

## **PURCHASE AND SALE AGREEMENT**

### **1. PARTIES**

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018. the Town of Barnstable, Massachusetts, c/o Mark Ells, Town Manager, Town Hall, 367 Main Street, Hyannis, Massachusetts 02601, hereinafter collectively called the SELLER, agrees to sell to \_\_\_\_\_ hereinafter called the BUYER or PURCHASER, who agrees to buy, upon the terms hereinafter set forth, the premises described in paragraph two (2) below.

### **2. DESCRIPTION**

The following parcel of land (the "Premises"):

The land in Barnstable (the village of \_\_\_\_\_), Barnstable County, Massachusetts located at \_\_\_\_\_, which is shown as lot \_\_\_\_ on Barnstable Assessors Map \_\_\_\_\_. For title of the Sellers, see deed recorded in said Registry in Book \_\_\_\_\_, Page \_\_\_\_\_, which is a deed into said the Town of Barnstable.

### **3. TITLE DEED**

The premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER and said deed shall convey a good clear record and marketable title thereto, free from encumbrances, except:

- (a) Provisions of existing building and zoning laws;
- (b) Such taxes for the then current year as are not yet due and payable on the date of the delivery of the deed;
- (c) Any liens for municipal betterments assessed after the date of this Agreement;
- (d) Title shall be considered "good, clear, record and marketable" if Buyer can obtain a commitment from an title agent of Buyer's choosing for an owner's policy of title insurance meeting standard conditions of an ALTA Owner's policy and being subject only to those matters referenced in (a)-(c) above. Neither Sellers nor Buyer shall be required to satisfy any requirements for issuance of such a commitment.

### **4. PURCHASE PRICE**

The agreed purchase price for said premises is \$ \_\_\_\_\_  
(\_\_\_\_\_ Dollars).

The purchase price shall be paid as follows:

\$\_\_\_\_\_ is to be paid within three business days of Sellers' acceptance, execution, and delivery of this Purchase and Sale Agreement to the Buyer.

The balance of \$\_\_\_\_\_ is to be paid at closing by the BUYER by certified check.

**5. TIME FOR PERFORMANCE; DELIVERY OF DEED.**

Such deed is to be delivered at \_\_\_\_\_ a.m. on \_\_\_\_\_, 2018 at the Barnstable County Registry of Deeds, unless otherwise agreed in writing. It is agreed that time is the essence of the Agreement.

**6. OTHER MATTERS.**

In addition to the matters set forth in Paragraph 3 of this Agreement, the Premises shall be conveyed subject to the following matters.

- a. The individual signing this Agreement on behalf of a Seller hereby represents that he/she/they is/are duly authorized and empowered to execute this Agreement for and on behalf of such Seller.
- b. Sellers shall require the following from the Buyer on or before the dates specified:
  1. Completed and executed disclosures of beneficial interests pursuant to G.L. c. 7 §40J on or before the closing herein.
  2. Affidavits satisfying the requirements of Section 1445 of the Internal Revenue Code and regulations issued thereunder, which states, under penalty of perjury, the Buyer's United States taxpayer identification numbers, that the Buyers are not foreign persons, and the Buyers' addresses (the "1445 Affidavit") on or before the closing.
  3. Internal Revenue Service Form W-8 or Form W-9 with Buyers tax identification numbers and an affidavit furnishing the information required for the filing of Form

1099S with the Internal Revenue Services and stating Buyers are not subject to back-up withholding, as applicable on or before the closing.

4. Seller shall cause proper notice of the sale to be published in the Central Register in compliance with the provisions of M.G.L. c. 30B §16.

**7. BUYERS' INSURANCE:**

The Buyers will be fully responsible for the insurance of the property once immediately following the execution of this agreement.

**8. POSSESSION AND CONDITION OF PREMISES.**

Unless otherwise agreed in writing, full possession of the premises free of all tenants and occupants, except as herein provided, is to be delivered at the time of the delivery of the deed, said premises to be then (a) in the same condition as they now are, reasonable use and wear thereof excepted, and (b) not in violation of said building or zoning laws, and (c) in compliance with the provisions of any instrument referred to in Paragraph 3 hereof.

**9. EXTENSION TO PERFECT TITLE, TO MAKE PREMISES CONFORM, OR TO OBTAIN NECESSARY PERMITS.**

If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of delivery of the deed the premises do not conform with the provisions hereof, then the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, and the time for performance hereof shall be extended for a period of thirty (30) days. Reasonable efforts shall not require Seller to expend more than \$500.00 exclusive of monetary liens.

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

If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or to make the premises conform, as the case may be, all as herein agreed, or if at any time during

the period of this Agreement or any extension thereof, the holder of a mortgage on said premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this Agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this Agreement shall be void and without recourse to the parties hereto.

#### **11. BUYER'S ELECTION TO ACCEPT TITLE.**

The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said premises in their then condition and to pay therefore the purchase price without deduction, in which case the SELLER shall convey such title, except that in the event of such conveyance in accord with the provisions of this paragraph, if the said premises shall have been damaged by fire or casualty insured against, then the SELLER shall, unless the SELLER has previously restored the premises to their former condition, either:

- (a) Pay over or assign to the BUYER, on delivery of the deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonable expended by the SELLER for any partial restoration; or

#### **12. ACCEPTANCE OF DEED.**

The acceptance of a deed by the BUYER or his nominee, as the case may be, shall be deemed to be full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of the deed.

#### **13. USE OF MONEY TO CLEAR TITLE.**

To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed.

#### **14. ADJUSTMENTS.**

Taxes for the then current year shall be apportioned as of the date of performance of this Agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the BUYER at the time of delivery of the deed.

**15. ADJUSTMENT OF UNASSESSED TAXES.**

If the amount of said taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained.

**16. DEPOSIT.**

The deposit, from the accepted buyer, as submitted with the proposals shall be held in escrow by the Town of Barnstable subject to the terms of this Agreement and shall be duly accounted for at the time for performance of this Agreement.

**17. BROKERAGE COMMISSION.**

There will be no brokerage commission payable by the Seller with respect to this transaction.

**18. BUYER'S DEFAULT; DAMAGES.**

If the BUYER shall fail to fulfill the BUYER'S agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLERS as liquidated damages as the SELLERS' sole and exclusive remedy at law and in equity.

**19. WARRANTIES AND REPRESENTATIONS.**

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this Agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either SELLER or SELLERS' agents:  
NONE

**20. CONSTRUCTION OF AGREEMENT.**

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 cancelled, modified, or amended only by a written instrument executed by both the SELLER and the BUYER. The captions are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it.

#### **21. RECORDING COSTS CLAUSE.**

SELLER shall pay for the cost of recording any instruments required to clear title. BUYER shall pay for the recording of the deed, any mortgages, and any other instruments to be recorded.

#### **22. MASSACHUSETTS CONVEYANCERS' ASSOCIATION STANDARDS CLAUSE AND TITLE INSURANCE**

Any title or practice matter arising under or relating to this agreement which is then the subject of a title or practice standard of the Real Estate Bar Association ("REBA") at the time for delivery of the deed contemplated hereunder shall be governed by such title or practice standard, as the case may be, to the extent applicable.

#### **23. FORM 1099-S CLAUSE.**

The parties agree to prepare, execute, and deliver at closing completed I.R.S. Form 1099-S, and any other related documents as required by law or deemed reasonably necessary by counsel for either party.

#### **24. CORRECTIONS CLAUSE.**

If any error or omissions are found to have occurred in any calculations or figures used in the settlement statement signed by the parties (or would have been included if not for such error or omission) and notice thereof is given within one year of the date of delivery of the deed to any party to be charged, then such party agrees to make a payment to correct the error or omission. Each party agrees to execute any document reasonably required

by one another's counsel to confirm re-execution of documents to correct errors and omissions that correctly reflect the intent of this agreement.

**25. CONTEMPLATED PROJECT:**

N/A

**26. NOTICES:**

All notices required or permitted to be given hereunder shall be in writing and delivered in hand, or sent by Federal Express or other recognized overnight delivery service requiring a receipt by recipient, or sent by electronic or facsimile mail if available, or mailed postage prepaid by registered or certified mail, addressed to Town Attorney, 367 Main Street, Hyannis, MA 02601 on behalf of seller or to buyer \_\_\_\_\_ or to such other address as shall be designated by written notice given to the other party. Any such notice shall be deemed given when so delivered in hand, upon receipt by electronic or facsimile mail, or if by Federal Express or other recognized overnight delivery service for which tracking service is available and has been purchased.

**27. CONTINGENCIES:**

Buyer's performance under this agreement is further contingent upon each of the following:

- a. **Approval to Sell:** Affirmative permission from the proper Town authority authorizing the sale.
- b. **Inspection:** None needed.
- c. **Due Diligence and Feasibility:** None needed.
- d. **Hazardous Materials:** This agreement is contingent upon the Premises being free of all hazardous materials or oils ("hazardous materials," "oil" and "release" as defined in M.G.L. c. 21E) and in conformance with all federal, state and local environmental statutes and regulations. Sellers make no warranties or representations with respect to this provision. Buyer may, at its own expense and on or before the closing

contract for the completion of a Phase I and, at Buyer's option, Phase II evaluation of the Premises for the presence or absence of hazardous materials or oils. If either the evaluation or subsurface testing determines hazardous materials or oils to be present from or near the Premises and not satisfactory to the Buyer in its absolute discretion, Buyer may cancel this agreement. Sellers agree to allow Buyer or their representatives at its and their sole cost, risk and expense, access to the Premises and to conduct appropriate testing for hazardous materials provided that Buyer promptly restores the Premises to their former condition at Buyer's expense.

- e. **Permitting:** None needed.
- f. **Failure of Contingency:** In the event that Buyer elects to cancel this agreement pursuant to the contingencies contained in paragraphs (a) and (d) above, the Buyer shall give notice to the Sellers in writing by the date indicated.
- g. **Cancellation:** Providing such notice is timely given as indicated above, then the Buyer shall have the option of canceling this agreement in which event the Buyer's obligations under this agreement shall terminate, all obligations of the parties hereto shall cease, and all deposits made by the Buyer shall be returned to the Buyer without deduction.

**TIME IS THE ESSENCE OF ALL PROVISIONS OF THIS AGREEMENT**

**WITNESS OUR HANDS AND SEALS THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2018.**

**INHABITANTS OF TOWN OF BARNSTABLE**

SELLER

By:

\_\_\_\_\_  
Mark Ells, Town Manager

BUYER(S),

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