shall cause this Agreement to be duly recorded or filed and rerecorded or refiled in the Land Records and in such other office as necessary, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all statutes and regulations as may be required by law in order to establish, preserve and protect the ability of the Seller to enforce this Agreement.

EXECUTED as a sealed instrument under Massachusetts law as of the date first written above.

Buyer:

DAVPOST1207, LLC

By:

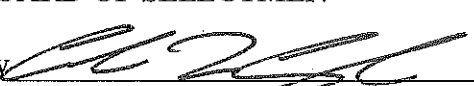
  
James F. Doherty, Its Trustee *Wm F. Doherty*  
Hereunto Duly Authorized

TOWN OF ARLINGTON

By its

BOARD OF SELECTMEN

By:

  
Adam W. Chapdelaine, Town Manager

*(for Authority See Vote of Board of Selectmen recorded herewith)*

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_. ss.

October 18, 2018

Then personally appeared the above-named James F Doherty the Manager of DAVPOST1207, LLC, proved to me by satisfactory identification, consisting of: {circle one} (a driver license (a passport) (my personal knowledge) (other: \_\_\_\_\_), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily and for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss.

October 18, 2018

Then personally appeared the above-named Adam W. Chapdelaine, the Town Manager of The Town of Arlington, proved to me by satisfactory identification, consisting of: {circle one} (a driver license (a passport) (my personal knowledge) (other: \_\_\_\_\_), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily and for its stated purpose.

Kristen A. DeFrancisco  
Notary Public

My Commission Expires: March 28, 2019

