

**AGREEMENT OF PURCHASE AND SALE**

This Agreement is made as of the 20<sup>th</sup> day of August, 2018, by and between Edward and Suzanne Shepard of Bristol, Vermont (“Seller”), and the Town of Bristol (“Purchaser”).

**WITNESSETH:**

WHEREAS, Seller owns certain real estate located in the Town of Bristol, County of Addison and State of Vermont; described as follows:

Land and improvements at 76 West Street, Bristol, Vermont consisting of a single family dwelling situated on .59 +/- acres more or less (the “Property”); and

WHEREAS, the subject property adjoins property of the Bristol Recreation Club, Inc. upon which recreation facilities of the Town of Bristol are located;

WHEREAS, acquisition of the subject property would provide the opportunity incorporate the property into its recreation facilities, construct improvements thereon, and thereby to develop further and enhance its public recreation facilities;

WHEREAS, the Seller desires to sell the Property to the Town of Bristol and the Town of Bristol desires to purchase the Property from Seller, all as hereinafter provided;

NOW, THEREFORE, the parties agree as follows:

1. Sale of Property – Seller shall sell the Property to Purchaser, and Purchaser shall purchase the Property from Seller on the terms and conditions hereinafter provided.
2. Purchase Price and Payment - The purchase price for the Property shall be One Hundred Sixty-Six Thousand Five Hundred and 00/100 (\$166,500.00). The purchase price shall be paid by Purchaser as follows:
  - (a) A deposit of One Thousand Dollars (\$1,000) within 10 days of the execution of this Agreement. The deposit shall be held in escrow by Langrock Sperry & Wool LLP, (“Escrow Agent”), in its pooled interest bearing real estate trust account. Any interest earned on the deposit will be remitted to an account held for affordable housing or legal services programs.
  - (b) Payment at the closing to Seller of the sum of One Hundred Sixty-Five Thousand Five Hundred and 00/100 Dollars (\$165,500.00 in the form of cash, wire transfer, Vermont attorney’s trust check, certified check or bank check, plus payment and disbursement to Seller of the total down payment of \$1,000.00 deposit referred to in paragraph 2(a)).
3. Contingencies - In addition to the other conditions precedent to Purchaser's obligation to close as provided for herein, Purchaser's obligation to close shall be conditioned upon the following:

(a) The approval of the voters of the Town of Bristol at the Annual Town Meeting in March of 2019, or at a special town meeting convened prior thereto to approve the purchase of the Property pursuant to 24 V.S.A. §1786a(b) (five-year promissory note or 24 V.S.A. §1786a(c) municipal bond). The ballot question put to the voters may include, in addition to the purchase price of the Property, a sum of money for the planning and/or design of recreational facilities and/or uses of the Property.

(b). In the event voters approve the financing of the purchase at the annual or special town meeting election, that the Town Clerk does not receive within thirty (30) days following the date of the annual or special town meeting election a voter petition requesting reconsideration or rescission of the special town meeting vote pursuant to 17 V.S.A. §2661(b).

(c) Inspection: Building, radon, water and septic inspections by Purchaser, or Purchaser's agent, at Purchaser's expense, which reveal to the satisfaction of Purchaser that the Property is in good repair and free from defects which would affect the value, or Purchaser's use and enjoyment, of the Property. Any item identified as in need of replacement or repair that would cost \$1,000 or less to remedy shall be deemed not to affect the value, or Purchaser's use and enjoyment of the Property. If the inspection identifies an item in need of replacement or repair that would cost \$1,000 or more to remedy, then Purchaser shall have the right to terminate this contract or renegotiate the purchase price. If Purchaser does not give written notice to Seller to terminate this Agreement based upon failure of this contingency by 5:00 pm on April 1, 2019 this contingency shall be deemed waived. If Purchaser elects to terminate this Agreement under this provision, Purchaser shall promptly provide Seller with a copy of any applicable inspection reports.

(d) As an accommodation to Seller, Seller shall have the right to retain exclusive possession of the Property for sixty (60) days after the Closing upon the following terms and conditions, all of which shall survive the Closing:

(i) The delay in the relinquishment of exclusive possession to the Town is intended to facilitate the Seller's transition to the new home that they intend to construct using proceeds from the sale of the Property to Purchaser. Purchaser's allowance of the retention of possession of the Property by Seller for no more than sixty (60) days following Closing is not intended to, and shall not, establish a landlord/tenant relationship. Seller acknowledges that any retention of possession by Seller after Closing does not create a landlord/tenant relationship and that Seller is not entitled to any rights accruing under Vermont law to tenants, including without limitation, Chapter 137 of V.S.A. Title 9.

(ii) It is specifically acknowledged and understood by Seller that, should the premises or personal property be destroyed or damaged by fire or other cause during the time that Seller retains possession of the Property after Closing, the risk of any and all bodily injury and/or damage to or loss of personal property shall be borne solely by the Seller and Purchaser shall have no responsibility to Seller for any such bodily injury or personal property loss/damage. Further,

Purchaser shall have no responsibility to provide Seller with replacement housing in the event the Property is destroyed or damaged by fire or other cause during the time that Seller retains possession of the Property after Closing.

(iii) During the time that Seller retains possession after Closing, Seller shall remain solely responsible for any and all utility and municipal service costs or expenses, (e.g. water, electricity, telephone, internet), and all property carrying costs, including without limitation, heating costs, trash removal, and snow plowing/removal, up to and including the date that Seller vacates the Property and relinquishes exclusive possession to Purchaser. Seller's responsibility for the payment of property taxes, however, shall terminate as of the day of Closing.

(iv) During the time that Seller remains in possession after Closing, Purchaser shall not owe to Seller, or any of their invitees, any duty of care, maintenance, upkeep, or repair with respect to the Property.

(v) Seller shall not commit waste or cause damage to the Property.

(vi) Seller shall turn over all keys to the Property to Purchaser when Seller vacates the Property.

(vii) Seller irrevocably waives any and all rights, title, and interests to any and all personal property that remains on or in the Property after Seller vacates the Property. Purchaser, in the exercise of its sole discretion, shall have the right to retain or dispose of any and all personal property that remains on or in the Property after Seller vacates, including without limitation, the right to sell such personal property on such terms as Purchaser shall see fit and to retain all proceeds from such sale.

4. Closing Adjustments – All property taxes shall be apportioned at the Closing: Should any tax, charge or rate be undetermined on the date of the Closing, the last determined tax, rate or charge shall be used for the purposes of apportionment, provided, however, such apportionment shall be subject to later adjustment between the parties when the actual amounts of such tax, charge or rate are finally determined.

(a) The sum of \$1,500.00 shall be withheld from the sale proceeds at Closing ("the holdback") and shall be retained by Purchaser as security for Seller's compliance with ¶5 below. In the event that Seller fails to turn over possession of the Property to Purchaser broom clean and free of tenants and personal property, Purchaser shall be entitled to apply the holdback to the costs and/or expenses, including without limitation trash removal and disposal costs, incurred by Purchaser to respond to and/or rectify Seller's breach if their obligations set forth in ¶5. In the event that the holdback exceeds the costs and/or expenses incurred by Purchaser, Seller shall receive from Purchaser the remaining balance of the holdback. This ¶4(a) shall survive the Closing.

5. Closing Date and Possession - The Closing under this Agreement shall be held on or before May 15, 2019 at the offices of Purchaser's lender, or at such other place as may be mutually agreed upon by the parties. Possession of the Property, broom clean and free of tenants

and personal property not provided for under this Agreement, shall be given by Seller to Purchaser on or before the sixtieth (60<sup>th</sup>) day after Closing. Seller shall permit Purchaser to inspect the Property within twenty-four (24) hours prior to Closing, and again upon the Sellers' relinquishment of exclusive possession in favor of Purchaser, to insure compliance with this provision.

6. Risk of Loss - During the period between the date of this Agreement and the Closing, the risk of loss shall be on Seller and Seller shall continue to carry the fire and extended coverage insurance presently maintained on the buildings on the Property (or, upon the written request of Purchaser, and at Purchaser's expense in such greater amount as Purchaser may reasonably request). In the event that any of the buildings located on the Property are destroyed or damaged and are not restored to their present condition by the date set for the Closing, Purchaser may either accept title to the Property and receive the benefit of all insurance monies recovered on account of such destruction or damage, or terminate this Agreement.

7. FIRPTA - At the Closing, Seller shall provide to Purchaser a sworn statement stating that Seller is not a "foreign person" as defined in Section 1445(f)(3) of the Internal Revenue Code, which sworn statement shall further state that Seller is a citizen of the United States, set forth Seller's Federal Tax Identification Number, state that Seller intends to file a U.S. Income Tax Return with respect to the sale of the Property, and granting Purchaser permission to furnish a copy of such sworn affidavit to the Internal Revenue Service. Otherwise, consistent with Purchaser's obligations under Section 1445 of the Internal Revenue Code, Purchaser shall be entitled to withhold ten percent (10%) of the amount realized by Seller upon the disposition of the Property.

8. Title and Instruments of Transfer - At the closing, Seller shall convey to Purchaser marketable title determined with reference to the Vermont Marketable Title Act (27 V.S.A. Section 601-604).

(a) The following documents shall be prepared, executed and delivered to Purchaser by and at the expense of Seller:

- (i) Warranty Deed; and
- (ii) Vermont Property Transfer Return.
- (iii) Vermont Land Gains Tax Return (if applicable).
- (iv) FIRPTA certificate.
- (v) Municipal Certificate of Occupancy, or equivalent.
- (vi) Such other documents which are necessary to convey marketable title to Purchaser or for Purchaser to obtain title insurance.

(b) In addition to the foregoing, the parties shall execute such other and further documents and shall take all actions which may be necessary to effectuate this Agreement and the transactions provided hereunder.

9. Examination of Title - Purchaser, at the sole cost and expense of Purchaser, shall cause the title to the Property to be examined, and shall notify Seller or Seller's attorney on or before the later of, April 15, 2019, or thirty (30) days prior to Closing, of the existence of encumbrances or defects which are not excepted in this Agreement and which render the title unmarketable. Promptly upon receiving such notification, Seller shall take such steps as are reasonably necessary to perfect title. If Seller shall not perfect or be unable to perfect title to the Property on or before the Closing, the date of Closing may, at Purchaser's option be extended for a period of thirty (30) days to enable Seller to perfect title to the Property. In the event Seller is unable to perfect title to the Property prior to the original or extended Closing date, as the case may be, then Purchaser may either accept such title as Seller is able to convey or at Purchaser's option may declare this Agreement null and void, in which event all deposit money shall be refunded to Purchaser, as Purchaser's sole remedy.

10. Recording Fees and Costs of Closing - If Seller is obligated to pay a Land Gains Tax pursuant to 32 V.S.A. § 10001, et seq., Seller shall provide at the Closing, a Commissioner's Certificate certifying the amount of the tax due and shall pay such tax at or prior to the Closing. Purchaser shall pay the cost of recording all documents recorded in connection with this transaction except those documents recorded to remove encumbrances or defects in Seller's title to the Property.

11. Default - Seller shall be in default under this Agreement if Seller fails to perform any obligation or duty imposed by this Agreement. In the event of default by Seller, Purchaser may terminate this Contract by written notice to Seller, Purchaser shall receive a refund of all Contract Deposits as liquidated damages, or at Purchaser's option, Purchaser may pursue all legal and equitable remedies as provided by law. Purchaser shall be in default of this Agreement if Purchaser fails to perform any obligation or duty imposed by this Agreement. In the event of a default by Purchaser, Seller may terminate this Contract by written notice to Purchaser and retain all Contract Deposits as liquidated damages, or at Seller's option, may pursue all legal and equitable remedies as provided by law. In the event the parties hereto become involved in any action or proceeding to enforce this Purchase and Sale Agreement, or the rights, duties or obligations hereunder, the unsuccessful party in such action or proceeding agrees to reimburse the substantially-prevailing party for the reasonable costs, expenses, and attorney's fees incurred therein by the substantially-prevailing party.

12. Tests and Inspections - Purchaser, its agents and contractors are hereby authorized, upon forty-eight (48) hours advance notice to Seller, to enter upon the Property prior to the Closing for the purpose of making such tests, inspections and appraisals as are provided for under this Agreement. Purchaser's entry on the Property shall not be construed as the taking of possession of the Property. Purchaser shall repair all damage to and restore all disturbance of the Property to its condition prior to the first entry on the Property by Purchaser immediately upon completion of the tests, inspections and appraisals. Purchaser hereby agrees to indemnify Seller and to hold Seller harmless from any loss, cost, damage, charge, fine, penalty or fee

incurred by Seller because of Purchaser's entry on the Property or the making of tests, inspections and appraisals by Purchaser, its agents and contractors.

13. Personal Property - Insofar as any of the following items are now located on the Property, they shall be deemed to be fixtures and are included in this sale; heating, lighting, and plumbing fixtures; storm windows and doors; screens and screen doors; curtain rods, window shades and venetian blinds; shrubbery and trees; wall-to-wall carpeting and television antennae and satellite dish. No personal property is included in this sale.

14. Deposit - In the event Purchaser terminates this Agreement in accordance with the provisions herein relating to "Contingencies", "Title Examination", "Risk of Loss", "Default" or "FIRPTA", or any other contingency expressly provided for elsewhere in this Agreement, Escrow Agent shall forthwith refund such deposit money to Purchaser. If Purchaser fails to perform and is in default, Escrow Agent shall pay and deliver such deposit money to Seller.

15. No Waiver - No waiver of any term or condition of this Agreement, or of any remedy hereunder shall be construed to be a continuing waiver of the same or any other term, condition or remedy.

16. Assignment - Purchaser may assign his rights, duties or obligations under this Agreement to any person or entity prior to the Closing.

17. Successors and Assigns - This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns.

18. Notices - Any notices required to be given hereunder shall be in writing and shall be deemed to be given when deposited in the United States mail, postage prepaid, via registered mail or certified mail, with return receipt requested, addressed as follows:

- (a) If to Seller: at 76 West St. Bristol, Vermont 05443  
with copy to: Kevin Brennan, Esq.  
Brennan Punderson & Donahue, PLLC  
PO Box 8  
Monkton, VT 05469
- (b) If to Purchaser: Valerie Capels  
Town of Bristol  
1 South St.  
P.O. Box 249  
Bristol, VT 05443  
with copy to: Kevin E. Brown  
Langrock Sperry & Wool LLP  
P.O. Drawer 351  
Middlebury, VT 05753

(c) If to Escrow Agent: Kevin E. Brown  
Langrock Sperry & Wool LLP  
P.O. Drawer 351  
Middlebury, VT 05753

The addresses and persons entitled to receive the notices provided for above may be changed by written notice to the other party given in accordance with the provisions of this Section.

19. Effect of Agreement - This Agreement states the whole agreement of the parties hereto regarding the purchase and sale of the Property, and all prior agreements, understandings, representations, covenants and agreements and warranties made by either party prior to the date of this Agreement are merged herein, and this Agreement alone fully expresses the understanding and agreements of the parties hereto. The terms of this Agreement may not be altered, modified or amended in any respect except by written Agreement executed by the parties hereto.

20. Governing Law - This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Vermont.

21. Survival - The terms, conditions, covenants and representations of this Agreement shall survive the Closing and the execution of the deeds, shall not be merged in any documents exchanged at Closing, and shall be in full effect and enforceable after the Closing.

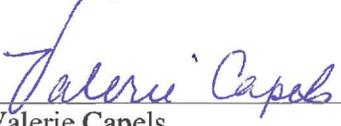
22. Brokers - Seller and Purchaser each represent and acknowledge to the other that there are no real estate brokers or agents in connection with this transaction. Purchaser agrees to hold Seller harmless from any claim for commissions, fees or other compensation due or alleged to be due because of the dealings between Purchaser and any real estate brokers or agents.

23. Counterparts - This Agreement may be executed in one or more counterparts, each of which shall be treated for all purposes as an original.

24. Headings - The headings in this Agreement are for the purposes of reference only and shall not limit or otherwise affect the meaning or interpretation of this Agreement.

25. Escrow Agent - The parties hereto jointly and severally hereby agree to indemnify and hold Escrow Agent harmless for all matters related to the discharge of Escrow Agent's responsibilities hereunder except for the gross negligence or intentional wrongful conduct of Escrow Agent.

PURCHASER'S OFFER TO PURCHASE

  
\_\_\_\_\_  
Valerie Capels  
Duly Authorized Agent for  
Town of Bristol

08/20/2018 7:05pm  
Date and time of offer

SELLER'S ACCEPTANCE OF OFFER AND AGREEMENT TO SELL

Seller hereby accepts Purchasers' offer and agrees to sell the property at the price and upon the terms set forth in this Contract and any General Addendum and/or Special Conditions Addendum thereto.

Edward Shepard  
Edward Shepard

9-9-18-2016  
Date and time of Acceptance

Suzanne Shepard  
Suzanne Shepard

9-9-18 8:45 PM  
Date and time of Acceptance

I hereby acknowledge receipt of the deposit referred to in paragraph 2(a), above, subject to collection this 11<sup>th</sup> day of September, 2018.

Kevin E. Ryan  
Escrow Agent