

PURCHASE AND SALE AGREEMENT

This 8th day of March, 2004:

Quail Ridge Country Club, LLC, a Massachusetts limited liability company with a principal place of business at 178 Great Road, Acton, MA 01720, hereinafter called the Seller, agrees to SELL and

The Town of Acton, a municipal corporation with a principal place of business at Town Offices, 472 Main Street, Acton, MA 01720 hereinafter called the Buyer or the Town, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

1. DESCRIPTION

A certain land parcel of land in Acton, Middlesex County, Massachusetts shown on Assessor's Map D-4, as Parcel 22, consisting of approximately six (6) acres of woodland, as more particularly described on a deed of Marjorie E. Torkelsen to Quail Ridge Country Club, LLC dated June 21, 2002, and recorded with the Middlesex South Registry of Deed on June 28, 2002 in Book 35786, Page 465. The sale involves land only; there are no fixtures involved in this transaction.

2. TITLE DEED

Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven 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) 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, if any, so long as the same do not prohibit or materially interfere with the use of said premises for the purposes described herein.

Title to the property offered to the Town (the "Premises") shall not be considered marketable or otherwise satisfactory unless:

- a. All buildings, structures and improvements, including garages, any cesspools, septic systems and any leaching fields, for the Premises, shall be located completely within the boundary lines of said Premises and shall not encroach upon or under the property of any other person or entity;
- b. No building, structure or improvement of any kind belonging to any other person or entity shall encroach upon or under said Premises;

- c. All buildings and improvements, and all means of access thereto from any abutting public way (if any) shall comply with all applicable requirements of state law and of the bylaws, rules, and regulations of the Town of Acton including, without limitation, the requirements of zoning, subdivision control and wetlands protection;
- d. Title to the Premises is insurable for the benefit of the Town by a nationally-recognized title insurance company (such as Lawyers Title Insurance Company or Chicago Title Insurance Company), upon delivery from Seller to Town of the deed to the Premises and upon recordation of such deed, at normal title insurance premium rates, an owner's title insurance policy (on the current ALTA form) insuring fee simple title in the Town free from exceptions other than those which Town may in its sole discretion waive. To enable Town to obtain such title insurance policy, Seller will provide Town, at the time of delivery of the deed, with executed affidavits and indemnifications regarding mechanics' and materialmen's liens, parties in possession and any other affidavits required by the title insurance company.

3. **PLANS**

If said deed refers to a plan necessary to be recorded therewith the Seller shall deliver such plan with the deed in form adequate for recording or registration, at Seller's sole cost and expense.

4. **REGISTERED TITLE**

In addition to the foregoing, if the title to said premises is registered, said deed shall be in form sufficient to entitle the Buyer to a Certificate of Title of said premises, and the Seller shall deliver with said deed all instruments, if any, necessary to enable the Buyer to obtain such Certificate of Title.

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

Such deed is to be delivered at 10:00 o'clock A.M. on the 19th day of March, 2004, at the Board of Selectmen's Office, Town Offices, 472 Main Street, Acton, MA, unless otherwise agreed upon in writing, or unless such date is extended pursuant to the terms of the Agreement. It is agreed that time is of the essence of this Agreement.

6. **POSSESSION AND CONDITION 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, (b) not in violation of any applicable federal, state and local statute, ordinance, bylaw, code, or rules and regulations or building or zoning laws, (c) free and clear of

personal property, equipment, solid waste, and hazardous waste or hazardous materials, and (d) not in violation of any restrictive covenant, agreement, or other instrument of record affecting the premises. The Buyer shall be entitled 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 Agreement.

7. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM

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 the delivery of the deed the premises do not conform with the provisions hereof, 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 without recourse to the parties hereto, except that the Seller shall first use reasonable efforts to remove any defects in title, or to deliver of possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the time for performance hereof shall be extended for a period of thirty days.

8. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM

If at the expiration of the extended time the 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 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 without recourse to the parties hereto.

9. 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 therefor the purchase price without deduction, in which case, subject to the provisions of Section 26 of this Agreement, Seller shall convey such title.

10. ACCEPTANCE OF DEED

The acceptance of a deed by Buyer or his 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.

11. USE OF PURCHASE PRICE TO CLEAR TITLE

To enable Seller to make conveyance as herein provided, Seller shall (if not paid prior to the Closing Date), at the time of delivery of the deed, use the Purchase Price, or any part thereof, to obtain the instruments necessary to clear the title of any or all encumbrances or interests which

are to be discharged, removed or eliminated by Seller in accordance with the terms hereof, and all required instruments are to be recorded by and at the expense of Seller, simultaneously with the deed

12. PAYMENT OF REAL ESTATE TAXES

Taxes for the then current fiscal year shall be apportioned as of the day of performance of this agreement and, if taxes are due and owing for any time period before the closing date, the net amount thereof shall be deducted from the purchase price payable by the Buyer (or otherwise paid to Seller by Buyer) at the time of delivery of the deed. The Board of Selectmen may, in their sole judgement, seek an abatement of any unpaid taxes for the balance of the fiscal year ending June 30, 2004, pursuant to the provisions of G.L. c. 59, § 72A.

13. CERTIFICATION OF COMPLIANCE WITH TAX LAWS

In accordance with G.L. c. 62C, § 49A, Seller shall certify, in the form attached hereto as Exhibit A, under the pains and penalties of perjury, that Seller has complied with all laws of the Commonwealth of Massachusetts relating to the payment of taxes. Such certification shall be made again and executed as of the time of closing.

14. BENEFICIAL INTEREST DISCLOSURE STATEMENT

In accordance with G.L. c. 7, § 40J, at the time of closing, Seller shall prepare, execute and file with the Commissioner of the Division of Capital Asset Management a statement, in the form attached hereto as Exhibit B, signed under the pains and penalties of perjury, disclosing the names and addresses of all persons having a beneficial interest in the Premises.

15. TOWN MEETING AUTHORIZATION/APPROPRIATION

Acquisition of the premises hereunder is contemplated pursuant to the Seller's response to the Town's request for competitive proposals pursuant to M.G.L. c. 60, § 77B, M.G.L. c. 30B, § 16, and Article 41 of the Acton Annual Town Meeting of April 2, 2001.

If and to the extent required by law, the BUYER's obligations under this Agreement shall be contingent upon a vote of the Town Meeting or of the Board of Selectmen of the Town of Acton or both.

16. UNIFORM PROCUREMENT ACT

The parties enter into this Agreement as a result of the response for competitive proposals sought by the Town pursuant to M.G.L. c. 60, § 77B, M.G.L. c. 30B, § 16, and Article 41 of the Acton Annual Town Meeting of April 2, 2001 (the "RFP"). In accordance with the requests for proposals for the disposition/acquisition of municipal real estate, sealed proposals were received at the Office of the Town Manager and publicly opened and read aloud on or about 12:00 noon, Thursday, July 31, 2003. This Agreement incorporates by reference all terms and conditions of the RFP and of the Town's award letter, a copy of which is attached as Exhibit C.

17. BROKERS

Seller represents and warrants to Buyer that Seller has not contacted any real estate broker in connection with this transaction and was not directed to Buyer as a result of any services or facilities of any real estate broker. Seller agrees to indemnify Buyer against and to hold Buyer harmless from any claim, loss, damage, cost (including, without limitation, attorneys' fees) or liability which Buyer may incur as a consequence of any breach of the foregoing warranty and representation. The provisions of this paragraph shall survive delivery of the deed.

18. WARRANTIES AND REPRESENTATIONS

The Buyer acknowledges that the Buyer has not been influenced to enter into this transaction nor has it relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing.

19. CLOSING DOCUMENTS:

At the Closing, Seller shall deliver to Buyer the following duly executed (and notarized) documents or instruments:

- (1) Quitclaim Deed to the Premises in accordance with the provisions of Section 2 of this Agreement (together with the original certificate of title (if available) if any portion of the Real Estate constitutes registered land).
- (2) An affidavit and indemnity, executed by Seller under oath, in the form required by Buyer's title insurer for the purposes of deleting from the owner's title policy the standard exceptions for parties in possession and mechanics' liens and any liens for sums owed to municipal lighting plants and water companies. Such affidavit and indemnity shall include, without limitation, statements certifying that: (1) there are no tenants, lessees or parties in possession of the premises, (2) no work has been done to the premises which would entitle anyone now or hereafter to claim a mechanics' or materialmens' lien on the premises, and (3) Seller indemnifies and holds 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.

- (3) An affidavit establishing that Seller is not a foreign person as defined in I.R.S. Code Section 1445 (and the regulations promulgated thereunder) in the form recommended by the Internal Revenue Service for the purpose of establishing that the withholding requirements of said Section 1445 do not apply to this transaction.
- (4) Any forms required to comply with Internal Revenue Service reporting requirements.
- (5) All other instruments which may be necessary to establish Buyer as the record owner of title to the Premises, in accordance with the requirements of Section 2.
- (6) Any documents reasonably required by (a) Buyer; (b) Buyer's counsel; and/or (C) Buyer's title insurance company or its counsel.
- (7) Any other documents required to be delivered at Closing pursuant to this Agreement.
- (8) Disclosure of beneficial interest in real property transaction executed as of the closing date.
- (9) Non-delinquency statement required by M.G.L. Chapter 60, Section 77B executed as of the closing date.
- (10) Certificate on Noncollusion executed as of the closing date.
- (11) Certificate of the payment of taxes executed as of the closing date.
- (12) Long form Certificate of Legal Existence with Amendments for a domestic limited liability company issued by the Secretary of the Commonwealth of Massachusetts, dated within thirty (30) days prior to closing.
- (13) Manager's Certificate as to authority of buyer to purchase the property and authority of individuals authorized to execute documents with respect to the transaction, dated within thirty (30) days prior to closing.
- (14) All disclosures, statements, checks, acknowledgments, certificates, waivers, instruments, affidavits, deeds, or other documents required (a) in accordance with Section 19.B of the Town Agreement (as hereinafter defined in Section 22 of this

Agreement) and (b) otherwise required of the "Buyer" in the Town Agreement as the term "Buyer" is defined in the Town Agreement.

- (15) The reliance letter set forth in Section 27.
- (16) An owner's title insurance policy (on the current ALTA form) issued for the benefit of the Town by a nationally-recognized title insurance company (such as Lawyers Title Insurance Company or Chicago Title Insurance Company), effective upon delivery, acceptance and recordation of the deed to the Premises, insuring fee simple title in the Town free from exceptions other than those which Town may in its sole discretion waive.

20. 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, merges all prior and contemporaneous agreements, understandings, warranties or representations, is binding upon and enures 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. 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.

21. NOTICES

All notices required or permitted hereunder shall be deemed to have been duly given if in writing and delivered by hand or when mailed by registered or certified mail, return receipt requested, all charges paid, as set forth below:

If to the Seller, notice shall be sent to:

Ronald B. Peabody, Manager
Quail Ridge Country Club, LLC
178 Great Road
Acton, MA 01720

with a copy to:

Stephen R. Graham, Esq.
Graham & Harsip, P. C.
Attorneys at Law
Strawberry Hill Building
289 Great Road

Suite 101
Acton, MA 01720

If to the Buyer, notice shall be sent to:

Don P. Johnson
Town Manager
Town Office
472 Main Street
Acton, MA 01720

with a copy to:

Stephen D. Anderson, Esq.
Anderson & Kreiger LLP
43 Thorndike Street
Cambridge, MA 02141

22. PURCHASE PRICE

The parties acknowledge that simultaneously with the execution of this Agreement the parties have entered into a Purchase and Sale Agreement of even date, by and between the parties, which provides for the disposition by the Town to Seller of a certain land locked parcel of land in Acton, Middlesex County, Massachusetts shown as Parcel 9 on the Town of Acton, Massachusetts Assessor's Map D-4 which was reportedly taken for taxes by the Town's Collector of Taxes by Instrument dated September 18, 1946, and recorded in the Middlesex South Registry of Deeds at Book 7048, Page 588, on September 19, 1946 (the "Town Agreement"). A copy of the Town Agreement is attached hereto as Exhibit D.

The agreed purchase price hereunder shall consist of performance by the Town under the terms and provisions of the Town Agreement; including, without limitation, the delivery by the Town and the acceptance and recording by Seller (Quail Ridge Country Club, LLC), of a deed, for the land described in the Town Agreement.

23. LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, ETC.

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

24. BUYER'S ACCESS TO PROPERTY AND INDEMNITY TO SELL

Buyer shall have the right, from time to time, and upon reasonable prior notice to Seller to enter upon the property at Buyer's sole risk and expense, for the purpose of taking measurements, conducting surveys or performing other inspections.

25. BUYER'S INSPECTION OF PREMISES

Buyer shall have the right to have the Premises (and any buildings, improvements, and the surface and subsurface of the Premises) inspected by persons of Buyer's choosing, including, without limitation, qualified structural, mechanical, engineering, chemical, pest, environmental, and similar inspection services within sixty days after the date of the Agreement (the "Inspection Period"). Such inspections may include, without limitation, physical inspections, surveys, landscape studies, soil and water sampling, and subsurface investigations. Buyer may, in Buyer's sole discretion, upon written notice to Seller, terminate this Agreement at any time during the Inspection Period, for any reason whatsoever. If Buyer elects to terminate this Agreement, all obligations of the parties hereto shall cease and this Agreement shall be null and void and without further recourse to the parties hereto.

26. CROSS DEFAULT PROVISION

The performance of the parties under the Town Agreement is a condition to the performance of the parties under this Agreement. If the transaction contemplated by the Town Agreement does not close, for any reason whatsoever, then, all obligations of the parties hereto shall cease and this Agreement shall be null and void and without further recourse to the parties hereto.

27. ENVIRONMENTAL REPRESENTATION AND WARRANTY

Seller hereby represents and warrants to Town 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 (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. The provisions of this clause shall survive the delivery of the deed.

Seller has submitted to Buyer a "Phase 1 Environmental Site Assessment for the Torkelsen Land, Assessor's Map D-4, Parcel 22," dated June 30, 2003, prepared by Engineering & Consulting Resources, Inc., pursuant to ASTM E1527, indicating that "recognized environmental conditions were not identified in connection with the subject Property" (the "Phase 1 Site Assessment"). At the closing, Seller shall furnish to the Buyer a reliance letter in a form reasonably acceptable to Buyer's counsel, signed by a Massachusetts Licensed Site

Professional (“LSP”) and by an authorized officer of Engineering & Consulting Resources, Inc., confirming that (a) the Phase 1 Site Assessment conforms to ASTM E1527, (b) the report and investigation set forth therein represent sufficient due diligence by Engineering & Consulting Resources, Inc., to determine whether there likely is or has been a recognized environmental condition at or from that property, and (c) the Town of Acton shall have the right to rely on that report as if the Town were a client of the LSP and Engineering & Consulting Resources, Inc.

28. DESTRUCTION OF PREMISES/EMINENT DOMAIN

The provisions of this Agreement to the contrary notwithstanding, in the event of damage to or destruction of the premises by fire, vandalism or other casualty, or in the event of a taking of all or part of the premises by eminent domain by an entity other than the Town of Acton, then at Town’s sole option, and upon notice to Seller, Town may terminate this Agreement, whereupon, all obligations of the parties hereto shall cease and this Agreement shall be null and void and without further recourse to the parties hereto.

BUYER:

SELLER:

TOWN OF ACTON
By its Board of Selectmen

QUAIL RIDGE COUNTRY CLUB LLC

Walter Foster, Chairman

By Ronald B. Peabody
Its Manager, duly authorized hereunto

Peter K. Ashton, Vice-Chairman

F. Dore Hunter, Clerk

Robert Johnson, Member

William H. Schupert, Member

EXHIBIT A

Copy of Certificate of Tax Compliance

EXHIBIT B

Copy of Beneficial Interest Disclosure Statement

EXHIBIT C

Copy of Seller's Award Letter

EXHIBIT D

Copy of Town Agreement

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