

**MEMORANDUM OF PURCHASE AND SALE
OF REAL ESTATE**

This ____ day of February, 2023

This Agreement is made between the **TOWN OF SOUTHBOROUGH**, a Massachusetts Municipal Corporation, acting by and through its Select Board, with an address of 17 Common Street, Southborough, Massachusetts (the "Town" or "Southborough"), and **THE TRUSTEES OF ST. MARK'S SCHOOL OF SOUTHBOROUGH, INC.**, a Massachusetts non-profit educational corporation, with an address of 25 Marlboro Road, Southborough, Massachusetts (the "School"), for the purpose of purchasing and selling the parcels of land as more fully defined below.

WHEREAS, the School desires to perform and construct certain improvements upon an approximately 16,134 square foot portion of the Town's current property consisting of a public road layout located at the northern area of the intersection of St. Mark's Street and Marlborough Road (Route 85) (the "Town Property"), said improvements to include the construction of a parking area and completion of landscaping improvements;

WHEREAS, the Town desires to perform certain road and park improvements on an approximately 31,357 square foot portion of land currently owned by the School located at the intersection of St. Mark's Street and Marlborough Road (the "School Property");

WHEREAS, the parties have agreed to convey, to each other the two above-described parcels of property, said parcels being depicted on the plan of land, entitled Southborough History Walk Property Plan, a copy of which is attached hereto as Exhibit A (the "Plan");

WHEREAS, the parties have executed a reciprocal license to do work on each other's properties (the "License"), said License to be supplanted by the terms hereof;

WHEREAS, the Town is a governmental entity and is therefore subject to the provisions of G.L. c. 30B, as may be applicable; and

WHEREAS, the Town proposes to obtain permission from the Southborough Town Meeting to both convey the Town Property to the School and to accept the School Property from the Town, as described herein, said Town Meeting to occur in the Spring of 2023; and

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, and for the mutual promises set forth herein, the parties agree as follows:

1. **Consideration:**

The Town and the School agree that the consideration for the Town Property is the School Property, and that the consideration for the School Property is the Town Property.

2. **Town Meeting Contingency:**

The parties agree that the proposed conveyances of the parcels described herein are contingent upon the Town obtaining approval of the Town Southborough Annual Town Meeting for: (i) the conveyance of the Town Property and acceptance of the School Property, and (ii) discontinuance of the portion of St. Mark's Street encumbering the Town Property (collectively, the "Approval"), said Approval to be obtained at the Spring Annual Town Meeting in 2023, or such other Town Meeting as may be designated by the parties. In the event that the Approval is not obtained, then this Agreement shall be null and void without any force and effect, provided however that such failure to obtain the Approval shall be subject to the applicable provisions of Section 5-j hereof.

3. **Planning Board Contingency:**

The parties agree that, notwithstanding the applicability of the so-called Dover Amendment (G.L. c. 40A, §3), the proposed conveyances of the parcels described herein are contingent upon the School obtaining any required approval of the Town of Southborough Planning Board, and any other required Board or Commission, required to construct the School's proposed project on the Town Property (the "Planning Board Approval"). Planning Board Approval shall not be deemed to have been obtained if the Planning Board Approval is the subject of an appeal or contains conditions unacceptable to the School. In the event that any required Planning Board Approval is not obtained, then this Agreement shall be null and void without any force and effect, provided however that such failure to obtain the Planning Board Approval shall not affect the validity and enforceability of the License terms contained herein. To facilitate the provisions of this paragraph, the School shall apply for any required Planning Board (or other municipal) approval or, alternatively, provide notice that such approval is not required, by no later than thirty days following the Approval, and shall diligently pursue such application upon filing.

4. **School Board Contingency:**

The parties agree that the proposed conveyances of the parcels described herein are contingent upon the School obtaining approval of its board of directors (the "School Approval"). In the event that the School Approval is not obtained, then this Agreement shall be null and void without any force and effect, provided however that such failure to obtain the School Approval shall not affect the validity and enforceability of the License.

5. **License:**

Upon the execution of this Agreement, the parties' previously executed reciprocal License shall terminate and be of no further force and effect and the parties shall cease any construction activities until such time as the conveyances contemplated herein are completed. – In said License's stead, and until such time as the conveyances of properties, as aforesaid, takes place, the parties agree to the following new license

terms: Upon such conveyances, the parties agree that they shall be permitted to do incidental work on each other's properties to complete the projects contemplated herein.

a. The School hereby grants a license to the Town to enter upon, locate, construct, maintain, operate and inspect right-of-way and park improvements on the above described property belonging to the School. Such rights shall include, but not be limited to the entry by persons and equipment and the installation of fixtures, utilities, pavement and other improvements as may be reasonably necessary to complete the Town's project.

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b. The Town hereby grants a license to the School to enter upon, locate, construct, maintain, operate and inspect certain parking improvements on the above described property belonging to the Town. Such rights shall include, but not be limited to the entry by persons and equipment and the installation of fixtures, utilities, pavement and other improvements as may be reasonably necessary to complete the School's project.

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e. The respective parties shall fully comply with all local, state and federal laws in any work to be performed at the respective licensed properties, as shown on said Plan.

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d. The parties in no way warrant or guarantee the condition and suitability of the the respective licensed properties for the purposes and work heretofore specified.

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e. The parties agree to indemnify, release and hold harmless each other and their respective officers, principles, agents, contractors and employees from any and all claims, losses, suits, damages and liability of any kind to persons or property that results from the acts, omissions, use and negligence of the licensee of each of the respective licensed properties.

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f. The School, its agents, executors and assigns, are responsible to maintain, repair, correct, fix and remedy any parking facilities it installs on the property licensed by the Town.

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g. The Town, its agents, and employees are responsible to maintain, repair any park or road improvements that it installs on the property licensed by the School.

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h. The parties agree to install the contemplated improvements in accordance with plans therefore and to complete such improvements in a good and workmanlike manner.

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i. In the event that the aforesaid conveyances take place, these license terms shall terminate and be of no further force and effect, provided however, that, pursuant to the terms hereof, the parties shall retain the right to enter onto each other's property to facilitate the work that is described above.

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j. In the event that the aforesaid conveyances do not take place, for any reason, these license terms shall terminate, provided however that the Town shall retain a

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license to enter on the School Property and complete any grading or landscaping restoration activities as the parties may agree is necessary with respect to previously work done by the Town.

6. **Title Deed:**

The Town Property and the School Property are to be conveyed by a good and sufficient quitclaim deed running to the School or the Town, as the case may be, and said deed shall convey a good, clear, record and marketable title thereto, free from encumbrances, except

- (a) Provisions of existing building and zoning laws; and
- (b) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of the Town Property or the School Property, as the case may be. If either party is not satisfied with the title to the Town Property or the School Property, as the case may be, then the other party may terminate this Agreement at any time prior to the Closing (as defined herein) in which case this Agreement shall be null and void without any force and effect provided however that such failure to obtain the Approval shall not affect the validity and enforceability of the License terms contained herein.

7. **Parties to bear their own cost of construction**

The parties agree that, upon conveyance, as contemplated herein, the School shall bear all of the expenses for construction and work on the Town Property, and the Town shall bear all of the expenses for construction and work on the School Property, provided however that each party understands that there may be incidental work on each other's Properties.

8. **Time for Performance; Delivery of Deed:**

Such deeds are to be delivered no later than thirty days following the certification of the Approval or the Planning Board Approval, whichever is later, or the next day on which the Worcester District Registry of Deeds is open for recording (the "Closing"). Time is of the essence with respect to all date and time periods in this Agreement.

9. **Acceptance and Recording of Deed:**

The acceptance and recording of the deeds by the parties 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 the deed. Upon the closing, as aforesaid, the license terms contained herein shall be deemed null and void, provided however, that, pursuant to the terms hereof, the parties shall retain the right to enter onto each other's property to facilitate the work that is described above.

10. **Compliance with G.L. c. 30B:**

The Town has declared or will declare that the Town Property is surplus by a vote of its Select Board. In all circumstance, the exchange of the subject properties shall be compliant with G.L. c. 30B or be exempt therefrom. If this transaction fails to comply with G.L. c. 30B for any reason, then either party may terminate this Agreement by written notice to the other prior to the Closing in which case this Agreement shall be null and void without any force and effect provided however that such failure to obtain the Approval shall not affect the validity and enforceability of ~~the any remaining~~ License terms contained herein.

11. **Cooperation:**

The Town and the School agree to cooperate with each other to effectuate the purchase and sale of the Town Property and School Property including but not limited to, providing, executing, registering and filing any and all instruments or authorizations that may be reasonably requested by the other.

12. **Payment of Recording Fees:**

The Town and the School shall each pay their respective recording and administrative fees. Both parties acknowledge that pursuant to G.L. c. 64D sec. 1 no deed stamp tax shall be due at the Closing.

13. **AS-IS:**

The Town and the School each acknowledge that they have inspected the Town Property and the School Property, as the case may be, and that they are satisfied with the results of the inspection. The Town and the School each acknowledge and agree to purchase the Town Property and the School Property, as the case may be, in "as is" condition and with "all faults" as of the date of this Agreement. Except as otherwise provided in this Agreement, neither party has made any representation or warranty as to the condition of the Town Property or the School Property, as the case may be, or any fixtures, appurtenances or utilities and expressly disclaims any liability for the condition of the same.

14. **Default:**

In the event of a default by either party under this Agreement, the only remedy available to the non-defaulting party is to terminate this Agreement in which case this Agreement shall be null and void without any force and effect provided however that such termination shall not affect the validity and enforceability of the License terms contained herein.

15. **Miscellaneous:**

This Agreement is a binding contract that may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one in the same instrument. Signatures to this Agreement transmitted by electronic mail in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

TOWN OF SOUTHBOROUGH
by and through its Select Board

By: _____
Name: _____
Authorized Signatory

By: _____
Name: _____
Authorized Signatory

By: _____
Name: _____
Authorized Signatory

By: _____
Name: _____
Authorized Signatory

By: _____
Name: _____
Authorized Signatory

TRUSTEES OF ST MARKS SCHOOL OF SOUTHBOROUGH, INC.
by and through its _____

By: _____
Name: _____
Authorized Signatory

By: _____
Name: _____
Authorized Signatory

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WHEREAS, the Town proposes to obtain permission from the Southborough Town Meeting to both convey the Town Property to the School and to accept the School Property from the Town, as described herein, said Town Meeting to occur in the Spring of 2023; and

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5. **License:**

Upon the execution of this Agreement, the parties' previously executed reciprocal License shall terminate and be of no further force and effect. In said License's stead, and until such time as the conveyances of properties, as aforesaid, takes place, the parties agree to the following new license terms:

- a. The School hereby grants a license to the Town to enter upon, locate, construct, maintain, operate and inspect right-of-way and park improvements on the above described property belonging to the School. Such rights shall include, but not be limited to the entry by persons and equipment and the installation of fixtures, utilities, pavement and other improvements as may be reasonably necessary to complete the Town's project.
- b. The Town hereby grants a license to the School to enter upon, locate, construct, maintain, operate and inspect certain parking improvements on the above described property belonging to the Town. Such rights shall include, but not be limited to the entry by persons and equipment and the installation of fixtures, utilities, pavement and other improvements as may be reasonably necessary to complete the School's project.
- c. The respective parties shall fully comply with all local, state and federal laws in any work to be performed at the respective licensed properties, as shown on said Plan.
- d. The parties in no way warrant or guarantee the condition and suitability of the the respective licensed properties for the purposes and work heretofore specified.
- e. The parties agree to indemnify, release and hold harmless each other and their respective officers, principles, agents, contractors and employees from any and all claims, losses, suits, damages and liability of any kind to persons or property that results from the acts, omissions, use and negligence of the licensee of each of the respective licensed properties.
- f. The School, its agents, executors and assigns, are responsible to maintain, repair, correct, fix and remedy any parking facilities it installs on the property licensed by the Town.
- g. The Town, its agents, and employees are responsible to maintain, repair any park or road improvements that it installs on the property licensed by the School.
- h. The parties agree to install the contemplated improvements in accordance with plans therefore and to complete such improvements in a good and workmanlike manner.
- i. In the event that the aforesaid conveyances take place, these license terms shall terminate and be of no further force and effect, provided however, that, pursuant to the terms hereof, the parties shall retain the right to enter onto each other's property to facilitate the work that is described above.
- i.j. In the event that the aforesaid conveyances do not take place, for any reason, these license terms shall terminate, provided however that the Town shall retain a license to enter on the School Property and complete any grading or landscaping restoration

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~~activities as the parties may agree is necessary with respect to previously work done by the Town. remain in effect, provided however that the parties reserves the right to review, revoke, or rescind these license terms, for any reason and at any time within three hundred (300) days notice, provided however, that the parties agree to attempt the resolution of any issues before any action of revocation or restriction is taken.~~

6. **Title Deed:**

The Town Property and the School Property are to be conveyed by a good and sufficient quitclaim deed running to the School or the Town, as the case may be, and said deed shall convey a good, clear, record and marketable title thereto, free from encumbrances, except

- (a) Provisions of existing building and zoning laws; and
- (b) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of the Town Property or the School Property, as the case may be. If either party is not satisfied with the title to the Town Property or the School Property, as the case may be, then the other party may terminate this Agreement at any time prior to the Closing (as defined herein) in which case this Agreement shall be null and void without any force and effect provided however that such failure to obtain the Approval shall not affect the validity and enforceability of the License terms contained herein.

7. **Parties to bear their own cost of construction**

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~~The parties agree that, upon conveyance, as contemplated herein, the School shall bear all of the expenses for construction and work on the Town Property, and the Town shall bear all of the expenses for construction and work on the School Property, provided however that each party understands that there may be incidental work on each other's Properties.~~

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7.8. **Time for Performance; Delivery of Deed:**

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Such deeds are to be delivered no later than thirty days following the certification of the Approval or the Planning Board Approval, whichever is later, or the next day on which the Worcester District Registry of Deeds is open for recording (the "Closing"). Time is of the essence with respect to all date and time periods in this Agreement.

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8.9. **Acceptance and Recording of Deed:**

The acceptance and recording of the deeds by the parties 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 the deed. Upon the closing, as aforesaid, the license terms contained herein shall be deemed null and void, provided however, that, pursuant to the terms hereof, the parties

shall retain the right to enter onto each other's property to facilitate the work that is described above.

9.10. Compliance with G.L. c. 30B:

The Town has declared or will declare that the Town Property is surplus by a vote of its Select Board. In all circumstance, the exchange of the subject properties shall be compliant with G.L. c. 30B or be exempt therefrom. If this transaction fails to comply with G.L. c. 30B for any reason, then either party may terminate this Agreement by written notice to the other prior to the Closing in which case this Agreement shall be null and void without any force and effect provided however that such failure to obtain the Approval shall not affect the validity and enforceability of the License terms contained herein.

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10.11. Cooperation:

The Town and the School agree to cooperate with each other to effectuate the purchase and sale of the Town Property and School Property including but not limited to, providing, executing, registering and filing any and all instruments or authorizations that may be reasonably requested by the other.

11.12. Payment of Recording Fees:

The Town and the School shall each pay their respective recording and administrative fees. Both parties acknowledge that pursuant to G.L. c. 64D sec. 1 no deed stamp tax shall be due at the Closing.

12.13. AS-IS:

The Town and the School each acknowledge that they have inspected the Town Property and the School Property, as the case may be, and that they are satisfied with the results of the inspection. The Town and the School each acknowledge and agree to purchase the Town Property and the School Property, as the case may be, in "as is" condition and with "all faults" as of the date of this Agreement. Except as otherwise provided in this Agreement, neither party has made any representation or warranty as to the condition of the Town Property or the School Property, as the case may be, or any fixtures, appurtenances or utilities and expressly disclaims any liability for the condition of the same.

13.14. Default:

In the event of a default by either party under this Agreement, the only remedy available to the non-defaulting party is to terminate this Agreement in which case this Agreement shall be null and void without any force and effect provided however that such

termination shall not affect the validity and enforceability of the License terms contained herein.

14.15. Miscellaneous:

This Agreement is a binding contract that may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one in the same instrument. Signatures to this Agreement transmitted by electronic mail in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

[Signatures follow on next page]

TOWN OF SOUTHBOROUGH
by and through its Select Board

By: _____
Name: _____
Authorized Signatory

By: _____
Name: _____
Authorized Signatory

By: _____
Name: _____
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By: _____
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Authorized Signatory

TRUSTEES OF ST MARKS SCHOOL OF SOUTHBOROUGH, INC.
by and through its _____

By: _____
Name: _____
Authorized Signatory

By: _____
Name: _____
Authorized Signatory

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