

PURCHASE AND SALE AGREEMENT
UNIMPROVED LAND

1. **Parties.** This Agreement is made as of the ____ day of January, 2011 (the "Effective Date"), by and between **XANH THI PYLE**, an individual with a mailing address of 13 Twin Island Road, Gray, Maine 04039 ("Seller"), who agrees to sell, and **TOWN OF FALMOUTH**, with a mailing address of 271 Falmouth Road, Falmouth, ME, 04105 ("Buyer"), who agrees to buy, upon the terms hereinafter set forth, the premises described in Paragraph 2 of this Agreement.
2. **Description.** The premises to which this Agreement applies is unimproved land located on Winn Road, Falmouth, Cumberland County, Maine, and described in Exhibit A attached hereto , comprising approximately one +/- acre, and also referred to on Town Tax Map R06-016-G (the "Premises"). Reference is made to a Corrective Release Deed from Larry Russell Pyle to the Seller herein, dated May 24, 1999 and recorded in the Cumberland County Registry of Deeds in Book 14775, Page 361 and to two Affidavits dated January 23, 2007 and recorded in such Registry in Book 44936, Pages 290 and 291.
3. **Title Deed and Closing.** Said Premises are to be conveyed by a good and sufficient Warranty Deed and said deed shall convey a good and clear, record, insurable and marketable title thereto, free from encumbrances except such municipal real estate taxes as are not due and payable on the date of the delivery of such deed.
4. **Purchase Price.** Subject to any adjustments and pro-rations hereinafter described, Buyer agrees to pay for the Premises the sum of One Hundred and Five Thousand and 00/100 **DOLLARS (\$105,000.00)** (the "Purchase Price"), to be paid at the time of delivery of the deed by certified, cashier's, treasurer's or bank check, or by wire transfer in accordance with wiring instructions provided by Seller within a reasonable time prior to the Closing.
5. **Boundary Survey Costs.** The parties agree that a boundary survey has been performed by Sebago Technics of Westbrook, Maine which serves as the basis for the description in Exhibit A and that Buyer has paid the cost of the survey. The parties agree that the Purchase Price paid at Closing shall be decreased by one half (1/2) the cost said survey. In the event this transaction does not close due to the Seller's failure to satisfy any of the conditions in paragraphs 6 (Contingencies) or 9 (Failure to Perfect Title) or due to Seller's default, the costs of the Boundary Survey shall be borne equally by the parties.
6. **Time for Performance; Delivery of Deed.** Such Warranty Deed is to be delivered and the Purchase Price paid at the offices of Buyer's counsel in Portland, Maine on or before the date which is thirty (30) days after delivery of the completed Boundary Survey to Buyer unless otherwise mutually agreed in advance in writing (the "Closing").
7. **Contingencies.** The obligations of Buyer under this Agreement are subject to the following contingency, which, if not met, shall entitle Buyer to terminate this Agreement by giving Seller written notice of Buyer's intention to do so within the time period specified and the parties shall be relieved of all further obligations under this Agreement and this Agreement shall be void and neither party shall be in default under this Agreement.

A. Inspection. Buyers may, after giving Seller twenty-four (24) hours prior notice, enter into the Premises at reasonable times prior to the Closing in order to inspect the Premises, conduct surveys and engineering studies and to do such things as are reasonably necessary with respect to its acquisition of the Premises. Buyers agrees to provide copies of all such surveys, studies and inspections to Seller. Buyer agrees to and does hereby indemnify and hold harmless Seller against any loss, cost, damage, claims or expense which may arise from its or its agents', employees' or contractors' activities at the Premises.

B. Premises deemed "buildable". This Agreement is subject to a determination by Buyer or its representatives and agents, and to Buyer's satisfaction, that the Premises comprise a "buildable" lot under applicable statutes and local law. .

8. Possession and Condition of Premises; Title; Occupancy After Closing. Except as set forth in this Paragraph 8, full possession of the Premises free of all tenants and occupants is to be delivered to Buyer at the Closing and the Premises shall be in the same condition as they now are, reasonable use and wear thereof excepted

9. Extension to Perfect Title or Make Premises Conform. If Seller is unable to convey title of the type and quality described in paragraph 3 hereof, or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or, if at the time of Closing the Premises do not conform with the provisions hereof, then Seller shall use good faith 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, in which event the time for performance hereof shall be extended for a period of thirty (30) days. If Seller is unable to cure the defects within the thirty (30) day extension, Buyer may, but shall not be required to, extend the time for Seller's performance hereof for an additional period of time up to sixty (60) days.

10. Failure to Perfect Title or Make Premises Conform. If at the expiration of any extended time for performance of this Agreement, Seller has failed after the exercise of good faith efforts to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, then, at Buyer's option, all obligations of the parties hereto shall cease, this Agreement shall be void without recourse to the parties hereto, and neither party shall be in default under this Agreement.

11. Buyer's Election to Accept Title and Condition. Buyer shall have the election, at either the original or any extended time for performance, to accept such title to the Premises in their then condition as Seller can deliver and to pay therefor the Purchase Price without deduction except as otherwise provided herein.

12. Risk of Loss. Until delivery of the deed from Seller to Buyer, risk of loss or damage to the Premises by fire or otherwise shall be on Seller. If on or before the Closing either: (a) all or any part of the Premises is damaged or destroyed by fire, earthquake, flood or the elements, or by any other cause; or (b) all or any part of the Premises is taken or threatened to be taken by condemnation or other power of eminent domain, Buyer may, by written notice given to Seller within thirty (30) days after Buyer shall have notice of such damage, destruction, taking or threatened taking (and the Closing Date shall be extended if necessary to allow Buyer said thirty (30) day period) elect, in Buyer's sole and absolute discretion, to terminate this Agreement or proceed with the transaction contemplated hereby in accordance with the terms and conditions set forth herein, provided, however, the insurance

proceeds received by or payable to Seller for any such damage (plus the amount of any deductible payable under the insurance policy allocable to the loss), or in the event of a taking, any condemnation award received by or payable to Seller, shall be paid or assigned by Seller to Buyer at Closing.

13. Default. In the event of a default by Buyer of its obligations under this Agreement, Seller's sole remedy shall be to retain all earnest money deposits previously made by Buyer under this Agreement as full, final, and fixed liquidated damages for the breach of this Agreement, the parties being in agreement that actual damages would be difficult to assess and ascertain. In the event of default by Seller, Buyer shall have all available remedies at law and equity, including, without limitation, specific performance.

14. Adjustments. Real estate taxes for the then-current municipal tax year shall be apportioned as of Closing. Maine real estate transfer tax shall be paid equally by Seller and Buyer in accordance with 36 M.R.S.A. 4641-A. All other charges affecting the Premises and customarily apportioned between a buyer and seller of real estate similar to the Premises shall be pro-rated as of the Closing.

15. Brokerage. Seller and Buyer each represent and warrant to the other that no brokers, agents or consultants have been employed with respect to this transaction by either of them, and Seller and Buyer agree to indemnify and hold the other harmless from any claim by any broker or agent claiming compensation in respect of this transaction, alleging an agreement with Seller or Buyer, as the case may be.

16. Withholding Tax Requirement. Any other provision of this Agreement notwithstanding, Buyer shall, unless an exemption applies, be entitled to withhold at the Closing all amounts required to be withheld under 36 M.R.S.A. §5250-A or any other applicable federal or state law, and any such withheld amounts shall be credited against the Purchase Price as if paid to Seller at Closing.

17. Offer and Acceptance. This document, when signed on behalf of Buyer and submitted to Seller, shall constitute an offer which, if not sooner revoked by Buyer, must be accepted by Seller within five (5) business days, failing which such offer shall automatically expire.

18. Other Conditions. None

19. Miscellaneous:

(a) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties.

(b) Notice. Any notice relating in any way to this Agreement shall be in writing and shall be sent by registered or certified mail, return receipt requested, addressed to the party to receive such notice at the address of such party set forth in the first paragraph of this Agreement, and such notice shall be deemed delivered when so posted. Either party may, by such manner of notice, substitute persons or addresses for notice other than those listed above.

(c) Entire Agreement. Any and all prior and contemporaneous discussions,

undertakings, agreements and understandings of the parties are merged in this Agreement, which alone fully and completely express their entire agreement. This Agreement may not be modified, waived or amended except in a writing signed by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such a breach, and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise be prejudicial thereto. Buyer shall be entitled to recover reasonable attorney fees in any action commenced by Buyer to enforce the terms of this Agreement.

(d) Construction. This Agreement shall be governed by and construed and enforced in accordance with the laws in effect in the State of Maine. Any time period which expires on a Saturday, Sunday, or legal holiday shall automatically be extended to the next succeeding business day.

(e) Multiple Counterparts. To facilitate execution, this Agreement may be executed in multiple counterparts, all of which, taken together, shall collectively constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date and year first written above.

WITNESS:

SELLER:

Xanh Thi Pyle

BUYER:

Town of Falmouth
By: Nathan Poore
Its: Town Manager

