

Purchase and Sale Agreement
One Garfield Avenue, Florence, MA

Section 1 – Information and Definitions

1.2.1 DATE of this Agreement: January 15, 2014

1.2 **PREMISES: A parcel of land in Florence, Massachusetts, at One Garfield Avenue containing 5,160 square feet, more or less, and being comprised of the land described as “Lot 1A, 5,160± square feet”, as shown on a survey recorded at the Hampshire Registry of Deeds at Plan Book 229, page 23.**

The property to the north and west of One Garfield Avenue is part of the protected Florence Conservation Area (See deeds recorded in the Hampshire Registry of Deeds at Book 11345, Page 226 and Book 10067, Page 301). The conservation area includes a capped landfill in a former quarry that is maintained by the City.

1.3 SELLER: City of Northampton, c/o Office of Planning and Sustainability
Address: City Hall, 210 Main Street, Northampton, MA 01060

Seller's Attorney: Robert J. Spencer, Esq., Seewald, Jankowski & Spencer, P.C
Address: 5 East Pleasant Street, Amherst, MA 01002
Phone: (413) 549-0041, Fax: (413) 549-3818
Email: rjs@sjsamherst.com

1.4 BUYER: Thomas A. Michel
Address: 5 The Jog, Haydenville, MA 01039

Buyer's Attorney: Timothy A. Reilly, Timothy A. Reilly, PC
Address: 82 ½ Maple Street, Florence, MA 01062
Phone: 413-584-9900 Fax: 413-586-9440
Email: treilly@reillylaw.net

1.5 CLOSING DATE: March 14, 2014 or anytime sooner date mutually agreed upon

1.6 PLACE: Hampshire County Registry of Deeds, unless some other place should be mutually agreed upon by the parties.

1.7 PURCHASE PRICE: The total purchase price for the Premises is eight-one thousand, two hundred and thirty-four and 56/100 Dollars (\$81,234.56), of which four thousand and sixty-one and 73/100 Dollars (\$4,061.73) have been paid as a deposit, and the balance of seventy-seven thousand, one hundred and seventy-two and 83/100 Dollars (\$77,172.83) shall be paid at the time of delivery of the deed by certified, treasurer's or bank check, or by wire transfer, at Buyer's election.

1.8 TITLE: Quitclaim Deed.

The lot is being sold with a deed rider that requires that the buyer hire one of the licensed architects who entered the City's 2013 "small lot | BIG IDEAS" design competition when they design a house for the property. There is no requirement that the design entered in the competition be used. This condition shall survive the closing. The 19 teams in competition, which include licensed architects, are:

- (a) Pari Riahi Architects-design competition First Place
- (b) Paul Lukez Architecture Inc. (Alex Hogrefe, Matt Uminski and Paul Lukez)- design competition Second Place
- (c) Dorrie Brooks, Julie Meyer and Kristian Whitsett- design competition People's Choice
- (d) Tempietto Homes and Robert Karn- design competition honorable mention
- (e) Brian Schumacher, Kathleen Lugosch and Patricia O'Flaherty- design competition shout out
- (f) NOVA Design- design competition shout out for interiors
- (g) Janos Keseru Architect- design competition shout out for context
- (h) Miller Pollin Architecture
- (i) Stephen Schreiber and Ryan Rendano with Jane Thurber
- (j) HAI Architecture
- (k) Crookedworks Architecture and SITELAB Architecture + Design
- (l) Christian C. Carey Architect
- (m) Thomas Douglas Architects
- (n) Harriman Architects
- (o) Michael Burgess, Architect
- (p) Richard Bosch Architect
- (q) ACME Building Arts and Gordon Greenfield
- (r) Metcalfe Associates Architecture
- (s) James Middlebrook Architect

1.9 BROKER: City: Maple and Main Realty
Buyer: None

1.10 WARRANTIES

Except as set forth otherwise in this Agreement, the following representations and warranties are made by Seller as of the date of this Agreement and also as of the time of the delivery of the deed:

(NONE)

SECTION 2 -- GENERAL PROVISIONS

2.1 Covenant. Seller agrees to sell and Buyer agrees to buy the Premises upon the terms hereinafter set forth.

2.2 Buildings, Structures, Improvements, Fixtures. There are no improvements on the property.

Buyer acknowledges that the Premises is being sold in “as is” condition.

2.3 Title Deed. Said Premises are to be conveyed by a good and sufficient quitclaim deed running to Buyer, or to a nominee designated by Buyer by written notice to Seller at least seven calendar days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except

- (a) Provisions of existing building and zoning laws;
- (b) Existing rights and obligations in party walls which are not the subject of written agreement;
- (c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
- (d) Any liens for municipal betterments assessed after the date of this Agreement; and
- (e) Easements, restrictions and reservations of record, if any, provided the same do not interfere with use of and access to the Premises.

2.4 Deed; Plans. Seller shall be responsible for drafting the deed. The survey to be referred to in the plan is already on record at the Registry of Deeds.

2.5 Registered Title. The title to this property is not Registered.

2.6 Possession and Control of Premises. Full possession of said 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) in compliance with provisions of any instrument referred to in clause 2.3 hereof. Buyer shall be entitled personally to inspect said Premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.

2.7 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 delivery of the deed the Premises do not conform with the provisions hereof, then 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 thereupon the time for performance hereof shall be extended for a period of thirty calendar days.

2.8 Failure to Perfect Title or Make Premises Conform. If at the expiration of the extended time Seller shall have failed so to remove any defects in title, deliver possession, or 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 all obligations of the parties shall cease and this Agreement shall be void without recourse to the parties hereto, provided however that all deposits made by Buyer under this Agreement shall be refunded to Buyer, which obligation shall survive the termination of this Agreement.

2.9 Buyer's Election to Accept Title. Buyer shall have the election, at either the original or any extended time for performance, to accept such title as Seller can deliver to the said Premises

in their then condition and to pay therefore the purchase price, without deduction, in which case Seller shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the said Premises shall have been damaged by fire or casualty insured against, then Seller shall, unless Seller has previously restored the Premises to their former condition, either

- (a) 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, or
- (b) if a holder of a mortgage on said Premises shall not permit the insurance proceeds or a part thereof to be used to restore the said Premises to their former condition or to be so paid over or assigned, give to Buyer a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage less any amount reasonably expended by Seller for any partial restoration.

2.10 Acceptance of Deed. The acceptance of a deed by Buyer, or its assignee or nominee as the case may be, shall be deemed to be a 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 said deed.

2.11 Use of Money to Clear Title. To enable Seller to make conveyance as herein provided, Seller may, at the time of delivery of this deed, 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 deed or, for institutional mortgages, are recorded in accordance with customary conveyancing practices.

2.12 Adjustments. Taxes for the then current fiscal year shall be adjusted in accordance with G.L. c. 59, § 72A. 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 fiscal year.

2.13 Brokers. The City has engaged Main and Maple as its broker for a brokerage fee of 4% of the sales price of One Garfield Avenue. The Broker is authorized to offer compensation to the cooperating Seller's Agents from this commission, at a 2% commission. Buyer and Seller agree to defend, indemnify the other against and hold the other harmless, to the extent permitted by law, from any claim, loss, damage, costs or liabilities for any other brokerage commission or fee which may be asserted against the other by any broker in connection with this transaction over and above the Agreement the City has with its Broker. The provisions of this paragraph shall survive the delivery of the deed.

2.14 Inspection Rights. The parties agree that Buyer shall have the right to obtain, at Buyer's expense, an inspection of the premises by a consultant of Buyer's choosing within 45 days of the award of the RFP to the Buyer (24 hours advance notice to Seller), and if Buyer is not satisfied with the results of such inspection, upon written notice to Seller within 45 days from award of RFP, Buyer may terminate this offer and any agreement, whereupon all money shall be refunded. In consideration of right of inspection and rescission, Seller is hereby released from liability

relating to defects in the premises actually disclosed or about which Seller had no actual knowledge.

2.15 Water/Sewer. Seller represents that public water and sewer serve the Premises and has obtained Water and Sewer Availability permits from its Department of Public Works.

2.16 Permitting. One Garfield Avenue and the abutting lots formerly owned by the City were permitted under a Comprehensive Permit issued by the Northampton Zoning Board of Appeals and recorded in the Hampshire Registry of Deeds at Book 7858, page 50, as amended in Book 9666, Page 330, and other amendments and permits as may have been issued on the site. There is a small isolated wetland on the adjacent conservation land, but the existing permit authorizes the home to be built in the cleared area of the property.

2.17 Ledge. The site is shallow to ledge. Seller makes no representation as to whether a basement could be developed without either building up the site or removing solid ledge.

2.18 Hazardous Materials, Lead, Asbestos, and Oil. The Florence Conservation Area north of One Garfield Avenue contains a former rock quarry which was filled with debris, trash, and other materials which was reported to the Department of Environmental Protection (DEP). The City hired Tighe & Bond (engineers and licensed site professionals) to perform an Environmental Site Assessment of the site, draft an Activities and Use Limitations for this old quarry, oversee the capping of the quarry landfill, and file a Release Action Outcome DEP. These documents are available for public inspection from the City and from DEP. In return for allowing the Buyer's due diligence and this disclosure, the Buyer, hereby releases, holds harmless, and waives all claims against the City related to the quarry site.

Seller represents and warrants to Buyer that, to the best of Seller's knowledge, information and belief, (i) there has been no release of any hazardous materials or oil on, from or near the Premises, except as noted above, (as used in this Agreement, the terms "release," "hazardous materials" and "oil" shall have the meaning given to them in M.G.L.c.21E), (ii) there are no underground storage tanks or other subsurface facilities holding petroleum or oil products currently in use or previously abandoned on the Premises and (iii) chlordane has not been used as a pesticide on the Premises. These representations and warranties shall survive the closing.

~~2.19 Mortgage Contingency. Buyer's obligation to purchase the Premises is contingent upon Buyer obtaining a firm commitment from a bank for a first mortgage loan in the amount of _____ for 30 years at prevailing interest rates. Buyer shall use reasonable efforts to obtain such firm commitment, and shall notify the Seller's attorney, Seewald, Jankowski & Spencer, P.C., 5 East Pleasant Street, Amherst, MA, in writing, on or before _____ [30 days from award of RFP], at 5:00 p.m. if, after such efforts, Buyer is unable to obtain such firm commitment, without which notice this contingency shall be deemed waived by Buyer.~~

2.20 Title to Premises. Notwithstanding anything herein contained, the Premises shall not be considered to be in compliance with the provisions of this Agreement with respect to title unless:

- (a) No building, structure, or right of way, easement or improvement, including any driveway(s), garages, septic systems and wells or property of any kind encroaches upon or under the Premises from other premises;
- (b) Title to the Premises is insurable, for the benefit of Buyer, by a title insurance company acceptable to Buyer, in a fee owner's policy of title insurance at normal premium rates, in the American Land Title Association form currently in use;
- (c) All structures and improvements on the Premises, including any driveway(s) garage(s), septic systems and wells and all means of access to the Premises shall not encroach upon or under any property not within the lot lines of the Premises;
- (d) The Premises abut a public way, or have the benefit of an access and utility easement over a private way leading to a public way, duly laid out or accepted as such by the municipality in which the Premises are located.

2.21 Affidavits, etc. Simultaneously with the delivery of the deed, Seller shall execute and deliver: (a) affidavits and indemnities under oath with respect to parties in possession and mechanic's liens to induce Buyer's title insurance company to issue lender's and owner's policies of title insurance without exception for those matters, and Seller shall indemnify and hold harmless the title insurance company for any losses, costs, or damages sustained as a result of issuing a policy without exceptions covered by such representations; (b) an affidavit, satisfying the requirements of Section 1445 of the Internal Revenue Code and regulations issued thereunder, which states, under penalty of perjury, Seller's United States taxpayer identification number, that Seller is not a foreign person, and Seller's address (the "1445 Affidavit"); (c) Internal Revenue Service Form W-8 or Form W-9, as applicable, with Seller's tax identification number, and an affidavit furnishing the information required for the filing of Form 1099S with the Internal Revenue Services and stating Seller is not subject to back-up withholding; and (d) such additional and further instruments and documents as may be consistent with this Agreement and customarily and reasonably required by Buyer and/or the Buyer's title insurance company to complete the transactions described in this Agreement.

2.22 Title Standards. Any matter or practice arising under or relating to this Agreement which is the subject of a title standard or a practice standard of the Real Estate Bar Association at the time for delivery of the deed shall be covered by said title standard or practice standard to the extent applicable.

2.23 Deposit. All deposits made under this Agreement shall be held in a non-interest-bearing escrow account by Seewald, Jankowski & Spencer, P.C., as escrow agent, subject to the terms of this Agreement, and shall be duly accounted for at the time for performance of this Agreement. The deposit may not be released from escrow without the assent of both Buyer and Seller. The recording of the deed to the Premises shall constitute such assent. In the event of any disagreement between the parties, the escrow agent shall retain the deposit pending instructions mutually given by Buyer and Seller or an order of court of competent jurisdiction. The parties mutually agree that Seewald, Jankowski & Spencer, P.C. may act as escrow agent notwithstanding its representation

of Seller, even in the event of a dispute between the parties regarding this Agreement or the deposits held hereunder.

2.24 Buyer's Breach. If Buyer shall unjustifiably fail to fulfill Buyer's part of this Agreement, all deposits made hereunder, if any, shall be forfeited and become the property of Seller as liquidated damages, which shall constitute Seller's sole and exclusive remedy at law or in equity for Buyer's default under this Agreement.

2.25 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and signed by the party or the party's attorney or agent and shall be deemed to have been given: (a) when delivered by hand, or (b) when sent by Federal Express or other similar courier service, or (c) when mailed by certified mail, return receipt requested, or (d) upon electronically confirmed receipt of facsimile delivery (provided that such facsimile delivery is promptly followed by one of the other permitted forms of notice contained herein), to the party with a copy to the party's attorney at the addresses set forth in Section 1.

2.26 Closing. The deed and other documents required by this Agreement are to be delivered and the Purchase Price paid at the Date and Time of Closing and at the Place of Closing. All documents and funds are to be delivered in escrow subject to prompt rundown of title and recording, which term shall include registration in the case of registered land. Seller's proceeds may be in the form of an IOLTA check, and the check shall be held in escrow by Seller's attorney who shall release the check to Seller only following the recording of the deed.

2.27 Condition of Premises at Closing. Seller agrees to deliver the Premises at the time of delivery of Seller's deed in a condition substantially similar to its condition at the time of the signing of this Agreement.

2.28 Casualty. Notwithstanding anything herein to the contrary, in the event of damage to or destruction of the Premises by fire, vandalism or other casualty, then at Buyer's sole option, this Agreement may be terminated, whereupon all deposits paid by Buyer hereunder shall be promptly returned to Buyer.

2.29 Liability of Trustee, Shareholder, Fiduciary, etc. If Seller or Buyer executes this Agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither Seller or Buyer so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

2.30 Extensions. Buyer and Seller hereby authorize their respective attorneys (as the case may be) to execute on their behalf any extensions to the time for performance and any change of location and/or time for delivery of the deed. Buyer and Seller shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge before the execution or other consent to such extensions, that either party has disclaimed the authority granted herein to bind them. For purposes of this Agreement, facsimile signatures shall be construed as original.

2.31 Construction of Agreement. This instrument, 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 Seller and Buyer. If two or more persons are named herein as Buyer their obligations hereunder shall be joint and several.

2.32 Incorporation; Conflict. All terms of the Request for Proposals and the Buyer's Proposal are hereby made a part of this Agreement and are incorporated herein by reference. In the event of conflicting or inconsistent provisions, the terms of the Request for Proposals and the Buyer's Proposal shall control.

2.33 Captions. The captions and headings throughout this Agreement are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this Agreement, nor in any way affect this Agreement, and shall have no legal effect.

In Witness whereof, the parties hereto sign this Agreement under seal as of this 15th day of January, 2014.

Buyer, Thomas A. Michel

Mayor David Narkiewicz

Wayne Feiden, Director of Planning and Sustainability

Joseph M. Cook, Chief Procurement Officer

Joyce Karpinski, Auditor