

ORDINANCE NO. 3740

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, ENTITLED "AN ORDINANCE TO AUTHORIZE THE EXECUTION OF A CONTRACT OF SALE AND DEED FOR THE PURPOSE OF CONVEYING CERTAIN SURPLUS PROPERTY LOCATED AT 1002-1012 VIRGINIA AVENUE IN THE CITY OF CUMBERLAND, ALLEGANY COUNTY, MARYLAND TO ~~SETH~~ [Sean] D'ATRI."

**WHEREAS**, Mayor and City Council of Cumberland is the fee simple owner of a certain parcel of real property and the improvements thereon located at 1002-1012 Virginia Avenue, in the City of Cumberland, Allegany County, Maryland;

**WHEREAS**, the said property was declared to be surplus property under the terms of Order No. 25,509, passed by the Mayor and City Council on March 12, 2013;

**WHEREAS**, ~~Seth~~ [Sean] D'Atri desires to purchase the said property for the sum of \$30,000.00, said offer being set forth in the terms of the Contract of Sale, a copy of which is attached hereto as Exhibit A, which Contract of Sale includes specific provisions relative to the repair and revitalization of the exterior of the said property so as to expeditiously improve its appearance and condition; and

**WHEREAS**, the Mayor and City Council of Cumberland deem it to be in the interest of the City to enter into said Contract of Sale and grant the said conveyance.

**NOW, THEREFORE**

**SECTION 1:** BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, that the Mayor be and he is hereby authorized to execute the Contract of Sale attached hereto as Exhibit A, agreeing to convey the real property and the improvements thereon located at 1002-1012 Virginia Avenue, Cumberland, Maryland 21502 to ~~Seth~~ [Sean] D'Atri for the purchase price in the amount of \$30,000.00;

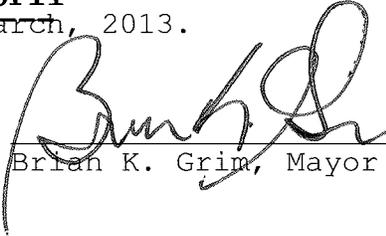
APR - 9 2013

**SECTION 2:** AND BE IT FURTHER ORDAINED, that the Mayor and City Clerk be and they are hereby authorized to execute a deed in the form attached to the Contract of Sale or in a similar form, conveying the aforesaid real property and improvements thereon to ~~Seth~~ **[Sean]** D'Atri in exchange for the payment of the aforesaid purchase price;

**SECTION 3:** AND BE IT FURTHER ORDAINED, that the City Solicitor be and he is hereby authorized to execute a HUD-1 or similar closing statement and such other documents as may be required or expedient for the purpose of facilitating and completing the closing for the sale of the property identified herein in accordance with the terms of the Contract of Sale attached hereto as Exhibit A and he is further authorized to deliver the deed executed by the Mayor and City Clerk to ~~Seth~~ **[Sean]** D'Atri at the said closing; and

**SECTION 4:** AND BE IT FURTHER ORDAINED, that this Ordinance shall take effect from the date of its passage.

Passed this 09th day of ~~March~~ <sup>April</sup>, 2013.

  
\_\_\_\_\_  
Brian K. Grim, Mayor

ATTEST:

  
\_\_\_\_\_  
Marjorie A. Eirich, City Clerk

3/12/2013 Ordinance amended  
Strikethroughs (---) to indicate deletions  
Brackets [ ] to indicate additions

3/12/2013 First reading of amended ordinance approved 5-0

**4/09/2013 Second reading approved**  
**4/09/2013 Third reading approved**  
**Passed 4-0**

# **EXHIBIT A**

DRAFT

**CONTRACT OF SALE**

**THIS CONTRACT OF SALE (“Contract”)** is made by and between **Mayor and City Council of Cumberland (“Seller”)** and **Sean B. D’Atri (“Buyer”)** and is effective the date its execution is completed (the **“Effective Date”**).

**1. Property Description.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, all of that tract or parcel of land, together with the improvements thereon, which are owned by Seller and located at 1002-1012 Virginia Avenue 21502 (the **“Property”**), the same being more particularly described in deed recorded among the Land Records of Allegany County, Maryland in Book 1832, Page 321.

**2. Purchase Price.** The purchase price (**“Purchase Price”**) for the Property is Thirty Thousand Dollars (\$30,000.00).

**3. Payment Terms.** The Purchase Price shall be paid by Buyer as follows:

(a) An initial earnest money deposit (the **“Deposit”**) in the amount of One Thousand Dollars (\$1,000.00) shall be paid by Buyer to Seller upon Buyer’s execution of this Contract.

(b) The balance of the Purchase Price less the Deposit shall be paid by Buyer to Seller at the settlement for the consummation of Seller’s sale of the Property to Buyer (**“Settlement”**).

**4. Estate.** The Property is being conveyed in fee simple.

**5. Financing.** This Contract is not contingent upon Buyer obtaining any financing.

**6. Condition of Property.** Seller makes no representations or warranties to Buyer relative to the condition of the Property, its suitability for Buyer’s intended use or any other matter. The Property is being sold in **“AS-IS”** condition.

**7. Contingencies.** Except as otherwise set forth herein, this Contract shall not be subject to any contingencies.

**8. Risk of Loss.** The Property shall be held at the risk of Seller until legal title has passed or possession has been given to Buyer.

**9. Settlement.**

**9.1. Settlement Date.** Settlement shall take place no later than forty-five (45) days from the Effective Date, unless that deadline is extended by agreement of the parties. It is understood that this Contract may not be executed by Seller until the Property is declared to be

surplus and an Ordinance is passed authorizing its execution.

**9.2. Possession of Property.** Buyer shall receive possession of and title to the Property upon the completion of Settlement.

**9.3. Title.** Settlement is contingent upon title to the Property being be good and merchantable, free of liens and encumbrances, except as specified herein and except use and occupancy restrictions of public record which are generally applicable to properties in the immediate neighborhood or the subdivision in which the Property is located and publicly recorded easements for public utilities and any other easements which may be observed by an inspection of the Property. Buyer shall have fifteen (15) days from the Effective Date to provide Seller with written notification of any defects in the title to the Property. In the event said written notice is not provided in the manner aforesaid, any such defects shall be deemed to be waived by Buyer. In the event such written notice is provided, Seller shall be afforded a reasonable period of time to correct said defects at its expense, said period of time not to exceed sixty (60) days beyond the date allowed for Settlement to occur under the terms of this Contract, and, if Seller should elect not to cure said defects or fail to cure the same within the aforesaid timeframe, it shall refund the Deposit to Buyer and Buyer shall have no further remedies against Seller, this Contract being deemed, at that point, to be null and void and other no further force and effect.

**9.4. Conveyance of Property.** Upon payment of the Purchase Price, a quit claim deed conveying the Property from Seller to Buyer shall be executed at Seller's expense by Seller. The deed effecting the conveyance of the Property from Seller to Buyer shall be in the form attached hereto and incorporated by reference herein as Schedule A. It is understood and agreed that the deed shall include the rights of reverter as described therein relative to Buyer's completion of certain improvements to the exterior of the Property within one (1) year of the date of Settlement.

**9.5. Settlement Agent.** Buyer shall be entitled to select his own title company, settlement company, escrow company or title attorney for the purpose of conducting the Settlement.

**10. Sale of Other Real Estate.** This Contract is not contingent in any manner upon the sale or settlement of any other real estate.

**11. Closing Costs and Prorations.** All general or special taxes, rents, ground rents, public, private or community water and/or sewer charges, including any deferred sewer and water tap fees, and all other public, private or governmental charges or assessments with regard to the Property, excluding liens which must be paid prior to deed recordation, which may exist, whether such have been levied or not are to be adjusted and apportioned as of the date of Settlement, and will be assumed and paid thereafter by Buyer.

Each of the parties hereto shall bear the expense of their own attorneys' fees in connection with the negotiations of the terms of this Contract and the consummation of the transactions contemplated hereby.

**12. Recordation & Transfer Taxes.** The cost of all documentary stamps, recordation tax and transfer tax shall be split evenly between Purchaser and Seller.

**13. Commissions.** Seller has retained the services of Coldwell Banker Professional Real Estate Services. Seller shall be responsible for the payment of the commissions due as a result of its Listing Agreement with Coldwell Banker (5% of the Purchase Price).

**14. Breach of Contract and Default.** If Buyer fails to comply with the terms of this Contract, Buyer will be in default, and upon Seller's written notice to Buyer of such default, this Contract shall terminate and be of no further force or effect unless Buyer cures the default within ten (10) days of the date of the notice unless Settlement is scheduled to occur in advance of the cure deadline, in which event the default shall be cured in advance of Settlement. If Buyer fails to cure its default in the manner prescribed herein, Seller shall have the right to declare this Contract null and void and of no further force and effect and, inasmuch as it will be impossible to ascertain Seller's damages as a result of Buyer's default, Seller may retain the Deposit as liquidated damages and not as a penalty.

If Seller fails to comply with the terms of this Contract, Seller will be in default, and Buyer, at its option, may either (a) institute proceedings for the specific performance of this Contract or (b) terminate this Contract with Seller refunding the Deposit.

In addition to the remedies set forth above, Seller and Buyer shall have the right to pursue any and all remedies available to them, at law or in equity, in the event of a breach of the terms of this Contract. Further, in the event of a breach of the terms of this Contract, the party in breach of its terms shall pay the reasonable attorneys' fees, court costs and litigation expenses incurred by the nonbreaching party as a result of the breach.

**15. Notices.** All notices from one party to the other must be in writing and are effective when mailed or hand-delivered as follows:

If to Seller to:

Mayor and City Council of Cumberland  
57 N. Liberty Street  
Cumberland, MD 21502  
ATTN: Marjorie A. Eirich, City Clerk

With a copy to:

Michael Scott Cohen, Esq.  
213 Washington Street  
Cumberland, MD 21502

If to Buyer to:

Sean B. D'Atri  
7 Willison Place  
Cumberland, MD 21502

With a copy to:

Seth D'Atri, Esq.  
Trozzo, Lowery, Weston & Rock, LLC  
323 Paca Street  
Cumberland, MD 21502

16. **Assignability.** This Contract may not be assigned without the written consent of the Seller.

17. **Timeliness.** Time is of the essence with respect to the provisions of this Contract.

18. **Captions.** The marginal captions of this Contract are for convenience and in no way define or limit the intents, rights or obligations of the parties hereunder.

19. **Entire Agreement.** This Contract contains the final and entire agreement between the parties, and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained. It may not be modified unless said modification is set forth in a writing signed by both of the parties hereto.

20. **Governing Law.** This Contract shall be governed and construed according to the laws of the State of Maryland without regard to principles of conflict of laws. This Contract is and shall be enforceable with an action commenced in the Circuit Court for Allegany County Maryland or the District Court of Maryland for Allegany County, and Buyer and Seller agree to be subject to the jurisdiction of such courts and further waive any claim that any action or proceeding arising out of or relating to this Contract and commenced in such courts is commenced in an inconvenient forum or a forum lacking proper venue.

21. **Gender/Tense/Conjugation.** The use of any gender, tense, or conjugation herein shall be applicable to all genders, tenses and conjugations. The use of the singular shall include the plural and the plural shall include the singular.

22. **Jury Trial Waiver.** Buyer and Seller waive trial by jury in any action or proceeding to which either of them may be parties arising out of or in any way pertaining to this Contract. It is agreed and understood that this waiver constitutes a waiver of trial by jury of all claims against all parties to such actions or proceedings, including claims against parties who are not parties to this Contract.

DRAFT

**23. Binding Effect.** This Contract shall be valid and binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.

**IN WITNESS WHEREOF**, the parties have each have duly executed this Contract, under seal, the date set forth beneath their signatures below.

**WITNESS/ATTEST:**

**MAYOR AND CITY COUNCIL  
OF CUMBERLAND**

\_\_\_\_\_  
Marjorie A. Eirich,  
City Administrator

By: \_\_\_\_\_ (SEAL)  
Brian K. Grim, Mayor

\_\_\_\_\_  
Date of Execution

\_\_\_\_\_

\_\_\_\_\_  
Sean B. D'Atri (SEAL)

\_\_\_\_\_  
Date of Execution

**SCHEDULE A**

**THIS DEED**, made this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between **MAYOR AND CITY COUNCIL OF CUMBERLAND**, a Maryland municipal corporation, party of the first part, and **SETH B. D'ATRI**, of Allegany County, Maryland, party of the second part.

**WITNESSETH:**

That for and in consideration of the sum of One Hundred Thousand Dollars (\$100,000.00) cash in hand paid and for other good and valuable considerations, the receipt of all of which is hereby acknowledged, the party of the first part does hereby quitclaim unto party of the second part, his personal representatives, heirs and assigns, all of the party of the first part's right, title, interest and estate in and to the following described property lying and being in the City of Cumberland, Allegany County, Maryland, to wit:

**ALL** the land and benefits appurtenant thereto, in Cumberland, Allegany County, Maryland described as follows:

**BEGINNING** at an iron pin at the intersection of the southerly side of Offut Street, 30 feet wide, and the easterly side of Virginia Avenue, 60 feet wide; extending thence (1) along said southerly side of Offut Street South 53 degrees 30 minutes East 83.83 feet to a point in line of land now or formerly of Edgar R. Sharon; thence (2) along said line of land now or formerly owned by Edgar R. Sharon South 36 degrees 30 minutes West 125 feet to a point in the northerly side of a 16

DRAFT

foot wide alley; thence (3) along said northerly side of a 16 foot wide alley North 53 degrees 30 minutes West 64.7 feet to a point on the said easterly side of Virginia Avenue; and thence (4) along said easterly side of Virginia Avenue North 27 degrees 48 minutes East 126.45 feet to the place of **BEGINNING**.

**IT BEING** the same property described in the deed from Jason M. Bennett, Director of Finance of Allegany County, Maryland, to Mayor and City Council of Cumberland dated November 18, 2011 and recorded among the Land Records of Allegany County, Maryland in Book 1832, Page 321.

**TOGETHER** with the buildings and improvements thereon, and the rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining.

**TO HAVE AND TO HOLD** the above-described property unto party of the second part, his personal representatives, heirs and assigns, in fee simple forever.

The foregoing conveyance is made subject to the following covenants, restrictions and agreements:

1. Within seven (7) months of the date of this deed, the party of the second part shall perform the following repairs and improvements to the hereinbefore-described property to the reasonable satisfaction of the party of the first part: (a) removal of all exterior debris; (b) replacement of exterior windows and broken doors; (c) repair of exterior walls; (d) removal of existing signage; (e) removal of concrete island; and (f) repair of parking area.

2. Within fourteen (14) months of the date of this deed, the party of the second part shall perform the following repairs and improvements to the hereinbefore-described property to the reasonable satisfaction of the party of the first part: (1) replacement of existing roof; (2) painting the exterior of the premises; and (3) installation of exterior lighting.

3. The party of the first part and its designees shall have the right to inspect the

## DRAFT

hereinbefore-described property from time to time in order to ensure that the work described in paragraphs 1 and 2 above is progressing and is being performed and completed in the manner described herein; provided, however, that the party of the first part shall endeavor to give the party of the second part no less than seventy-two (72) hours advance notice of any such inspections. The party of the second part shall fully cooperate with the party of the first part and its designees in regard to the scheduling and conduct of the inspections.

4. The party of the second part may not convey the hereinbefore-described property or any interest therein (aside from a security interest granted subject to these covenants, restrictions and agreements) to a third party until all of the repairs and improvements described in paragraphs 1 and 2 are completed in accordance with the terms and provisions set forth therein. Any such conveyance or attempt at such conveyance shall be null and void.

5. In the event the property is not reconveyed to the party of the first part within three (3) years of the date of the execution of this deed, in accordance with the hereinafter set forth provisions, the repairs and/or improvements described above shall be deemed to have been completed in accordance with the terms and provisions set forth above, and the party of the first part shall forfeit its hereinafter-described rights of reverter.

6. Should the party of the second part fail to comply with the terms and provisions of paragraphs 1 and 2 hereinbefore, the title to the said property shall immediately and without the necessity of any further action on the part of the party of the first part, revert and revest in the party of the first part, and the party of the second part shall lose and forfeit all of his right, title and interest in and to the said property and to the improvements, fixtures, rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining, and the party of the first part shall

have the right of re-entry to the said property.

7. In furtherance of the terms and provisions set forth in the preceding paragraph, the party of the second part hereby appoints Jeffrey D. Rhodes, City Administrator of the City of Cumberland, and his successor City Administrators, his true and lawful attorney-in-fact, with full power of substitution, hereby granting them full power and authority for him and in his stead to execute and deliver a deed or deeds to the hereinbefore-described property to the party of the first part in the event the party of second part fails to comply with the terms and provisions set forth in paragraphs 1 and 2 hereinbefore and to do any and all acts required in order to effect the conveyance of the hereinbefore-described property to the party of the first part in the event the party of the second part fails to comply with the said terms and conditions. Alternatively, the party of the second part hereby authorizes and empowers Jeffrey D. Rhodes, City Administrator of the City of Cumberland, and his successor City Administrators to execute and deliver a deed or deeds to the hereinbefore-described property to the party of the first part in the event the party of second part fails to comply with the terms and provisions set forth in paragraphs 1 and 2 hereinbefore and to do any and all acts required in order to effect the conveyance of the hereinbefore-described property to the party of the first part in the event the party of the second part fails to comply with the said terms and conditions. The terms and provisions of this paragraph 7 shall not be subject to revocation except upon the written consent of the party of the first part; however, notwithstanding the foregoing, they shall expire on the date set forth in paragraph 5 above and shall be of no further force and effect after that date.

8. Once the repairs and improvements identified in paragraphs 1 and 2 above have been completed to the reasonable satisfaction of the party of the first part, upon the request of the party of

DRAFT

the second part, the party of the first part shall deliver a deed to the party of the second part which shall effect the surrender of the rights of reverter as described herein.

WITNESS the hand and seal of the party of the first part the day and year first above written.

WITNESS/ATTEST:

**MAYOR AND CITY COUNCIL  
OF CUMBERLAND**

\_\_\_\_\_  
Marjorie A. Eirich, City Clerk

By: \_\_\_\_\_ (SEAL)  
Brian K. Grim, Mayor

\_\_\_\_\_  
SETH B. D'ATRI (SEAL)

**WITNESSES TO SIGNATURE  
OF SETH B. D'ATRI:**

\_\_\_\_\_  
signature

\_\_\_\_\_  
printed name

DRAFT

\_\_\_\_\_  
address

\_\_\_\_\_  
signature

\_\_\_\_\_  
printed name

\_\_\_\_\_  
address

**STATE OF MARYLAND,  
ALLEGANY COUNTY, TO WIT:**

**I HEREBY CERTIFY**, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared **Brian K. Grim**, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, the Mayor of Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland, and acknowledged the foregoing to be the act and deed of the said Mayor and City Council of Cumberland; and at the same time made oath he is duly authorized by it to make this acknowledgment; and he further certified under the penalties of perjury that the actual consideration for the foregoing conveyance is \$30,000.00 and that the total payment made to the grantor was \$\_\_\_\_\_ and he further made oath in due form of law that this transaction is not subject to the provisions of Section 10-912 of the Tax General Article of the Maryland Annotated Code as the grantor is a resident of the State of Maryland.

**WITNESS** my hand and Notarial Seal.

\_\_\_\_\_  
**NOTARY PUBLIC**

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

**STATE OF MARYLAND,  
ALLEGANY COUNTY, TO WIT:**

**I HEREBY CERTIFY**, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared **Seth B. D'Atri**, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, and acknowledged the foregoing to be his act and deed.

DRAFT

WITNESS my hand and Notarial Seal.

---

**NOTARY PUBLIC**

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

**I HEREBY CERTIFY** that the within and foregoing document was prepared by, or under the supervision of, the undersigned, a Maryland attorney.

---

**MICHAEL SCOTT COHEN**

*City of Cumberland/Surplus Property Transactions/1002 VA Ave – Contract.v1*