

TOWN OF CARLISLE

Office of

Board of Selectmen

978.369.6136
fax 978.318.0098

FAX

TO: Mr. Greg Peterson

FAX NO.: 617.406.6126

FROM: Margaret McNally

Date: March 24, 2004

Re: Purchase and Sale Agreement

NO. OF PAGES (including cover page): 11

Per your request, attached you will find a copy of the Purchase and Sale Agreement for Parcel A.

PURCHASE AND SALE AGREEMENT

From: Deutsch Williams Brooks DeRensis & Holland, P.C.
99 Summer Street 13th Floor
Boston, MA 02110
Phone: 617-951-2300
Fax: 617-951-2323

Agreement made this 16th day of March, 2004.

1. PARTIES AND MAILING ADDRESSES

Carlisle Conservator Foundation, Inc., a Massachusetts nonprofit corporation, hereinafter called the SELLER, agrees to SELL and the Town of Carlisle, acting by and through its Board of Selectmen, a Massachusetts municipality, hereinafter called the BUYER or PURCHASER, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

2. DESCRIPTION

Vacant land (the "Property", or the "Premises") located between South Street and the thread of Spencer Brook, and commonly known as "Parcel A" in Carlisle, Massachusetts, consisting of approximately 45.23 acres +/- of land shown as Lots 1A, 2A, 3A, 4A, and 5A, and Open Space Parcel A on the plan recorded in Middlesex North Registry of Deeds Plan Book 112 Page 82 (the "Plan"). Seller is the holder of an exercised option to purchase the property with the seller thereunder being John M. Cornish and Marjorie Getchell, Trustees of South Street Nominee Trust w/d/t dated January 3, 2001 and recorded with Middlesex North Registry of Deeds in Book 11322, Page 117. For title of such seller to Seller, see Deed at Book 11322, Page 127 recorded in said Deeds.

3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES

<Intentionally Omitted - Vacant Land>

4. TITLE DEED

Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, 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 delivery of such deed;
- (c) Any liens for municipal betterments assessed after the date of this agreement;
- (d) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with Buyer's proposed use of said premises;
- (e) Terms and conditions stated in the town meeting vote to be adopted pursuant to Paragraph 30.
- (f) Terms and conditions contained in the Carlisle Conservation Commission Order for Resource Area Delineation in DEP File No. 125-718, to be recorded prior to closing.

5. PLANS

<Intentionally omitted.>

6. REGISTERED TITLE

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<Intentionally omitted >

7. PURCHASE PRICE

The agreed purchase price for said premises is One Million Nine Hundred Twenty-Five Thousand and no/100 Dollars (\$ 1,925,000.00) all of which is to be paid by Buyer at the time of delivery of the deed by federal funds wire, or by certified, cashier's, treasurer's, or bank check(s) on a Boston clearing house bank. At the closing the Buyer shall also pay the reimbursement to Seller as set forth in paragraph 29, below.

8. TIME FOR PERFORMANCE: DELIVERY OF DEED

Said deed is to be delivered at Twelve O' Clock Noon on April 7, 2004, at the office of Deutsch Williams Brooks DeRensis & Holland, P.C., unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement.

9. POSSESSION AND CONDITION OF PREMISES

Full possession of said premises free of all tenants and occupants 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 are now, reasonable use and wear thereof excepted (b) not in violation of said building and zoning laws, (c) in compliance with provisions of any instrument referred to in Clause 4 hercof. The BUYER shall be entitled to personally inspect the premises prior to the delivery of the deed in order to determine whether the condition of the premises complies with the terms of this clause.

10. 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 delivery of the deed the premises do not conform with the provisions hereof, then the SELLER shall use reasonable efforts (which shall not require the expenditure of more than \$10,000 in the aggregate) to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hercof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of ten(10) days.

11. 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 the premises shall refuse to permit any insurance proceeds 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.

12. 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 therefore the purchase price without deduction, in which case the SELLER shall convey such title.

13. ACCEPTANCE OF DEED

The acceptance and recording of a deed by the 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 delivery of said deed.

14. USE OF MONEY TO CLEAR TITLE

To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the 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 delivery of said deed, except that releases of liens held by institutional lenders may be delivered within a reasonable time after closing.

15. INSURANCE

<Intentionally omitted - Vacant Land>

16. ADJUSTMENTS

Taxes for the then current fiscal year shall be apportioned as of the day of performance of this agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the BUYER at the time of delivery of the deed.

17. ADJUSTMENT OF UNASSESSED AND UNABATED TAXES

<Intentionally omitted>

18. BROKER'S FEE

<Intentionally omitted.>

19. BROKER'S WARRANTY

<Intentionally omitted.>

20. DEPOSIT

<Intentionally omitted.>

21. BUYER'S DEFAULT; DAMAGES

If the Buyer shall fail to fulfill the BUYER'S agreements herein, the parties agree that the sum of \$5,000 is a reasonable estimate of the damage to SELLER as a result of such failure, and said sum shall be paid by the BUYER to the SELLER as liquidated damages, which shall be the SELLER'S sole and exclusive remedy at law and in equity for a breach of this agreement.

22. RELEASE BY HUSBAND OR WIFE

<Intentionally omitted.>

23. BROKER AS PARTY

<Intentionally omitted.>

24. LIABILITY OF TRUSTEES, SHAREHOLDERS OR BENEFICIARIES

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 or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

25. WARRANTIES AND REPRESENTATIONS

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranty and representation made by the SELLER:

Seller has a validly existing and exercised option to purchase the premises for the price stated herein. Said option is pursuant to Article VIII of that certain Master Planning, Conservation and Escrow Agreement dated January 23, 2003 (the "Benfield Agreement"), by and among Seller and Benfield (as defined in the Benfield Agreement). Seller represents that the copies of the Benfield Agreement which it has supplied to Buyer are true and complete with respect to said option.

Seller will provide a certificate at closing which restates the foregoing representation as of the date of closing.

Except as stated above in this paragraph 25, Buyer is purchasing the Property "as is" without any representation or warranty whatsoever, based on Buyer's review of due diligence documents obtained by Seller and made available to Buyer at no additional charge, as set forth in paragraph 28, below (all of which have been delivered without representation or warranty as to the accuracy of the contents and conclusions stated therein), and such other due diligence as Buyer has performed at its sole cost and expense, including without limitation, the substantial surveying, wetlands surveying, topographic and other engineering information available to the Buyer from public record Town files as a result of filings made with the Planning Board, the Conservation Commission and the Board of Health by or on behalf of Seller's seller.

26. MORTGAGE CONTINGENCY CLAUSE

<Intentionally omitted>

27. 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 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 the SELLER and the BUYER or their respective counsel. The Parties may rely upon facsimile copies of such written instruments. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several. 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.

28. SELLER'S DUE DILIGENCE DOCUMENTS

Prior to the execution of this Agreement Seller has caused the following documents in its possession to be delivered to Buyer, which delivery is made without any representation or warranty whatsoever.

- a. A current title examination of the Property and a commitment from Stewart Title Guaranty Company to Buyer for an ALTA form of owner's title insurance at customary premium rates;

- b. A Phase I Environmental Site Assessment Report from Rizzo Associates, Inc., stating that Buyer is entitled to rely thereon;
- c. A copy of the Order of Resource Area Delineation ("ORAD") for the Property approved by the Conservation Commission of the Town of Carlisle. Buyer acknowledges that although the ORAD application for the Property did not seek to determine any riverfront areas on the Property (and, accordingly, the ORAD for the Property does not make such determination), (i) the stream crossing the northwesterly corner of the Property was determined to be an intermittent stream in another ORAD issued in November, 2002 by the Conservation Commission of the Town of Carlisle, with respect to the property abutting the Property to the west, and (ii) Spencer Brook is presumed to be a perennial stream giving rise a riverfront area; and
- d. Completed Soil Evaluator Forms (in 28 pages) for the Property together with a site plan showing the locations of soils evaluations on the Property.

If Buyer requires that the documents in Paragraph 28(a) be amended or supplemented to entitle Buyer to rely thereon, Seller shall obtain at no expense to Buyer written confirmation from the appropriate vendors and professionals authorizing such reliance.

29. REIMBURSEMENT OF SELLER'S EXPENSES

At closing, Buyer shall pay to Seller the sum of \$60,000 to reimburse Seller for its expenses in negotiating and obtaining the option on the Property which Seller has made available to Buyer at no additional consideration, undertaking planning exercises with respect to the Property and certain neighboring properties of Seller's seller, and performing due diligence with respect to the premises, comprised of the following sums:

Rizzo Associates (Phase I Environmental Site Assessment)	\$2000
Toby Kramer (Housing Cost Estimator / Housing Consultant)	\$960
Casner & Edwards, LLP (Legal Services)	\$8,894.25
F.W. Bucklin Appraisal Company (Research in preparation for a second opinion appraisal; research work released by Seller so that research work could be used for appraisal provided to Buyer)	\$3,000
Hanify & King (Legal Services)	\$20,499.89
Marsh, Moriarty, Ontell & Golder, P.C. (Title searches and rundowns)	\$262
Shepherd Associates (Initial valuation services for exercise of option)	\$6,725
Stanski & McNary (Planning and engineering services)	\$9,259.16
Stewart Title	\$690.50

(Title searches and run downs)	
Hill & Barlow (Photocopying, faxes, delivery charges and other out of pocket disbursements only; No Fees)	\$5,557.11
Interest on Non-refundable Option Deposit (Borrowed by Seller at 5% per annum) (5% on \$147,500 from 10/2/03 to closing - 189 days, plus 5% on \$45,500 from 12/30/03 to closing - 100 days)	\$3,871.88, plus \$ 631.94
TOTAL	\$62,351.73

Seller represents that each vendor listed above (other than Toby Kramer, whose invoice has been estimated) has been paid in full for services rendered in connection with the premises. Notwithstanding the fact that the list of expenses totals a sum in excess of \$60,000, the sum to be reimbursed will be only \$60,000.

30. TOWN MEETING VOTE

The obligations of both parties shall be contingent upon passage prior to closing of one or more resolutions by the Carlisle Town Meeting authorizing the transaction described in this agreement, appropriating the funds required to complete the transaction described herein, and stating the restrictions applicable to use of the premises after it is acquired by the Buyer. Such resolutions will be deemed passed and final only after they have been adopted by Town Meeting and shall provide as listed below:

- a. Appropriate the purchase price and all other sums required to close the transaction described in this agreement, with all such sums to be taken from revenues available to the Buyer from local assessments or from the proceeds of bonds to be issued by Buyer in anticipation of such revenues.
- b. Authorize the Buyer to acquire the premises, with title to be held on behalf of the Buyer by its Board of Selectmen or such other boards or committees which may be designated by the Buyer.
- c. State that the Open Space Parcel (described below) shall be held, used and managed by the Buyer in its natural state as open space (as defined in the Community Preservation Act ("CPA"; MGL Chapter 44B)), provided that the Open Space Parcel shall be used only for passive recreation. The Open Space Parcel shall be a portion of the premises which consists of at least 26 contiguous acres and includes the entire 24-acre interior meadow and wetlands complex located between Spencer Brook and the east-west running stone wall that bisects the property.
- d. State that the Remainder Parcel (described below) may be held, used and managed by the Buyer only for one or more of community housing, open space and/or recreational use (as defined in the CPA). The Remainder Parcel shall be the portion of the premises which is the balance of the premises other than the Open Space Parcel. In response to the Seller's offer, Buyer agrees that a five-acre portion of the Remainder Parcel which includes the existing field along South Street and a buffer along the entire northerly boundary of the premises shall be used and managed by Buyer for open space (as defined in the CPA), and may include active recreation such as a ball field, and for access to the rest of the premises.

- e. Require the Buyer to enter into a public planning process with regard to the Remainder Parcel. The process will be led by a task force to be appointed by the Board of Selectmen, which will include representatives from each of the neighborhood, conservation, community housing and active recreation communities. The task force shall report to the 2005 Annual Town Meeting by providing for approval a detailed plan of the manner in which the Remainder Parcel will be allocated among open space/recreation and/or community housing uses. Such allocation shall be consistent with the restrictions and limitations set forth in Subparagraphs 30(c) and 30(d) above, and will refer to specific parcel descriptions.
- f. Authorize and direct the Board of Selectmen to impose on the entire premises permanent restrictions complying with CPA Section 12 and/or M.G.L. Chapter 184, such that the Open Space Parcel and Remainder Parcel will be retained in the uses designated above.
- g. Such other provisions which the Buyer may determine in its sole discretion are necessary or appropriate; provided that such other provisions shall be consistent with the restrictions and limitations set forth in Subparagraphs 30(c) and 30(d) above.
- h. Seller reserves the right to waive, in whole or in part, or to accept a modified version, in whole or in part, of any one or more of the foregoing requirements for such Town Meeting resolution or resolutions, without prejudice to Seller's right to require compliance with any other portion of such requirement or compliance with any other requirement.

31. TITLE STANDARDS

Any matter relating to performance of this Agreement which is the subject of a title, practice or ethical standard of the Massachusetts Real Estate Bar Association (formerly known as Massachusetts Conveyancers Association) shall be governed by such standard to the extent applicable.

32. NOTICES

All notices required or permitted to be given hereunder shall be in writing and delivered by hand or mailed, postage prepaid, by registered or certified mail, in the case of the Seller:

Carlisle Conservation Foundation, Inc.
 12 Skelton Road
 Carlisle, MA 01741
 Attention: Mr. Arthur Milliken, President

With a copy to:

Greg D. Peterson, Esq.
 Piper Rudnick, LLP
 One International Place
 Boston, MA 02110

And with a further copy to:

F. Alex Parra, Esq.
 D'Agostine, Levine, Parra & Netburn, P.C.
 268 Main Street
 Acton, MA 01720

In the case of Buyer:

Town of Carlisle
Board of Selectmen
Carlisle Town Hall
66 Westford Street
Carlisle, MA 01741

With a copy to:

Valerie Swett, Esq. or
Paul R. DeRensis, Esq.
Deutsch Williams Brooks DeRensis & Holland, P.C.
99 Summer Street
Boston, MA 02110

Or in the case of any party to such other address as shall be designated by written notice given to the other party. Any such notice shall be deemed given when so delivered by hand or, if so mailed, when deposited with the U.S. Postal Service.

33. BROKER WARRANTY

Seller and Buyer represent each to the other that they have not engaged any broker, entered into a listing agreement or other contract or otherwise retained a broker in connection with the transaction contemplated by this Purchase and Sale Agreement. Each shall indemnify and hold the other harmless from and against any loss, cost or damage suffered or incurred by the other as a result of a breach of the foregoing representation.

34. SELLER'S CONTINGENCY

Seller's obligations under this Agreement shall be contingent upon Seller closing its option under the Benfield Agreement for \$1,920,000 and with title in conformance with this Agreement, either before or simultaneously with closing under this Agreement, and shall also be contingent on adoption by Carlisle Town Meeting of a resolution or resolutions as set forth in paragraph 30 of this Agreement.

35. BUYER'S CONTINGENCIES

Buyer's obligations under this Agreement shall be contingent upon the following occurring before closing:

- a. Buyer complying with the requirements of Massachusetts General Laws Chapter 30B concerning public procurement of the premises.
- b. Buyer obtaining from bond counsel a determination that the transaction described in this agreement may be financed in whole or in part by a note in anticipation of a municipal bond and ultimately by a municipal bond.
- c. To the extent that financing will be provided from CPA funds, the transaction described herein being approved by the Town of Carlisle Community Preservation Act Committee for acquisition using such funds.
- d. Adoption by Carlisle Town Meeting of a resolution or resolutions complying with Paragraph 30.

36. SELLER'S DOCUMENTS

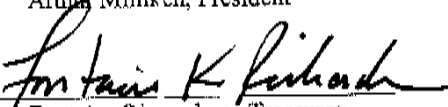
Seller agrees to sign at closing all forms customary or reasonably required by Buyer or Buyer's attorney, including without limitation title insurance affidavits, nonforeign affidavits, Internal Revenue Service disclosure statement, and 40J disclosure.

37. SEVERABILITY

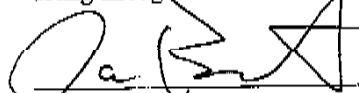
If any provision or condition of this Agreement shall be deemed invalid or unenforceable, the remaining provisions and conditions shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

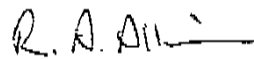
SELLER
CARLISLE CONSERVATION FOUNDATION, INC.

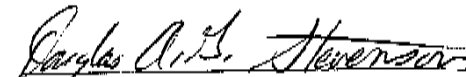
By 
Arthur Milliken, President

By 
Fontaine Richardson, Treasurer

BUYER
TOWN OF CARLISLE
acting through its Board of Selectmen


John W. Ballantine


Richard A. Allison


Douglas Stevenson

(2/26/2004)

DWLJB 150875v5
5602/18

**LEGAL NOTICE
NOTICE OF TOWN CAUCUS**

Pursuant to the provisions of Chapter 53, Section 121, of the General Laws; a Town Caucus will be held on Monday, April 12, 2004, at 7:00 p.m. at the Town Hall (Clark Room) for the nomination of candidates to fill the following office:

Selectman one for one year

The Town Clerk will call the meeting to order and preside over the meeting until a Chairman is chosen.

BOARD OF SELECTMEN

Timothy F. Hult
John W. Ballantine, Jr.
Richard A. Allison
Douglas A. G. Stevenson

April 2, 2004
April 9, 2004

Signature of Voter

Signature of Voter

Signature of Voter

Posted: Carlisle Town Hall
Published: Carlisle *Mosquito*
Publish Dates: April 2, 2004 and April 9, 2004

Posted: Town Hall, Gleason Library, and Post Office