

Purchase and Sale Agreement

Draft January 11, 2012

The Town of Falmouth, a municipality existing under the laws of the State of Maine (hereinafter the "Town") and Ocean View Retirement Community Limited Partnership, a Maine limited partnership (hereinafter "OV") hereby agree as follows:

1. **Purchase and Sale of the Property.** On and subject to the terms and conditions of this Purchase and Sale Agreement (hereinafter this "Agreement"), the Town agrees to sell to OV, and OV agrees to purchase from the Town, property shown as (a) the "Ocean View Lunt lot" (hereinafter called the "Lunt Lot") and (b) the "Plummer lot" (hereinafter called the "Plummer Lot") as shown on Exhibit A hereto, consisting of land adjoining property currently owned by OV as shown on Exhibit A hereto, together with the former Plummer school building and the former Lunt School building, being all of the property shown as Lot 3 on the Town's Tax Map U-27 and the property described in the deeds to the Town recorded in the Cumberland County Registry of Deeds, Book 1342, Pages 367 and 437, but excluding the property shown on Exhibit A hereto as (a) the "Town Green lot" (hereinafter called the "Town Green Lot", and (b) the "Mason Motz lot" (hereinafter called the "Mason Motz Lot"), such excluded property consisting of the former Mason Motz school building and the parcel of land on which Mason Motz school is located and the "Town Green", the boundaries of the Mason Motz Lot, the Town Green Lot, the Lunt Lot and the Plummer Lot to be substantially as shown on Exhibit A hereto, with the exact boundaries thereof to be determined in accordance with the provisions of Section 4(a) of this Agreement (such property to be conveyed to OV being hereinafter called the "Property"). The Property conveyed to OV shall also include cross easements for the benefit of the Plummer Lot, the Ocean View Lunt Lot, the Town Green Lot and the Mason Motz Lot over: (a) the Mason Motz Lot and Town Green Lot for utilities and storm water drainage and stormwater retention, (b) the Town Green Lot for easements for shared parking sufficient for the uses contemplated on the Plummer Lot, the Mason Motz Lot and the Town Green Lot, and (c) over the Mason Motz Lot, the Plummer Lot and the Town Green Lot (but not over the Ocean View Lunt Lot) for shared access, which easements shall not unreasonably interfere with the parties planned use of their respective parcels, and which shall be reasonably acceptable to Town and OV in all respects, such easements to be shown on the Master Plan to be prepared in accordance with Section 4(a) of this Agreement and such easements to be granted and reserved in the deed delivered at Closing.

2. **Purchase Price.** The total Purchase Price payable by OV to the Town for the Property is \$3,250,000 (hereinafter the "Purchase Price") with payment to be made as follows: (a) \$50,000 (the "Deposit") on the date hereof, such Deposit to be held in escrow by CBRE-The Boulos Company, as Escrow Agent, and deposited in an interest bearing account, with the Deposit and all interest earned thereon to be applied to the Purchase Price or paid to the Town at Closing (as defined in Section 3 of this Agreement); and (b) the balance of the Purchase Price, by wire transfer, or by bank, law firm or title company check, or by certified check at Closing.

3. **Closing.** This transaction shall be closed at the offices of Jensen Baird Gardner & Henry or such other place in Cumberland County, Maine as designated by OV, and OV shall pay the Purchase Price as provided in Section 2 hereof, and the parties hereto shall execute all necessary documents for the completion of the purchase as set forth in Sections 4 and 5 of this Agreement, on the date that is 60 days after the date on which all of the conditions described in Sections 5(b), (c), and (d) of this Agreement have been satisfied but in any event not later than December 31, 2012 (provided, however, such date may be extended by OV or the Town in accordance with the provisions of Section 5 of this Agreement), or such earlier date as specified by OV by at least 5 business days prior written notice to the Town (hereinafter the "Closing").

4. **Closing Documents.** At the Closing, and in addition to any other documents referred to in this Agreement to be delivered to OV at Closing, the Town shall execute, acknowledge, as necessary, and

deliver the following documents and such other documents as reasonably required to complete the transaction contemplated herein:

(a) Transfer Documents. The Town shall execute, acknowledge and deliver to OV a Quitclaim Deed with Covenant, conveying good and marketable fee simple title to the Property to OV, free and clear of all liens and encumbrances, (except for utility easements serving the Lunt Lot and the Plummer Lot, and other existing easements of record as of the date hereof), and a Real Estate Transfer Tax Declaration of Value, an Option Agreement for the Purchase of the Mason Motz Lot and a memorandum of Option for Recording, and any other documents as are reasonably necessary to convey the Property to OV at Closing. The Town shall convey the Property by a deed using a metes and bounds description of the Property based upon a survey to be prepared by a surveyor (acceptable to the Town and selected by OV) prior to the Closing (the "Survey"), the cost of which Survey shall be paid by OV. Within 90 days from the date of this Agreement, OV shall provide a conceptual master plan (Master Plan) following consultation with the Town Manager of the Town and a survey of the Property. The survey shall depict the the Lunt Lot and Plummer Lot parcels to be conveyed to OV, the Town Green Lot and the Mason Motz Lot to be retained by the Town and the easements described herein or contemplated hereby. The survey shall be reviewed by the Town and if the Town fails to object to the exact boundaries of the Property, as shown on the survey, within 30 days of the receipt thereon, such survey shall conclusively determine the boundaries of the Property and easement rights to be conveyed by the Town to OV at Closing. If the Town provides a written objection to such boundaries within such 30 day period, the Town and OV shall meet promptly to agree on the exact boundaries of the Property and easement rights, and if the parties do not agree, the dispute shall be conclusively resolved by a neutral land planner selected by OV and the Town, taking into consideration the proposed or reasonably intended uses of each parcel by the parties hereto.

(b) Title Affidavits. The Town shall deliver to OV such customary certificates, affidavits or agreements as the title insurance company issuing the title insurance policy to OV on the Property shall require in order to issue such policy and to omit therefrom all exceptions for unfiled mechanic's, materialmen's or similar liens and for parties in possession.

(c) Underground Oil Storage Tank Certification. The Town shall deliver to OV a written notice, in form and substance reasonably satisfactory to OV, which written notice shall certify either: (i) that to the best of the Town's knowledge, there is no underground oil storage facilities located on the Property, or (ii) pursuant to 38 M.R.S.A. § 563(6), if there are any such facilities on the Property, that the facilities exist and shall disclose its registration number or numbers, the exact location of the facilities, whether or not it has been abandoned in place, and that the facilities are subject to regulation by the Maine Board of Environmental Protection.

(d) Authorization. The Town shall cause to be delivered to OV evidence reasonably satisfactory to OV and its lender to the effect that: (i) this Agreement and the deed and other documents delivered at Closing have been duly authorized and approved by the Town, including, without limitation, pursuant to Section 16-43 of its Ordinances (providing for a waiver of the competitive bidding process by "Order" of the Town Council pursuant to section 204.12 of the Falmouth Town Charter), and (ii) the Lunt school and the Plummer school have been duly closed and that the Falmouth School Board has duly voted to transfer control of the Property to the Municipal Officers of the Town and that the Property is being duly disposed of to OV, all in accordance with Chapter 202 of Title 20-A of the Maine Revised Statutes.

5. Conditions to Closing. Without limitation of any other conditions set forth herein, OV's obligations to pay the Purchase Price and to consummate the transactions contemplated by this Agreement are subject to satisfaction of all of the conditions set forth in this Section 5. If such conditions have not been satisfied by December 31, 2012, then the Closing Date may be extended, at the option of OV (or at the option of either OV or the Town in the case of the condition described in Section 5(d) below), to the date that is 45

days after the date on which all of the conditions set forth in this section 5 have been satisfied (provided that OV may exercise such right to extended the date for Closing only if applications for the permits and approvals described in Sections 5(b), (c), and (d) hereof either are pending or have been granted, with appeals thereof still pending or appeals periods not yet having expired), provided, however, that OV shall make an additional Deposit of \$75,000 prior to December 31, 2012 (the "Additional Deposit"), and provided that the extension period shall not exceed 24 months from the date of this Agreement unless litigation is pending by an opponent of the project in which case such extension shall not exceed 36 months. OV may waive any or all of such conditions in whole or in part but any such waiver shall be effective only if made in writing. If OV pays the Purchase Price due to the Town at Closing, all such conditions shall be deemed to have been satisfied or to have been waived by OV. If any condition set forth in this Section 5 is not fully satisfied by the Closing date or waived in writing by OV, then OV, by written notice to the Town, may terminate this Agreement, in which event the Deposit and all interest earned thereon shall be returned to OV and OV shall transfer all right, title and interest in and to any and all surveys, plans, drawings, environmental or geotechnical reports, engineering studies and other like studies, reports and plans relating to the development of the Lunt Parcel and the Plummer Parcel (the "Land Reports") and deliver copies of each of the Land Reports to the Town and neither party shall have any further rights, claims or obligations hereunder. OV and the Town shall each use reasonable, good faith efforts to satisfy the conditions described below. The conditions to Closing are as follows:

(a) Title. Good and marketable title to the Property in accordance with the Standards of Title adopted by the Maine Bar Association shall be conveyed by the Town to OV at Closing, free and clear of all liens and encumbrances, other than utility easements serving the Lunt Lot and the Plummer Lot and other easements of record as of the date hereof affecting the Lunt Lot and the Plummer Lot. If the Town is unable to convey title to the Property in accordance with the provisions of this paragraph, then the Town shall have a reasonable time period, not to exceed 180 days from the time the Town receives written notice of the title defect, to remedy the title. The Town hereby agrees to use reasonable efforts to cure any title defect. If such defects cannot be cured within such period, then OV shall either (i) elect to close and accept title "as is" without any reduction in the Purchase Price except that if such defect is susceptible of cure by the payment of money, e.g., a lien, attachment or mortgage, OV may elect to close and to pay for such cure and deduct such cure amount from the Purchase Price at Closing, or (ii) terminate this Agreement, whereupon the Deposit and all interest thereon shall be returned to OV and neither party shall have any further obligations hereunder.

(b) Zoning Amendment. OV shall, within 90 days of the date of this agreement, deliver to the Town draft zoning amendments to accomplish the Master Plan for the Property, the Town Green Lot and the potential purchase and development of the Mason-Motz Lot and for the lawful conveyance of the lots as described in Section 1. The Town shall adopt any amendments to the Falmouth Zoning and Site Plan Review Ordinance that are reasonably requested by OV to achieve the development of the real estate as shown on the Master Plan including:

- 1) The sale of the Lots as described in Section 1 of this agreement,
- 2) The Lodge Expansion, as defined in Section 5(c) hereof,
- 3) The Cottages Expansion as defined in Section 5(c) hereof,
- 4) The Lunt Project, as defined in Section 5(c) hereof,
- 5) The Plummer Project, as defined in Section 5(c) hereof,
- 6) Use of the Mason-Motz Lot for uses including but not limited to senior housing, workforce housing, senior center, offices, supportive retail and services, and other community uses such as a common programs facility, library or pool, and
- 7) Any other uses mutually agreed upon by OV and the Town during the amendment development process.

(c) Land Use Approvals. OV shall have obtained from the Maine Department of Environmental Protection, the Army Corps of Engineers, if applicable, and from the Town (and its Code Enforcement Office, Planning Board, Board of Zoning Appeals and Town Council) all necessary land use and zoning approvals (including, without limitation, subdivision and site plan approval from the Falmouth Planning Board) in order to develop: (i) the Lodge Expansion, as hereafter defined; and (ii) the Cottages Expansion, as hereafter defined, and (iii) the Lunt Project, as hereafter defined, and as may be amended by mutual agreement of OV and the Town.

- 1) The “Lodge Expansion” shall mean development and construction of at least 36 new apartment units and related parking, utility, drainage, detention and other site improvements and related building facilities in an expansion of or addition to the existing OV main lodge and/or in new townhouse buildings to be constructed near to the existing OV main lodge, which number of Lodge Expansion units shall be in addition to the Existing and Previously Proposed Apartment Units, as hereafter defined.
- 2) The “Cottages Expansion” shall mean development and construction of at least 35 new single family cottage dwelling units and related parking, utility, drainage, detention and other site improvements, similar to those previously constructed by OV as part of its “Whipple Farm” project, which number of Cottages Expansion units shall be in addition to the “Previously Approved Cottage Units” as hereafter defined.
- 3) The “Lunt Project” shall mean development and construction of at least 30 Alzheimer’s assisted living beds in the former Lunt School building or in an addition thereto or in a new building located in the rear (southwesterly) of the existing Lunt School building, together with offices, an auditorium, meeting and event space and adult day care facilities and services, and related parking, utility, drainage, detention and other site improvements and related assisted living facilities.
- 4) The “Existing and Previously Proposed Apartment Units” shall mean: (i) the currently existing OV main lodge units (49 main lodge apartments and 23 Hilltop Lodge apartments), and (ii) the 15 additional OV main lodge units and the 12 renovated and expanded OV main lodge units, approved by the Falmouth Planning Board on November 2, 2010, which units are currently under construction, and (iii) the currently existing 39 assisted living units at Falmouth House and the previously proposed 20 new assisted living units at Falmouth House.
- 5) The phrase “Previously Approved Cottage Units” shall mean the 109 single family OV “cottage” units previously approved by the Falmouth Planning Board, all but one of which have been previously constructed.
- 6) The Plummer Project shall mean use of the Plummer Lot (and similar rezoning of the Mason Motz Lot) as affordable senior housing, workforce housing, senior center, offices, supportive retail and service, and/or community uses such as but not limited to a common or community programs facility, library or pool.

(d) Land and Water Conservation Fund Restrictions. All restrictions, encumbrances and covenants that restrict development of the Property for residential or commercial purposes or that limit its use in any way, including the terms of the Land and Water Conservation Fund grant of 1981 (NPS #23-00474) relating to use of the Property for public outdoor recreation use, shall be removed so that such restrictions, encumbrances and covenants no longer affect, encumber or bind the Property or the use thereof (and the Property shall be converted from public outdoor recreation use to the residential retirement community and development uses contemplated by this Agreement) by the Town and the applicable governmental agencies, including without limitation the National Park Service and the Maine Department of Conservation, at the expense of the Town and to the reasonable satisfaction of OV and its lender and title insurance company. The Town hereby agrees to make a good-faith effort to obtain removal of such encumbrances, restrictions and covenants.

(e) Appeals Period. No litigation shall be pending or threatened with respect to this Agreement or the permits and approvals described in paragraphs (b), (c), and (d) of this Section 5, and the appeals period for all permits and approvals described in paragraphs (b), (c), and (d) of this Section 5 shall have expired.

(f) Closing Documents. The Town shall deliver at Closing each of the Closing Documents required to be delivered pursuant to Section 4 hereof, and the Town shall have timely performed in all material respects each and every covenant and agreement to be performed by the Town under this Agreement.

(g) Condition of Property. The Property shall be in substantially the same condition as on the expiration of Due Diligence Period described in Section 6 hereof except that, prior to Closing, the Town shall remove all of its personal property, waste and debris from the Property and shall leave the Property in a clean and orderly condition, and this Agreement shall not have been terminated pursuant to Sections 6 hereof.

(h) Financing. OV shall have obtained, within 180 days of the date of this Agreement, a commitment or letter of intent to provide financing from one of its current lenders for a mortgage loan to finance payment of the purchase price payable to the Town hereunder and construction of the Lodge Expansion and the Cottages Expansion and Lunt Project, and such loan shall be obtained by OV at Closing.

6. Due Diligence. The Town makes no warranty as to title, dimensions or conditions of the land and buildings, including, without limitation, the presence of hazardous materials. OV will need to conduct its own due diligence as to all conditions. The Town will cooperate with OV where reasonably possible, but all costs of due diligence shall be the responsibility of OV. Within 15 days after the date of this Agreement, the Town shall provide to OV copies of the following documents relating to the Property in the Town's possession or under its control: (a) all surveys and plans for the Property; (b) building inspection studies, reports and evaluations relating to the Property; and (c) any environmental studies, reports or evaluations relating to the Property. For a period of 180 days from the date of this Agreement (hereinafter the "Due Diligence Period"), OV and its officers, employees, agents, advisers, architects and engineers shall have the right, and are hereby authorized, to enter the Property to conduct inspections, surveys, evaluations, tests (including soils tests) and investigations relating to the Property and for all other reasonable purposes (collectively, "OV's Inspections"). All parties conducting OV's Inspections shall be insured by policies of liability insurance covering such activities, and OV shall upon request of the Town, provide certificates of such insurance to the Town. OV or its inspectors shall restore the grade and condition of the Property promptly after making the OV inspections. In making OV's Inspections, OV shall rely exclusively on its own independent investigation and evaluation, and all costs and expenses of OV's Inspections shall be paid by OV. If OV, in its sole and absolute discretion, is not satisfied with the results of OV's Inspections and OV's due diligence or if OV is not satisfied with the condition of the Property, then on or before the date that is ten days after the expiration of the Due Diligence Period, OV may serve written notice on the Town of its election to terminate this Agreement. If OV gives such notice to the Town, terminating this Agreement, this Agreement shall be deemed terminated, the Deposit and all interest earned thereon shall be returned to OV, OV shall transfer all right, title and interest in and to the Land Reports and deliver copies of the Land Reports to the Town, and neither party shall have any further rights, claims or obligations, except that OV agrees to indemnify, defend and hold the Town harmless from and against any lien, damage, injury, claim or expense, including, without limitation, reasonable attorneys' fees, resulting from the OV's Inspections or the entry by OV or its officers, employees, agents, consultants, advisors, attorneys, accountants, architects or engineers upon the Property in the performance of the inspections and investigations hereunder or in connection with OV's Inspections.

7. Possession. Full possession of the Property shall be given by the Town to OV at Closing, with the improvements on the Property to be in the same condition as the same are now, reasonable wear and tear excepted.

8. Risk of Loss. Until transfer of title at Closing, the risk of loss or damage to the Property by fire or otherwise is assumed by the Town, unless such loss or damage results from OV's inspections, in which case the risk of loss for such loss or damage shall be the responsibility of OV and its agents and contractors performing the OV inspections. The Town shall maintain insurance on the Property in an amount reasonably satisfactory to OV and the Town. If, prior to Closing, the improvements on the Property are damaged or destroyed by fire or other casualty, then, OV may elect either: (a) to require the Town to pay over and assign to OV at Closing all amounts recovered or recoverable on account of any insurance recovered or recoverable, or (b) to terminate this Agreement, whereupon the Deposit and all interest thereon shall be returned to OV and neither party shall have any further rights or obligations hereunder.

9. Default. If OV fails to perform any of the terms of this Agreement, the Town, as its sole remedy, may retain the Deposit, the Additional Deposit, if applicable and all interest accrued thereon as full and complete liquidated damages, and OV shall transfer all right, title and interest in and to the Land Reports and Deliver the Land Reports to the Town, in which event this Agreement shall terminate and neither party shall be under any further obligation hereunder. In the event of any alleged default by either party, the Escrow Agent shall not return the Deposit to OV or pay the Deposit to the Town without written releases from both parties. If a dispute arises between OV and the Town as to the existence of a default hereunder and said dispute is not resolved by the parties within thirty (30) days, Escrow Agent may deposit the Deposit in the court to resolve said dispute. If the Town fails to perform any of the terms of this Agreement, OV may terminate this Agreement and obtain a refund of the Deposit and all interest earned thereon or OV may obtain specific performance of this Agreement from the Town.

10. Public Use Considerations. OV agrees: (a) that the Ann Lamb (stone circle) Memorial located on the Plummer Lot shall be preserved and shall not be altered or removed without the prior approval of the Falmouth Town Council; (b) that the Henry Binder Memorial Maple Tree located on the Plummer Lot shall be preserved to the extent reasonable; (c) that OV shall work cooperatively with the Town regarding the design of the Town Green Lot and the proposed uses thereof, such design to include at a minimum a playground, gazebo, and a green suitable for meetings, concerts, a farmer's market and winter holiday tree and lighting ceremony, and Ocean View shall construct and maintain the Town Green at OV's expense; (d) OV shall preserve the Plummer School clock tower and the façade of the Plummer School facing Middle Road and the façade of the Lunt Road facing Lunt Road, with reasonable modifications for signage and building entrances, to the extent that the clock tower and those facades are found to be structurally sound by a 3rd party engineer chosen jointly by OV and the Town who shall issue a written report for review by OV and the Town; and (e) an auditorium shall be built by OV in the former Lunt School building, which auditorium shall be available both for OV and for Town and Town related entities use, such uses to be by prior reservation on a first come first served basis, provided that if scheduling becomes a problem, the auditorium shall be reserved for the Town and Town related entities uses for 40% of the time. No fees shall be charged to the Town for such uses except that the Town shall be responsible for clean up and security in connection with any Town or Town related entity uses of the auditorium occurring on weekends, holidays or evenings or other hours outside of the normal OV business days during the week. The Town and OV also agree to discuss and explore, without undertaking any obligations herein, possible public private partnerships for redevelopment of the Plummer Lot and/or Mason Motz Lot, which may include both private uses and public uses such as, but not limited to, communities facilities and programs, a library and/or a pool. If no public private partnerships are entered for redevelopment of the Plummer Lot and/or Mason Motz Lot, then the Plummer Lot shall be used for private uses and/or public uses, as determined appropriate by OV and consistent with the re-zoning to be approved prior to Closing, such as senior housing, work force housing, offices, senior center, school, library, other uses as set forth in the Redevelopment Proposal submitted by OV to the Town on November 29, 2012, or any combination of such uses. All of the obligations of OV set forth in this Section 10 shall survive the Closing and the delivery of the deed.

11. Mason Motz Put Option. At the sole option and election of the Town, the Town may require OV to purchase the Mason Motz Lot at a purchase price of \$200,000 at any time within five (5) year after the date of the Closing hereunder with respect to the Property by providing 90 days prior written notice of the exercise of such put option. The conditions set forth in Section 5(a),(b), and (d) shall be satisfied prior to the closing on the Mason Motz Lot. The Town and OV shall enter into an Option Agreement and shall execute a Memorandum of Option Agreement prior to Closing setting forth the terms and conditions relating to the Put Option.

12. Miscellaneous. This Purchase and Sale Agreement may be accepted by the Town only if the Town executes and delivers a copy of the fully signed Agreement to OV not later than February 27, 2012. OV may designate another related entity as the party to take title to the Property. OV shall have the right, at all reasonable times, to inspect the Property and to make engineering studies, surveys, soil tests, inspections, and other reasonable evaluations thereof. OV and the Town represent and warrant that no broker or agent is involved in this sale other than CBRE-The Boulos Company and Greater Portland Realty and the Town agrees to pay all fees owed to such brokers in connection with this transaction. Time is of the essence of this Agreement.

In Witness Whereof, the Town of Falmouth and Ocean View Retirement Community Limited Partnership have caused this Agreement to be executed, by their duly authorized officers, as of this ___ day of January 2012.

Town of Falmouth

By: _____
Its Town Manager

Ocean View Retirement Community Limited Partnership
By: Ocean View Management Company, Its General Partner

By: _____
John B. Wasileski, Its President