

PURCHASE AND SALE AGREEMENT

1. PARTIES. Catherine M. Liberty, Trustee of the David G. Merrill Revocable Trust, whose mailing address is 100 Woodville Rd., Falmouth, ME 04105 (“Seller”), agrees to sell, and Town of Falmouth, a Maine municipality whose mailing address is 271 Falmouth Rd., Falmouth, ME 04105 (“Buyer”) agrees to buy, upon the terms and conditions hereinafter set forth, a 45-acre portion of the Seller’s land located at and near Woodville Road and Field Road (Tax Map R03, Lot 066), with all buildings and improvements thereon, and all rights and easements appurtenant thereto, being generally as shown on Exhibit A attached hereto, and more particularly described in a Deed from David G. Merrill to Seller dated April 1, 2014, and recorded in the Cumberland County Registry of Deeds in Book 31419, Page 262 (the “Premises”). The remaining portion of Seller’s lot or parcel of land is hereinafter referred to as the “Seller’s Retained Land”.

This Agreement shall be effective on the date it has been signed by the last of the Buyer or Seller and transmitted to the other party (the “Effective Date of this Agreement”).

2. DEED. The Premises are to be conveyed by a good and sufficient Trustee’s Deed conveying good and clear record and marketable title to the Premises, free from all liens and encumbrances, the Premises to be in compliance at transfer with all applicable laws, ordinances and regulations relating thereto. The Premises shall be conveyed utilizing a metes and bounds description based upon a current survey of the Premises obtained by Seller.

3. PURCHASE PRICE. The purchase price for the Premises shall be Eight Hundred Ninety Five Thousand Dollars (\$895,000) (the “Purchase Price”), less any proportional adjustment if the Premises is less than 45-acres, as described herein, payable as follows:

(a) Three Thousand Dollars (\$3,000) which has been paid as an earnest money deposit (the “Deposit”) to Greater Portland Realty, which Deposit is to be held in a non-interest bearing account and disbursed in accordance with the terms and conditions of this Agreement; and

(b) The remainder of the Purchase Price, subject to the credits and prorations set forth herein, shall be paid to the Seller by wire transfer or check at the Closing.

4. TIME FOR PERFORMANCE/DELIVERY OF DEED. The deed and other transfer documents are to be delivered and the Purchase Price paid on the thirtieth (30th) day following the Seller’s receipt of Subdivision Approval, as defined in Section 5 of this Agreement, at 10:00 a.m. at the offices of Buyer’s attorney, Drummond Woodsum, 84 Marginal Way, Suite 600, Portland, Maine 04101 (the “Closing”), unless otherwise agreed to by Seller and Buyer.

5. CONTINGENCIES.

a. Appraisal. Within ninety (90) days of the Effective Date of this Agreement, Buyer and Seller shall have obtained, from a mutually agreed upon licensed Maine

appraiser, an appraisal of the Premises to be conveyed to the Buyer (the "Appraisal"), the cost of which shall be paid ½ by Buyer and ½ by Seller.

- i. If the Appraisal reflects a market value for the Premises that is below the Purchase Price, the Buyer and Seller shall be allowed thirty (30) days to review the Appraisal and negotiate, in their sole discretion, a new Purchase Price. If the parties do not agree on a new Purchase Price within such time period, the Buyer shall then have the right to terminate this Agreement by written notice thereof to the Seller within three (3) days of the expiration of said 30-day period; and
- ii. If the Appraisal reflects a market value for the Premises that is at or above \$1,000,000, the Buyer and Seller shall be allowed thirty (30) days to review the Appraisal and negotiate, in their sole discretion, a new Purchase Price. If the parties do not agree upon a new Purchase Price within such time period, the Seller shall then have the right to terminate this Agreement by written notice thereof to the Buyer within three (3) days of the expiration of said 30-day period.

In the event of termination by either party in accordance with this subsection (a), the Deposit shall be promptly returned to Buyer, and the parties shall be relieved of all further obligations under this Agreement except for such obligations as by their terms survive termination of this Agreement.

- b. Survey. Seller shall have obtained, at its cost and within ninety (90) days from the date of the Appraisal, a current survey showing the precise boundaries of the Premises and the Seller's Retained Land (the "Survey") and shall provide a copy of the Survey to the Buyer. If the results of the Survey are not satisfactory to Buyer in its sole discretion, Buyer may terminate this Agreement by giving Seller written notice thereof within seven (7) days from Buyer's receipt of the Survey, in which case the Deposit shall be promptly returned to Buyer, and the parties shall be relieved of all further obligations under this Agreement except for such obligations as by their terms survive termination of this Agreement.
- c. Subdivision Approval. The Seller shall have obtained final subdivision approval from the Falmouth Planning Board, beyond all appeal periods, to establish a 6-lot residential subdivision on the Seller's Retained Land ("Subdivision Approval"). In the event that the Seller, despite reasonable best efforts, is unable to obtain Subdivision Approval within one (1) year of the Effective Date of this Agreement, unless the parties agree otherwise, either party may terminate this Agreement by written notice thereof to the other party and upon such termination the Deposit shall be promptly returned to Buyer and the parties shall be relieved of all further obligations under this Agreement except for such obligations as by their terms survive termination of this Agreement.

- d. Acreage. In the event that the Seller and Buyer agree to reduce the size of the Premises to less than 45 acres in order to accommodate Seller's subdivision on Seller's Retained Land, the parties shall execute an amendment to this Agreement evidencing such change and a corresponding proportionate reduction in the Purchase Price to preserve the same cost per square foot.
- e. Additional Buyer Contingencies. In addition to any other conditions to closing as may be set forth herein, the obligations of Buyer under this Agreement are subject to the following contingencies, any of which, if not met within the time periods specified, shall entitle Buyer to terminate this Agreement by giving Seller written notice of Buyer's intention to do so within the time period specified. Upon such termination, the Deposit shall be promptly returned to Buyer, and the parties shall be relieved of all further obligations under this Agreement except for such obligations as by their terms survive termination of this Agreement. Buyer and its agents shall have the right to enter, inspect and survey the Premises, at their own risk, for such purposes and to otherwise undertake appropriate invasive activities on the Premises so long as any damage to the Premises as a result thereof is repaired in the event that Buyer should not proceed with the acquisition of the Premises.
 - i. Existing Documents. Seller shall provide Buyer with copies of any surveys, title information, or environmental reports of the Premises within Seller's or Seller's agents' possession within seven (7) days of the Effective Date of this Agreement.
 - ii. Title. Buyer shall have thirty (30) days from the date of Buyer's receipt of the Appraisal to conduct its title examination. Within such time frame, Buyer shall provide Seller with written notice of any alleged title defects, easements, conditions, encumbrances or restrictions that are unacceptable to Buyer. Any condition of title existing prior to the date of this Agreement shall be deemed waived if not objected to in writing prior to the end of said 30-day period.
 - iii. Environmental Report. Buyer shall have sixty (60) days from the receipt of the Survey to obtain, at its option and at its sole cost and expense, a Phase I and/or Phase II Environmental Assessment of the Premises disclosing a set of facts acceptable to the Buyer.

6. CLOSING DOCUMENTS. At the Closing, and in addition to any other documents referred to in this Agreement to be delivered to Buyer at the Closing, Seller shall execute, acknowledge as necessary and deliver the following documents and such other documents as Buyer's attorneys may reasonably require to complete the transaction contemplated herein, including without limitation (a) the deed, (b) transfer tax declaration, (c) title affidavits, (d) Non-

foreign person affidavit pursuant to § 1445 of the Internal Revenue Code, (e) Form 1099-S, (f) a certificate of Maine residency or a certificate of reduction/waiver of withholding, in compliance with 36 M.R.S. § 5250-A, (g) oil storage tank certification, in accordance with 38 MRS § 563 evidencing that, to the best of Seller's knowledge, the Premises contains no underground oil storage facility or aboveground oil storage facility with underground piping; and (h) Trustee's Certificate.

7. CONDITION OF PREMISES; POSSESSION. Seller shall not, without the prior written consent of the Buyer, after the Effective Date of this Agreement (a) make or permit any leases, contracts, mortgages or other liens or encumbrances affecting the Premises which will not be removed, released or terminated at the Closing, (b) cause or permit any dumping or depositing of any materials on the Premises, (c) cut or remove any topsoil or timber from the Premises, or (d) alter the use of the Premises, or fail to maintain it consistent with the manner in which the Seller has operated and maintained the Premises prior to this Agreement. Full possession of the Premises free of all tenants and occupants, is to be delivered at the Closing, the Premises to be then in the same condition as they now are, reasonable wear and tear excepted. Buyer and Buyer's agents may inspect the Premises up to forty-eight (48) hours prior to the Closing in order to determine whether the condition thereof complies with the terms and conditions of this Agreement.

8. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM. If Seller shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or, if at the time of the Closing the Premises do not conform with the terms and conditions hereof, then Seller shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Premises conform to the terms and conditions hereof, as the case may be, in which event the time for performance hereof shall be extended for a period of thirty (30) days, or such longer period as shall be agreed to by Buyer, during which time Seller shall continue such efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Premises conform to the terms and conditions hereof.

9. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM. If at the expiration of such extended time Seller shall have failed to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, then, at Buyer's option, any payments made under this Agreement shall be promptly refunded to Buyer and all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse of the parties hereto, except for such obligations as by their terms survive termination of this Agreement.

10. BUYER'S ELECTION TO ACCEPT TITLE AND CONDITION. In addition to such other remedies available to Buyer under this Agreement, Buyer shall have the election, at either the original or such extended time for performance, to accept such title to the Premises in its then condition as Seller can deliver and to pay therefor the Purchase Price without deduction, in which case, Seller shall convey such title or deliver the Premises in such condition, except that in the

event of such conveyance in accordance with the provisions of this clause the Premises shall have been damaged by fire or casualty insured against, then Seller shall, unless Seller has previously restored the Premises to its former condition, and at Buyer's express election, pay over or assign to Buyer, on delivery of the deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by Seller for any partial restoration. Seller represents and warrants that Seller will maintain replacement value insurance coverage on the Premises through the Closing.

11. USE OF PURCHASE MONEY TO CLEAR TITLE. To enable Seller to make conveyance as herein provided, Seller may, at the time of delivery of the deed and other transfer documents, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed and other transfer documents.

12. RISK OF LOSS. Until delivery of possession of the Premises from Seller to Buyer, risk or loss or damage to the Premises by fire or otherwise shall be on Seller.

13. ADJUSTMENTS. The following shall be prorated and/or adjusted between Buyer and Seller on a per diem basis as of the date of the Closing: property taxes (based on taxes per acre, as the Premises is only a portion of the current tax lot) and other municipal assessments, water/sewer and other utility charges, if any, and other items of expense customarily prorated on the transfer of properties similar to the Premises. The date of the closing shall be a Seller day for purposes of all prorations. Transfer tax shall be paid half by the Buyer and half by the Seller in accordance with Maine law.

14. ADJUSTMENT OF UNASSESSED AND ABATED TAXES. If the amount of said real estate taxes and any other municipal assessments referred to in the preceding Paragraph is not known at the time of the Closing, they shall be apportioned on the basis of the real estate taxes assessed for the immediately preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained.

15. BROKERAGE. Seller and Buyer each represent and warrant to the other that no brokers, agents or consultants have been employed with respect to this transaction by either of them, except: David M. Banks of Remax by the Bay (listing broker) and Willie Audet, Jr. of Greater Portland Realty (Buyer's broker). Seller has agreed to pay a 5% commission on the sale of the Premises, to be split 50/50 with the Buyer's broker. Seller agrees to indemnify and hold the Buyer harmless from any claim by the Seller's broker or any other broker or agent claiming compensation in respect of this transaction, alleging an agreement with Seller different from the above. This agreement to indemnify and hold harmless shall survive the Closing or termination of this Agreement.

16. DEFAULT/DAMAGES. Should Seller fail to fulfill Seller's obligations hereunder, Buyer may elect to terminate this Agreement and receive a refund of the Deposit or to pursue all

available remedies, including specific performance and collection of Buyer's reasonable attorney's fees and costs. Should Buyer fail to fulfill Buyer's obligations hereunder, Seller shall retain the Deposit as liquidated damages as Seller's sole and exclusive remedy at law or in equity without further recourse to Buyer and Buyer shall be relieved of all obligations hereunder except for such obligations as by their terms survive termination of this Agreement.

17. SELLER'S WARRANTIES AND REPRESENTATIONS. Seller warrants and represents as of the date of Seller's execution of this Agreement and as of each date through and including the Closing that:

- a. The Seller is not a foreign person or foreign corporation for purposes of the withholding required under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), and accordingly, no such withholding will be required;
- b. No consent, approval, order or authorization of any court or other governmental entity is required to be obtained by Seller in connection with the execution and delivery of this Agreement or the performance hereof by Seller;
- c. There are no litigation, liens, judgments, violations, or proceedings pending or, to the best of Seller's knowledge, threatened against or relating to the Premises nor does Seller know or have reasonable grounds to know of any basis for any such action, or of any governmental investigation relating to the Premises;
- d. There is no pending or, to the best of Seller's knowledge, threatened action or proceeding (including, but not limited to, any condemnation or eminent domain action or proceeding) before any court, governmental agency or arbitrator relating to or arising out of the ownership of the Premises or any portion thereof, or which may adversely affect Seller's ability to perform this Agreement, or which may affect the Premises or any portion thereof;
- e. No work has been performed or is in progress at, and no materials have been furnished to, the Premises or any portion thereof which may give rise to mechanic's, materialmen's or other liens against the Premises or any portion thereof;
- f. To the best of Seller's knowledge, no hazardous or toxic wastes, substances, matters or materials, including but not limited to any material defined as hazardous or toxic from time to time by applicable state, local and federal law, are stored or otherwise located on the Premises or any adjacent property owned by Seller;
- g. To the best of Seller's knowledge the Premises is not subject to any encroachments, boundary line disputes, unrecorded rights or easements held by third parties, buried storage tanks or buried waste.

- h. Seller is the sole Trustee under said above-referenced Trust; said Trust is still in full force and effect; said Trust has not been amended; Seller has the power under said Trust to execute this Agreement and to perform all obligations of Seller hereunder; in executing this Agreement, Seller has, in all respects, acted pursuant to and in accordance with the authority vested in and granted to Seller under said Trust and all terms and conditions of said Trust; and Seller shall deliver a certification to Buyer at closing affirming this warranty and representation;
- i. There has not been a division of the Premises, or any parcel of which the Premises was formerly a part, within the past five (5) years excepting the subdivision contemplated herein.

Seller shall immediately disclose any changes in any of the Seller's warranties and representations set forth in this Agreement, and in the event of any material adverse change, Buyer may, at its election, terminate this Agreement in which case the Deposit shall be promptly returned to Buyer and the parties shall be relieved of all further obligations under this Agreement except for such obligations as by their terms are to survive termination of the Agreement.

Buyer's performance under this Agreement is conditioned upon the truth and accuracy of Seller's warranties and representations expressed herein as of the date of Seller's execution of this Agreement and as of the Closing. All warranties and representations expressed herein shall survive the Closing and any termination of this Agreement. Seller agrees to indemnify, defend and hold harmless Buyer from and against any liability, cost, damage, loss, claim, expense or cause of action (including, but not limited to, attorneys' fees and costs) incurred by or threatened against Buyer as a result of any breach by Seller of any of Seller's warranties or representations contained in this Agreement. The foregoing indemnification obligations shall survive the Closing.

18. TREE GROWTH PENALTY. Seller shall cause the Premises and the Seller's Retained Land to be removed from the Tree Growth tax assessment program at or prior to the Closing. Any penalty assessed by the tax assessor in connection with such removal shall either be waived or shall be the Buyer's sole cost and responsibility.

19. ASSIGNMENT. The Buyer may assign this Agreement to such other entity that may be formed by Buyer for the purpose of acquiring title to the Premises without the consent of Seller provided that such assignee assumes all obligations of Buyer hereunder.

20. NOTICES. Except where expressly stated otherwise, any notice relating in any way to this Agreement shall be in writing and shall be delivered to the other party by (a) registered or certified mail, return receipt requested, (b) overnight by a nationally recognized courier, or (c) hand delivery obtaining a receipt therefor addressed to the parties as follows:

To Seller: Catherine M. Liberty, Trustee of the David G. Merrill
Revocable Trust
100 Woodville Rd.
Falmouth, ME 04105

With copy to: Thomas Van Meer, Esq.
Van Meer & Belanger
215 Commercial St., 4th Floor
Portland, ME 04101

To Buyer: Town of Falmouth
c/o Nathan Poore, Town Manager
271 Falmouth Rd.
Falmouth, Maine 04105

With copy to: Lisa Magnacca, Esq.
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, ME 04101

and such notice shall be deemed delivered the business day when delivered in the case of notice by registered or certified mail, overnight courier, or hand delivery. Either party may, by such manner of notice, substitute persons or addresses for notice other than those listed above.

21. COUNTERPARTS. This Agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but which together shall constitute one and the same instrument. Signatures delivered by fax or email shall be as effective as an original.

22. DAYS. Except as expressly set forth herein, the term “days” used herein shall mean calendar days, provided however, that if the date for performance of any action under this Agreement shall fall on a weekend or a holiday on which banks in the state of Maine are closed, such deadline shall be the next business day thereafter.

23. MISCELLANEOUS. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. Headings are for convenience of reference only and have no independent legal significance. This Agreement may not be modified, waived or amended except in a writing signed by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such a breach, and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise be prejudicial thereto. Any and all prior and contemporaneous discussions, undertakings, agreements and understandings of the parties are

merged in this Agreement, and the exhibits referenced herein, which alone fully and completely express their entire agreement. It is expressly understood and agreed that time is of the essence with respect to this Agreement. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which this Agreement is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. This Agreement shall be governed by and construed and enforced in accordance with the laws in effect in the State of Maine.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the dates hereinafter set forth.

BUYER:
TOWN OF FALMOUTH

By: Nathan Poore
Its: Town Manager

Date: _____, 2019

SELLER:

Catherine M. Liberty, Trustee
of the David G. Merrill Revocable Trust

Date: _____, 2019

EXHIBIT A

**Survey showing approximate boundaries
of the Premises and the Seller's Retained Land**