



LANCASTER BOARD OF SELECTMEN
Joint Special Meeting with Conservation Commission
Minutes of Tuesday, October 10, 2017

I. CALL TO ORDER

Chairman Stanley B. Starr, Jr. called the Special Meeting for a Joint Meeting with the Board of Selectmen and Conservation Commission to Order at 6:00 P.M. in the Lancaster Community Center, 39 Harvard Road, Lancaster, Massachusetts. Present were Selectmen Walter F. Sendrowski, Mark A. Grasso, Jr., Executive Assistant Kathleen Rocco. Town Administrator Orlando Pacheco was not present.

Conservation Commission members present were Ken Rapoza, Tom Christopher, Peter Farmer and Conservation Agent David Koonce.

Guests: Attorney Thomas Bovenzi, representing North Lancaster LLC and William DePeitri of the Capital Group.

II. ADMINISTRATION, BUDGET, AND POLICY

Discussion and vote to sign Settlement Agreement for Land Court case 10 TL 140513 –Town of Lancaster vs. Owner Unknown, et al

Chairman Starr stated that he would like to go through the draft *Land Confirmation, Acquisition and Use Agreement* page by page.

Chairman Starr noted that Attorney Bovenzi, (representing his client North Lancaster, LLC) and Mr. William DePeitri, (representing the Capital Group) were present at this meeting, and to answer any questions the Board of Selectmen and Conservation Commission may have.

It was further noted by Conservation Agent David Koonce, that the latest draft Agreement is the third revision received late this afternoon, and has Town Council edits. (*see attached*)

Land Confirmation, Acquisition and Use Agreement

Page 1 – It was agreed by all present that all parcels were properly identified.

Page 2 Chairman Starr has questions and the meaning regarding the last paragraph under:

Section 1 – Information and Definitions

1.1 PREMISES:

It is further acknowledged by the parties that notwithstanding the above actions, North Lancaster maintains that it is the owner of Parcel 13-4 by virtue of defects in the low-value tax taking of said parcel and subsequent deed of the property to North Lancaster or, alternatively, by adverse possession.

Attorney Bovenzi explained that his client has a claim to that parcel, but acknowledges that the Town had a low-value tax taking back in the 1930's and Notice given was not proper. He noted that if there was a defect, his client could take the parcel by adverse possession.

David Koonce maintained that Mr. Bovenzi could do adverse possession however, he is not filing a claim at the moment.

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1.6 SUPPLEMENT CLOSING:

DATE: Thirty (30) days following a determination by the Assessors that North Lancaster is the owner of the Private Property (but not before the Initial Closing), or the recording of a deed or other instrument establishing or asserting title to the Private Property in North Lancaster, whichever is earlier

Attorney Bovenzi explained the his client had proposed the thirty (30) days following the determination, however, the Town of Lancaster Assessors need to recognize Parcels B4 and B2 in any entity except the Commonwealth, will be acceptable to his client. *(see attached Maps submitted by Attorney Bovenzi)*

Attorney Bovenzi noted that the Board of Assessors have acknowledged a portion of land, known as 14-4F (Benton Parcel), but the conveyance of B-4 and B-2 have not been recognized by the Assessors as owned by his client, North Lancaster LLC.

Discussion on the trail easement not being finalized for eight years.

It was noted by Attorney Bovenzi, that his client would not preclude the use of these trails by the public. Conservation Commission member Tom Christopher raised concern of not providing any certainty regarding the development and the trail system.

Chairman Starr recommended continuous use of the trails in the interim and not to exceed three years. All were in agreement of that change.

Page 4.

Section 2 – General Provisions

2.1 Covenant

- a. Selectman Grasso wanted clarification with this clause regarding the Board of Assessors, in which the Selectmen nor North Lancaster will interfere with the role of the Assessors.
- b. Chairman Starr and Selectman Sendrowski stressed that the filing of motion to withdraw its complaint – subject to all taxes paid in full with the exception of Parcel 19-11, which taxes will be satisfied after closing.
- d. Discussion on releasing the appraisal to North Lancaster, LLC prior to the Auction. Both Chairman Starr and Selectman Sendrowski would like to keep the Appraisal confidential, as recommended by Town Counsel. However, Selectman Grasso and Mr. Koonce noted that the

document is a public document and North Lancaster has offered to reimburse Conservation Commission for the cost of the Appraisal. The Selectman and Conservation agreed in the affirmative to make the Appraisal available.

Page 5.

- e. Discussion on the request that the Commonwealth of Massachusetts approve the transfer to North Lancaster LLC of Parcel 13-5 (consisting approximately 8.1 acres) and the norther portion of Parcel 14-11 (consisting approximately 40 acres), which both maybe subject to the provisions of Article 97 of the Amendments to the Massachusetts State Constitution. It was noted that the Conservation Commission shall support the transfer provided that North Lancaster LLC will convey other land of North Lancaster.

Mr. Bovenzi noted that Chapter 97 is an advisory ruling and allows North Lancaster LLC to go in front of Conservation Commission to request and support Chapter 97. Mr. Christopher stated that where ownership is not clear, there is currently a bill drafted by Senator Eldridge regarding this issue and currently before Committee.

- f. David Koonce explained that North Lancaster LLC will pay all the legal costs incurred regarding this agreement.

Page 6.

At the date and time of Initial Closing:

- b. Brief discussion on North Lancaster shall convey a permanent easement to the Town in that portion of 13-8

Page 7.

No questions or concerns

Page 8.

No questions or concerns.

Page 9.

No questions or concerns

Page 10.

Standard language

Page 11.

Standard language

Page 12.

Standard language

Page 13.

Standard language

Chairman Starr asked if there any further comments or input on this agreement.

Attorney Bovenzi would like to see a vote this evening regarding the \$62,000 component of this agreement in order to stop the clock ticking and allow Counsel to stop the charges and North Lancaster being able to redeem it.

Selectman Grasso moved that the Town of Lancaster shall file a motion to withdraw its complaint to foreclose in the Land Court Case along with a letter to the judge that indicates the case has been settled and North Lancaster will be redeeming the Tax Property for a sum of \$63,040.19 in accordance with the provisions of G.L. c.60, §68. Selectman Sendrowski Seconded. Walter F. Sendrowski vote Aye, Mark A. Grasso, Jr. vote Aye and Stanley B. Starr, Jr. vote Aye 3-0.


III. NEW BUSINESS

IV. ADJOURNMENT

Seeing no further business, on Motion by Selectman Sendrowski, seconded by Selectman Grasso, it was unanimously voted the Board of Selectmen adjourned at 6:53 P.M.

Respectfully submitted

Kathleen Rocco
Executive Assistant


Walter F. Sendrowski, Clerk
Approved and accepted: 11/6/17

LAND CONFIRMATION, ACQUISITION AND USE AGREEMENT

AGREEMENT made this _____ day of October 2017, by and between **North Lancaster, LLC** ("North Lancaster"), a Massachusetts limited liability company with a place of business at 435 Lancaster Street, Leominster, Massachusetts 01453 and the **Town of Lancaster** (the "Town") a Municipal Corporation acting by and through its Board of Selectmen and its Conservation Commission (the "Conservation Commission").

RECITALS

WHEREAS, the Town brought an action in the Massachusetts Land Court, Town of Lancaster v. Owners Unknown et al., Case No. 10 TL 140513 (the "Land Court Case") seeking to foreclose all rights of redemption on a parcel of land containing approximately 14.5 acres and identified on the Assessors' Map 14 as Parcel 13 (**Parcel 14-13**); and

WHEREAS, persons claiming by, through and under North Lancaster are named defendants in the Land Court Case and claim an interest in **Parcel 14-13**; and

WHEREAS, the Town is willing to allow North Lancaster to redeem **Parcel 14-13** in accordance with G.L. c.60, §68, subject to the terms of this Agreement; and

WHEREAS, North Lancaster claims ownership of a certain parcel of land containing approximately 71.70 acres identified on the Town's Assessors' Map 19 as Parcel 11 (**Parcel 19-11**); and

WHEREAS, North Lancaster claims ownership of a certain parcel of land containing approximately 14.00 acres identified on the Town's Assessors' Map 14 as Parcel 15 (**Parcel 14-15**); and

WHEREAS, North Lancaster claims ownership of a certain parcel of land containing approximately 33.00 acres identified on the Town's Assessors' Map 13 as Parcel 8 (**Parcel 13-8**); and

WHEREAS, the Town claims ownership of a certain parcel of land containing approximately 21.50 acres identified on the Town's Assessors' Map 13 as Parcel 4 (**Parcel 13-4**) by way of a Treasurer's deed recorded with the Worcester District Registry of Deeds in Book 2947, Page 90; and

WHEREAS, North Lancaster claims ownership of **Parcel 13-4** (defined as the Town Property in this Agreement) by virtue of a deed recorded with the Worcester Registry of Deeds or alternatively by adverse possession; and

WHEREAS, the Town's Assessors list the Commonwealth of Massachusetts as the owner of certain parcels of land containing a total of approximately 41.59 acres which are identified on the Town's Assessors' Map 14 as a portion of Parcel 11, and which are shown as Parcels 14-11A, B4 and B2 and shaded as "Assessed to Comm of Mass" on the plan entitled

"Property Owner Sketch in Lancaster, Massachusetts" prepared by Hannigan Engineering, Inc. dated September 20, 2017, a copy of which plan is attached hereto as Exhibit A (together, the "**Parcel 14-11 Portion**")

(**Parcels 14-13, 19-11, 14-15, 13-8, 13-4** and the **Parcel 14-11 Portion (14-11A, B4 and B2)**) may collectively be referred to in this Agreement as the context permits as the "**LAND**" and are shown on Exhibit A); and

WHEREAS, the Town, acting by and through its Conservation Commission pursuant to G.L. c.40, §8C, desires to acquire **Parcel 19-11** and **Parcel 14-15** so that said parcels will be protected and maintained in perpetuity as open space and conservation land, and further to obtain a permanent easement in a portion of **Parcel 13-8** sufficient to maintain an existing network of trails or portion thereof for the public enjoyment of said trails and nearby conservation lands; and

WHEREAS, North Lancaster desires to see **Parcels 19-11, 14-15 and a portion of 13-8** protected and maintained as open space and conservation land as part of an overall use and development plan for the area;

WHEREAS, North Lancaster further desires that other portions of the **LAND** used or considered for incorporation into a mixed-use development that would include residential and open-space components; and

WHEREAS, the parties agree that a comprehensive and desirable land use approach to the use and development of the **LAND** is in the best interests of the parties to preserve certain areas for open space and conservation land and facilitate development of other areas in a manner that addresses community needs and provides significant tax revenues to the Town.

NOW THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

SECTION 1 -- INFORMATION AND DEFINITIONS

1.1 PREMISES:

The "**Town Property**" shall consist of **Parcel 13-4**.

It is acknowledged by the parties hereto that prior to January 1, 2016, the Town's Assessors listed the Commonwealth of Massachusetts as the owner of Parcel 13-4. Having reviewed a certain title opinion issued by Coppola and Coppola dated Nov. 9, 2015, indicating that the Town is the record owner of the Parcel, and pursuant to the approval subsequently obtained from the Massachusetts Department of Revenue, as of January 1, 2016, the Town's Assessors have determined the Town of Lancaster is the record owner of the Parcel.

It is further acknowledged by the parties that notwithstanding the above actions, North Lancaster maintains that it is the owner of Parcel 13-4 by virtue of defects

in the low-value tax taking of said parcel and subsequent deed of the property to North Lancaster or, alternatively, by adverse possession.

The “**North Lancaster Property**” shall consist of **Parcel 19-11** and **Parcel 14-15**;

The “**Conservation Property**” shall consist of **Parcel 13-8**; and

Parcel 14-13 shall be referred to hereinafter as the “**Tax Property.**”

Parcel 14-11 Portion shall be referred to hereinafter as the “**Private Property.**”

1.2 FIRST PARTY (“Town”): the Town of Lancaster, acting by and through its Board of Selectmen and Conservation Commission.

1.3 SECOND PARTY (“North Lancaster”): North Lancaster, LLC.

1.4 CONSIDERATION:

The consideration for the required actions of each party to this Agreement shall be the completion of the required actions of the other party in accordance with the terms of this Agreement.

1.5 INITIAL CLOSING:

DATE: One hundred and twenty (120) days after the execution of this Agreement.

TIME: 11:00 A.M.

PLACE: Worcester District Registry of Deeds, or such other location as the parties agree upon in writing.

Time is of the essence.

1.6 SUPPLEMENTAL CLOSING:

DATE: Thirty (30) days following a determination by the Assessors that North Lancaster is the owner of the Private Property (but not before the Initial Closing), or the recording of a deed or other instrument establishing or asserting title to the Private Property in North Lancaster, whichever is earlier.

TIME: 11:00 A.M.

PLACE: Worcester District Registry of Deeds, or such other location as the parties agree upon in writing.

Time is of the essence.

1.7 FINAL CLOSING:

DATE: Thirty (30) days following the completion of mixed-use development of the land depicted on Exhibit A as "Owned by North Lancaster, LLC", or eight (8) years from the date of this Agreement, whichever is earlier.

TIME: 11:00 A.M.

PLACE: Worcester District Registry of Deeds, or such other location as the parties agree upon in writing.

Time is of the essence.

SECTION 2 -- GENERAL PROVISIONS

2.1 Covenant. The Parties agree to undertake the following actions, subject to the terms of this Agreement.

Upon the execution of this Agreement:

- a. The Town shall join with North Lancaster in requesting that its Assessors' office review and finally determine North Lancaster's claim that North Lancaster is the owner of the Private Property, and the parties agree to cooperate with each other in providing the Assessors' office or any state agency, at North Lancaster's sole cost and expense, with any and all information necessary or convenient for such review and determination, which may include a legal opinion of title procured by the Town on behalf of its Assessors, all such actions to be taken as soon as is reasonably possible;
- b. The Town shall file a motion to withdraw its complaint to foreclose in the Land Court Case along with a letter to the judge that indicates the case has been settled and North Lancaster will be redeeming ~~the~~ the **Tax Property** for a sum of \$62,979.63 in accordance with the provisions of G.L. c.60, §68.
- c. The parties shall execute and cause to be recorded at North Lancaster's expense, the Notice of Agreement attached as Exhibit B which shall be a lien on the North Lancaster Property.
- d. The Town shall, within sixty (60) days of the execution of this Agreement, to the extent permitted by law, take such action as is required in preparation for and hold an auction pursuant to the provisions of G.L. c.60, §77B, for the purpose of selling the Town Property to the highest bidder, and shall accept the highest bid made at such auction by a qualified buyer, whoever that may be, that is no less than \$90,000, which sum the Town has determined by appraisal to be the fair value of the Property, an abstract copy of which shall be provided to North

Lancaster and all other interested parties upon request within ten (10) days of the execution of this Agreement. The Town may set a minimum bid price approximately equal to said fair value;

Comment [JDE1]: The appraisal may be held by the Town as confidential until the sale is complete

- e. North Lancaster intends to request that the Commonwealth of Massachusetts approve the transfer to North Lancaster of Parcel 13-5 (consisting of approximately 8.1 acres) and the northern portion of Parcel 14-11 (consisting of approximately 40 acres) (both of which may be subject to the provisions of Article 97 of the Amendments to the Massachusetts State Constitution). The Conservation Commission shall support the transfer provided and on the condition that North Lancaster offer to convey to the Town, acting by and through its Conservation Commission, in exchange for the Commonwealth land other land of North Lancaster with at least as much acreage as the land transferred to North Lancaster by the Commonwealth and in the judgment of the Conservation Commission is of equal or greater value as open space and other conservation purposes to the land proposed for transfer to North Lancaster. The Conservation Commission's support for the transfer shall further be tied to a specific proposal by North Lancaster which includes an assessors map or survey plan explicitly identifying those properties proposed for conveyance to the Town presented to the Conservation Commission for approval at least thirty (30) days in advance of North Lancaster's submittal of the same proposal and plan to the Commonwealth, provided, however, that the Conservation Commission may withdraw its support for the transfer in the event the proposed exchange is not acceptable to either the Town or the Commonwealth.

- f. North Lancaster shall make a payment to the Town in the amount of \$ [REDACTED] for those expenses incurred by the Town to date, and not otherwise provided for in this Agreement, in connection with negotiating and preparing this Agreement, including counsel fees to review title, draft agreements between the parties, including this Agreement, and provide legal advice to the Town concerning this Agreement. The portion of such expenses charged by Town Counsel, Tax Title Counsel, and the Town's title examiners to the Conservation Commission in the amount of \$8,825.00 shall be credited to the Conservation Commission's Trust Fund. Such payments shall be in addition to the payment made to redeem the property as set forth in Section 2.1.b above.

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At the date and time of the Initial Closing:

- a) North Lancaster shall convey the **North Lancaster Property** to the Town by good and sufficient quitclaim deed, provided, however, in the event the Assessor has not determined that North Lancaster is the owner of the Private Property as set forth above, at the Initial Closing North Lancaster shall convey only Parcel 14-15 and the northern "half" of Parcel 19-11 consisting of approximately 40 acres (bounded on the south side by the southern boundary of the electric easement) and shown on Exhibit A as 19-11-A;

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- b) North Lancaster shall convey a permanent easement to the Town in Parcel 13-8 sufficient to allow the Town to maintain an existing network of trails within said land for public use and enjoyment, which trail network is approximately depicted on a sketch plan attached hereto as Exhibit C, provided that such easement shall allow North Lancaster to relocate such trails within Parcel 13-8 upon agreement of the Town, such agreement not to be unreasonably refused.

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a) —

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At the date and time of the Supplemental Closing:

- a) North Lancaster shall convey to the Town, by good and sufficient quitclaim deed, that portion of **Parcel 19-11**, if any, including that portion shown as 19-11-B on Exhibit A not conveyed to the Town at the Initial Closing.

At the date and time of the Final Closing:

- a) North Lancaster shall convey to the Town ~~a permanent easement in that portion of Parcel 13-8 sufficient to maintain an existing network of trails or portion thereof for public enjoyment~~, by good and sufficient quitclaim deed, such land or portions thereof within the completed mixed-use development of the land depicted on Exhibit A as "Owned by North Lancaster, LLC," that are not part of such development (including, without limitation, parks, recreational or buffer areas) and that are capable of being protected and maintained in perpetuity as open space and conservation land.

The instruments referenced above shall be hereinafter referred to collectively as the "Deeds." The lands and interests in land conveyed by such Deeds shall be collectively referred to as the "Premises."

At each Closing:

- a) North Lancaster shall pay all real estate taxes owing on the property being conveyed as of the date of closing, and the taxes on such property shall thereupon be adjusted in accordance with G.L. c.59, §72A. Any real estate taxes paid by North Lancaster prior to the closing in excess of that required to be paid hereunder shall not be refunded.
- b) North Lancaster shall make a payment to the Town for those expenses incurred by the Town to date, and not otherwise provided for in this Agreement, to provide for the transfer of property in accordance with this Agreement, including counsel fees to review title, prepare instruments for recording and other closing documents, and otherwise prepare for and carry out such closing. Such payments shall be in addition to the payment to redeem the property as set forth in Section 2.1.b above. The performance of this obligation shall, as necessary, survive the closing and delivery of the Deeds.

North Lancaster's obligations under this Agreement are not contingent upon, unless otherwise expressly stated: a) a determination of the Assessors' Office that North Lancaster is the owner of the Private Property; b) sale of the Tax Title Property if no qualifying bids are received; or c) North Lancaster obtaining title to Parcel 13-5 and/or the northern portion of Parcel 14-11.

2.2 Buildings, Structures, Improvements, Fixtures. The Premises consist of vacant land.

2.3 Title. North Lancaster shall convey the North Lancaster Property to the Town, by good and sufficient quitclaim deed running to the Town and said quitclaim 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) 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) Easements, restrictions and reservations of record, provided the same do not prevent or conflict with the preservation and use of the North Lancaster Property for open space and passive recreation purposes.

North Lancaster shall convey a permanent easement in the Conservation Parcel to the Town by recordable grant of easement conveying a good and clear record and marketable title thereto, free from or superior to any liens or encumbrances on the Conservation Parcel that could be enforced against the Town or result in loss of the Town's title if enforced.

The Town shall accept the deeds to the North Lancaster Property pursuant to G.L. c.40, §8C, for open space and passive recreation purposes, which acceptance shall make use and disposition of the property conveyed thereby subject to the provisions of Article 97 of the Amendments to the Massachusetts State Constitution.

2.4 Deeds; Plans. The Town shall be responsible for drafting the Deeds. If a plan is required to effect any conveyance of the North Lancaster Property as set forth herein, North Lancaster shall provide for the preparation and approval of such plan at its sole cost and expense, and shall deliver such plan in a form adequate for recording or registration to the Town for approval at least 30 days prior to closing.

2.5 Registered Title. In addition to the foregoing, if title to any part of said Premises is registered, the deed for such property shall be in a form sufficient to entitle the grantee to a Certificate of Title for said property, and the grantor shall deliver with said deed all instruments, if any, necessary to enable grantee to obtain such Certificate of Title.

2.6 Possession and Control of Premises. Full possession of the Premises free of all tenants and occupants, is to be delivered at the time of the delivery of the Deeds, said Property to be then (a) in the same condition as they now are, reasonable use and wear thereof excepted, and (b) in compliance with the provisions of clause 2.3 hereof. The Town shall be entitled personally to inspect the Premises prior to the delivery of the deeds in order to determine whether the condition thereof complies with the terms of this clause. North Lancaster agrees that, from the

date of this Agreement, it will not cut or remove any wood on or from or excavate or remove any earth materials from the Premises, or take or allow any action to be taken, including bringing vehicles or machinery upon the aforesaid property, that will or is reasonably likely to disturb, alter, or damage such properties, including the trees and other vegetation thereon.

2.7 Extension to Perfect Title or Make Premises Conform. If North Lancaster 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 a deed the Premises do not conform with the provisions hereof, then the North Lancaster 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 provisions hereof, as the case may be, and thereupon the time for performance hereof shall be extended for a period of thirty calendar days. Reasonable efforts as used herein shall not require the parties to separately incur more than \$1,000.00 in costs and expenses to remove or cure such defects or deficiencies, except with respect to monetary liens, for which there shall be no limit and which shall be required to be discharged as of the closing.

2.8 Failure to Perfect Title or Make Premises Conform; Election to Accept Title. If at the expiration of the extended time North Lancaster 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, then all obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto, provided, however, that the Town shall have the election, at either the original or any extended time for performance, to accept such title as North Lancaster can deliver to the Premises in its then condition, in which case North Lancaster shall convey such title.

2.9 Acceptance of Deeds. The acceptance by the parties of the Deeds 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 before or after the delivery of said Deeds.

2.10 Closing Costs. At closing, North Lancaster shall pay (a) the recording and filing fees incurred in connection with recording and/or filing a plan or plans of any part of the Premises and the cost of obtaining and recording and/or filing such instruments as are necessary to establish North Lancaster's good and clear record and marketable title to the Premises and North Lancaster's authority to convey the fee or other interest in same free of encumbrances in accordance with the terms of this Agreement; (b) the fees and expenses of North Lancaster's attorneys; and (c) any other costs and expenses incurred by North Lancaster. At closing, the Town, acting by and through the Conservation Commission, shall pay (a) the recording and filing fees incurred in connection with recording the Deeds and such instruments as are necessary to establish the Town's acceptance of the Deeds; (b) the closing fees and expenses of the Town's attorneys; and (c) any other closing costs and expenses incurred by the Town with regard to the acceptance of the Deeds.

2.11 Brokers. The parties each represent and warrant to the other that each has not contacted any real estate broker in connection with this transaction and was not directed to the other as a result of any services or facilities of any real estate broker. The parties 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 brokerage commission or fee which may be

asserted against the other by any broker in connection with this transaction. The provisions of this paragraph shall survive delivery of the Deeds.

2.12 Contingencies. Except as expressly provided in this Agreement, the Town's performance hereunder is expressly contingent upon satisfaction of the following conditions:

- (a) North Lancaster shall have complied with the disclosure provisions of G.L. c.7C, §38;
- (b) The Town shall have inspected the Premises and be satisfied with the condition thereof;
- (c) Any other requirements of the Massachusetts General or Special Laws precedent to the acquisition and disposition of the Premises by the Town;
- (d) There shall be no evidence of the presence of hazardous waste or hazardous material, or other materials hazardous to health and safety, on the Premises in reportable quantities.

North Lancaster and the Town agree to diligently pursue satisfaction of the above conditions. If any of the above conditions are not satisfied as of the date and time of closing, either party shall have the option of extending the closing date until such conditions are satisfied, provided that the closing date shall not be extended more than six (6) months beyond the closing date, other than by agreement of the parties, and further provided that the each party shall give the other party three days written notice of its exercise of this option and shall give the other party ten days written notice of the new closing date. If neither party extends the closing date and such conditions have not been timely satisfied, or alternatively waived by the applicable party the Agreement shall be deemed terminated whereupon all obligations of the parties not then performed shall cease and this Agreement shall be void and without recourse to the parties hereto.

2.13 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 improvement of any kind belonging to any person or entity encroaches upon or under said Premises from other premises;
- (b) the Premises shall not be the subject of any litigation or threat of litigation as indicated by a recorded lis pendens prior to the closing date.

2.14 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 (REBA) shall be governed by said Standard to the extent applicable.

2.15 Hazardous Materials. The Parties shall, no later than thirty (30) days prior to closing, provide each other with information of any past or current release or threat of release, or the

presence of "hazardous materials" and "oil" on the Premises, as such terms are defined in G.L. c. 21E, and copies of all environmental tests, studies, and assessments relating to the Premises and copies of all notices of noncompliance or responsibility received from the Department of Environmental Protection or any other federal, state, or local governmental body. The provisions of this paragraph shall survive the delivery of the deed.

2.16 Representations and Warranties. North Lancaster represents and warrants to the Town, effective as of the date of this Agreement and also effective as of the date of closing, unless otherwise specified, that:

- a. No options, rights of first refusal, or other contracts have been granted or entered into which give any other party a right to purchase or acquire any interest in the Premises (Though no such contracts exist as of the date of the Agreement, North Lancaster shall have the right to enter such contracts after this date provided said contracts are expressly subject to North Lancaster's obligations under this Agreement);
- b. As of the date of this Agreement, and thereafter until Closing, no persons or entities other than North Lancaster, its successors or assigns, occupy or use or have a legal right to occupy or use any part of the Premises, and North Lancaster has not at any time in anticipation of conveying the Premises to the Town caused any such person or entity to be removed from the North Lancaster Property or terminated the legal right of any person or entity having a legal right to occupy or use the North Lancaster Property.
- c. North Lancaster has no present knowledge of and will disclose and deliver all received written notices of, any planned or threatened condemnation or eminent domain proceedings, or other legal proceedings concerning the Premises;
- d. This Agreement has been duly authorized by all requisite action and to the best North Lancaster's knowledge, is not in contravention of any law or organizational documents and this Agreement has been duly executed by a duly authorized manager of said North Lancaster;
- e. The execution of this Agreement does not violate any other contracts, agreements, or any other arrangements of any nature whatsoever that North Lancaster has with third parties;
- f. There is no litigation pending, or to the best of North Lancaster's knowledge, threatened against North Lancaster or the Premises, which, if determined adverse to North Lancaster would affect, in any materially adverse respect, the ability of North Lancaster to transfer title to the Premises as herein provided or to otherwise perform North Lancaster's obligations hereunder;
- g. To the best of North Lancaster's knowledge, information and belief: (i) there has been no release of any hazardous materials or oil on, from or near the Premises (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;

- h. North Lancaster has received no written notice from any governmental authority or agency having jurisdiction over the Premises of any environmental contamination, or the existence of any hazardous materials at said property in violation of the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. § 9601, et seq. (CERCLA), or any similar federal, state or local statute, rule or regulation.
- i. No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under Federal or State bankruptcy laws is pending against or contemplated by North Lancaster.

North Lancaster will not cause nor, to the best of North Lancaster's ability, permit any action to be taken which would cause any of North Lancaster's representations or warranties to be false as of closing, and in any event shall notify the Town of any change in these representations and warranties. North Lancaster's representations and warranties shall survive the closing and the delivery of the deed.

2.17 Inspection Rights. The Town shall have reasonable access to the Premises. It shall have the right at any time to enter such property at its own risk for the purposes of surveys, inspections and tests, provided, however, that it has given North Lancaster at least 24 hour's prior notice thereof. To the extent permitted by law, the Town shall hold North Lancaster harmless against any claim of any harm arising from said entry and shall restore the property to substantially the same condition as prior to such entry if the closing does not occur. The provisions of this paragraph shall survive the acceptance of the Deeds.

2.18 Affidavits. Simultaneously with the delivery of the Deeds, the Town and North Lancaster shall execute and deliver to the other, as may be required by the other party:

- a. Affidavits and indemnities with respect to parties in possession and mechanic's liens to induce the party's title insurance company to issue lender's and owner's policies of title insurance without exception for those matters;
- b. An affidavit, satisfying the requirements of Section 1445 of the Internal Revenue Code and regulations issued thereunder, which states, under penalty of perjury, the party's United States taxpayer identification number, that the party is not a foreign person, and the party's address (the "1445 Affidavit");
- c. Internal Revenue Service Form W-8 or Form W-9, as applicable, with the party's tax identification number, and an affidavit furnishing the information required for the filing of Form 1099S with the Internal Revenue Services and stating the party is not subject to back-up withholding

- d. Any plan not previously recorded and referred to in the Deed, such plan to be recordable;
- e. Any other documents reasonably requested by either party's counsel, by any title insurance company or by any lender granting mortgage financing on the Premises.

2.19 Default. If either party shall default in the performance of any of its obligations hereunder, and if such default is not cured within thirty (30) days after written notice to the defaulting party specifying such default, the other party shall be entitled to enforce the obligations of this Agreement by a suit for specific performance only, and shall have no other remedy at law or in equity, including the remedy of damages.

2.20 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 express written confirmed receipt of e-mail or facsimile delivery:

If to North Lancaster:

Steve Boucher, Manager
North Lancaster, LLC
435 Lancaster Street
Leominster, MA 01453
e-mail: Sboucher@boucher-construction.com

With a copy to:

Thomas M. Bovenzi, Esq.
Bovenzi & Donovan
14 Manning Avenue
Leominster, MA 01453
e-mail: bovenzi@bdlaw1.com

If to the Town:

Town of Lancaster
Town Hall
695 Main Street
Lancaster, MA 01523
ATTN: Town Administrator
e-mail: rmnutt@lancasterma.net

With a copy to:

James E. Coppola, Jr., Esq.

Coppola And Coppola
40 South Street
Marblehead, MA 01945
e-mail: coppola.coppola@verizon.net

Jonathan D. Eichman, Esq.
Kopelman and Paige, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110
e-mail: JEichman@k-plaw.com

2.21 Closing. The Deed and other documents required by this agreement are to be delivered at the Date and Time of Closing and at the Place of Closing. All documents 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.

2.22 Taking. Notwithstanding anything herein to the contrary, in the event of a taking of all or part of the Premises by eminent domain by any entity other than the Town, either party may terminate this Agreement at its sole option.

2.23 Relocation. North Lancaster hereby waives any rights North Lancaster may have with respect to relocation assistance or benefits, including, without limitation, those rights and benefits provided pursuant to G.L. c. 79A and 760 CMR 27.00, et seq., and shall defend, indemnify and hold harmless the Town from any and all claims, damages, losses and costs incurred by the Town to satisfy any lawful claim for relocation assistance or benefits made by any person resulting from the Town's purchase or intent to purchase the Premises. The provisions of this section shall survive the delivery of the deed.

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

2.25 Extensions. The Parties hereby authorize their respective attorneys to execute on their behalf any extensions to the time for performance and any change of location and/or time for delivery of the Deeds. The Parties 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.

2.26 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 the Town and North Lancaster. 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. All offers and agreements made prior to this agreement are hereby discharged and all further obligations of the parties are contained only in this agreement.

2.27 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.

[signatures on following page]

In Witness whereof, the parties hereto sign this agreement under seal as of this ____ day of October, 2017.

NORTH LANCASTER, LLC

TOWN OF LANCASTER
BOARD OF SELECTMEN

By: _____
Its: Steve Boucher,
Manager

TOWN OF LANCASTER
CONSERVATION COMMISSION

