

**ADDENDUM TO**  
**Purchase and Sale Agreement for Massachusetts Real Estate**  
**Made as of December 11, 2013**

31

If premises are residential property constructed prior to 1978 buyer must sign lead paint "Property Transfer Notification Certification" prior to signing Purchase and Sale Agreement.

This Addendum (the "Addendum") made and entered into with respect to that certain Purchase and Sale Agreement (the "Agreement") between 20 Castle Street, LLC (the "Buyer") and the Town of Great Barrington (the "Seller") dated February 13, 2012 with respect to that certain real property commonly known as 20 Castle Street, Great Barrington, Berkshire County, Massachusetts.

The parties have created this Addendum as a means of modifying or changing the original Agreement. Should the terms of this Addendum conflict with the terms of the original Agreement, the terms of this Addendum shall govern and prevail.

**SECTION 1 -- INFORMATION AND DEFINITIONS**

**1.1 DATE OF THE AGREEMENT:** February 13, 2012

**1.2 PREMISES:** City or Town: Great Barrington Land Area: 18,990 sq. ft. +/-

Street Address: 20 Castle Street, Great Barrington, MA

Seller's Title Reference: Book 417, Page 227 (See Rider "A" attached)

Assessor's Map Reference: Map 19, Lot 87

**1.3 SELLER: THE TOWN OF GREAT BARRINGTON, by and through its Board of Selectmen**

Address: 334 Main Street, Great Barrington, MA 01230

Phone: (413) 528-1619

Seller's Attorney: Kopelman and Paige, P.C.

Phone: (617)556-0007

Fax: (617)654-1735

Address: 101 Arch Street, Boston, MA 02110

**1.4 BUYER: 20 CASTLE STREET, LLC**

Address: 390 Main Street, Great Barrington, MA 01230

Phone: (413) 528-0630

Buyer's Attorney: McCormick Murtagh & Marcus      Phone: (413)528-0630  
Fax: (413)528-5287  
Address: 390 Main Street, Great Barrington, MA 01230

**1.5 PURCHASE PRICE:** \$ 50,000.00

Paid as follows: Deposit paid to date: (to be held by Escrow Agent) \$ 2,500.00

Balance of Purchase Price due on Closing Date \$ 47,500.00

**1.6 ESCROW AGENT:** Treasurer, Town of Great Barrington

Address: 344 Main Street, Great Barrington, MA 01230

Deposits to be held in: (check one)

( X ) non-interest bearing account

(\_\_\_) insured interest bearing bank account

(\_\_\_) other interest bearing account

**1.7 CLOSING:**

DATE: Within 65 days of execution of this Addendum      TIME: 2:00pm

PLACE: McCormick Murtagh & Marcus  
390 Main Street  
Great Barrington, MA 01230

**1.8 INCLUDED ITEMS:** the following items are included in the sale of the Premises in addition to those generally listed below in Paragraph 2.2 of this Agreement: NONE

**1.9 EXCLUDED ITEMS:** The following items are excluded from the sale and will be retained by Seller: Refer to Paragraph 2.2

**1.10 TITLE:** The Seller's deed will be a quitclaim deed unless otherwise specified here:

**1.11 OTHER MATTERS:** In addition to the matters set forth in Paragraph 2.4 of this Agreement, the Premises shall be conveyed subject to the following matters (include here subdivision restrictions, rights of way over the Premises, etc. agreed to by Buyer):

2  


See Rider "D"

**1.12 SELLER'S FIRE AND EXTENDED COVERAGE INSURANCE :** as currently insured. Seller will continue with its insurance coverage on the Premises until Closing. Buyer will be obtaining its own insurance by Closing and any tenants occupying the Premises after Closing will obtain their own insurance for the portion of space rented.

**1.13 ITEMS TO BE APPORTIONED AS OF DATE OF CLOSING:**

☒ Current real estate taxes  
☐ Fuel value  
☐ Water rates  
☐ Sewer use charges  
☐ Collected rents  
☐ Uncollected rents if and when collected by either party  
☐ Other:

In accordance with G.L. c. 44, §63A, Buyer shall deliver to Seller a pro forma tax payment for fiscal year 2014.

**1.14 BUYER'S MORTGAGE CONTINGENCY:** N/A

**1.15 BUYER'S INSPECTION CONTINGENCY DATE:** (as described in Paragraph 2.21)  
Inspection to occur within 50 days of the date of this Addendum. For specific inspection items see attached Rider B.

**1.16 BROKER: NONE.**

**1.17 WARRANTIES** - The following representations and warranties are made by Seller as of the Date of this Agreement and also as of the time of the delivery of the deed (modify as appropriate);

**a.** Seller owns the personal property described in Paragraphs 1.8 and 2.2 free of any lien or encumbrance;

**b.** To the best of Seller's knowledge, information and belief, the Premises do not contain any urea formaldehyde foam insulation (UFFI), asbestos, lead paint or unsafe concentrations of radon gas or underground storage tanks exceeding the scope and/or estimated cost set forth in

3  
000

the reports included in the Seller's RFP dated August 16, 2010; and in subsequent engineer reports provided to the Buyer, including but not limited to a Phase I Environmental Site Assessment prepared by Tighe & Bond, Inc., dated June 2012; an Asbestos and Hazardous Material Evaluation prepared by Tighe & Bond, Inc. in June 2012; and a Limited Phase II Subsurface Investigation Report prepared by Tighe & Bond, Inc., dated September 10, 2012.

c. The building on the Premises is situated entirely within the boundaries thereof.

d. Other : N/A

UNLESS OTHERWISE NOTED, THE FOLLOWING PROVISIONS SHALL APPLY:

## **SECTION 2 -- GENERAL PROVISIONS**

**2.1** Seller agrees to sell and Buyer agrees to buy the Premises upon the terms hereinafter set forth.

**2.2** Included in the premises to be sold, unless excluded by Paragraph 1.9, are the buildings, structures and improvements now thereon, the fixtures and attached personal property used in connection therewith including, if any, chandeliers, electric and other lighting fixtures, stair carpets and wall to wall carpeting, Venetian blinds, window shades, curtain rods, screens, screen doors, storm windows and doors, awnings, shutters, furnaces, heaters, heating equipment, stoves, ranges, oil and gas burners, hot water heaters, plumbing and bathroom fixtures, mantelpieces, outside television antennae, satellite dishes, fences, gates, trees, shrubs, plants, ventilators, garbage disposers, dishwashers, washing machines, dryers, burglar and fire alarm systems, and if built in, cabinets, shelving, bookcases and air conditioning equipment. Excluded from the premises are window air conditioners and any items constituting or related to office equipment, internet connections, computers and computer networking, which Seller shall retain.

Seller shall at the closing deliver to Buyer all existing keys to the premises, garage door openers and all security codes.

**2.3** The deed and other documents required by this Agreement are to be delivered and the balance of the Purchase Price paid at the Date and Time of Closing and at the Place of Closing. Unless the Closing takes place at the appropriate Registry of Deeds, all documents and funds are to be delivered in escrow subject to prompt rundown of title and recording, which term shall include registration in the case of registered land. Unless otherwise agreed, funds will be released after recording of the deed.

4  


**2.4** The Premises shall be conveyed on the Date and Time of Closing at the Place of Closing by a good and sufficient deed (accompanied by a Certificate of Title if this is registered) running to Buyer (or Buyer's Nominee) conveying a good and clear record and marketable title thereto free from all encumbrances except those listed in Paragraph 1.11 and the following:

**a.** Real Estate Taxes assessed or to be assessed on the Premises to the extent that such taxes then are not yet due and payable.

**b.** Betterment assessments, if any, which are not a recorded lien on the Premises as of the Date of this Agreement.

**c.** Federal, state and local laws, ordinances, by-laws, regulations and rules regulating the use of land, particularly environmental, building code, zoning, health, safety, rent control and condominium conversion laws, if any, applicable as of the Date of this Agreement. Seller represents that the Great Barrington Building Inspector has determined that, provided there are no substantive changes in the condition of the building that would constitute a substantial or significant deterioration in its condition as it exists as of December 9, 2013, he does not intend to issue a condemnation order for the building under the State Building Code, nor a notice for violation of safety or Building Code provisions.

**d.** Existing rights, if any, in party or partition walls; and

**e.** Rights of ways, easements and utility easements which do not materially affect the Buyer's use;

**f.** Such real estate taxes as are required to be paid pursuant to Paragraph 1.13.

**2.5** Buyer may require the conveyance to be made to another person, persons or entity ("Nominee"), upon notification in writing delivered to Seller at least five days prior to the Date of Closing.

**2.6** Simultaneously with the delivery of the deed, Seller shall execute and deliver:

**a.** Affidavits and indemnities with respect to parties in possession and mechanic's liens to induce Buyer's title insurance company to issue lender's and owner's policies of title insurance without exception for those matters;

**b.** A bill of sale for all personal property included as part of the sale, if requested by the Buyer.

**c.** In the case of new construction a Certificate of Occupancy and an assignment of any and all builder's, seller's or manufacturer's warranties on the Premises or on any appliances or other property included in the sale. N/A

**d.** An affidavit, satisfying the requirements of Section 1445 of the Internal Revenue Code and regulations issued thereunder, which states, under penalty of perjury, the Seller's United States taxpayer identification number, that the Seller is not a foreign person, and the Seller's address (the "1445 Affidavit");

**e.** Internal Revenue Service Form W-8 or Form W-9, as applicable, with Seller's tax identification number, and an affidavit furnishing the information required for the filing of Form 1099S with the Internal Revenue Services and stating Seller is not subject to back-up withholding;

**f.** Any plan not previously recorded, referred to in the deed.

**2.7** THE BALANCE OF THE PURCHASE PRICE SHALL BE PAID BY BUYER UPON DELIVERY OF THE DEED BY A CERTIFIED CHECK, TREASURER'S CHECK, CASHIER'S CHECK (IN EACH CASE DRAWN ON A MASSACHUSETTS BANK OR CREDIT UNION) OR BY FEDERAL FUNDS WIRE TRANSFER. IT IS BUYER'S OBLIGATION TO INSURE THAT BUYER'S LENDER FURNISHES ANY FUNDS TO BE PROVIDED BY SUCH LENDER IN COMPLIANCE WITH THIS PARAGRAPH.

**2.8** The deposits made hereunder shall be held in escrow by the Great Barrington Town Treasurer, subject to the terms of this Agreement and shall be duly accounted for at the time for performance of this Agreement. The deposits may not be released from escrow without the assent of both Buyer and Seller. The recording of the deed to the Premises shall constitute such assent. In the event of any disagreement the Escrow Agent may retain the deposits pending written instructions by both the Seller and Buyer, or an order of a court of competent jurisdiction. So long as Escrow Agent serves in good faith, Buyer agrees to hold harmless Escrow Agent from damages, losses or expenses, arising out of this Agreement or any action or failure to act, including reasonable attorney's fees, related thereto.

**2.9** Full possession of the Premises shall be delivered at the Date and Time of Closing, except for that portion to be occupied by Seller as a tenant of Buyer, pursuant to a separate lease agreement and as described in the Letter of Intent to Lease (Rider X). The Premises then shall (a) not be in violation of any of the matters in Paragraph 2.4.c or of the provisions of any matter or instrument referred to in Paragraph 1.11; (b) be free of encroachments burdening the Premises and of improvements which encroach on adjoining property, including buildings, septic system, well and driveway; and, (c) have sufficient legal access to a public way. Otherwise, except as provided herein, the Premises are being sold "as is." From the Date of Agreement to the Closing, Seller shall maintain its current insurance coverage on the Premises and shall reasonably maintain the Premises as would an owner under similar circumstances, but shall not be required to repair damage caused by reasonable use or wear, except as required herein.

Upon Seller vacating, the portion of the Premises to be delivered shall be in the same condition as they now are (reasonable use or wear excepted) and broom clean and free of trash, debris



and personal property not included in the sale. Seller has removed the so-called fire whistle air tanks/compressors located in the basement of the building.

**2.10** Seller may, if Seller so desires, at the Closing, use all or part of the Purchase Price to clear the title of any encumbrances or interests provided that all instruments necessary for this purpose are recorded by and at the expense of Seller simultaneously with the deed or at such later time as shall be reasonably acceptable to Buyer, and provided further, with respect to discharges of mortgages from insurance companies, banks and credit unions, such discharges may be recorded within a reasonable time after the recording of the deed.

Seller has provided to Buyer a survey of the Premises, including easements and rights of way, which is incorporated herein by reference in Paragraph 2.21. Buyer accepts the survey as depicting and describing the Premises.

**2.11** If Seller is unable to convey title or deliver possession of the Premises as required hereunder or the Premises do not comply with the requirements of Paragraph 2.10, upon notice by either party, prior to the Date of Closing, this Agreement shall be automatically extended for 30 days (or if Buyer's mortgage commitment sooner expires, to a date one business day before the expiration of such commitment). Seller shall remove all mortgages, attachments and other encumbrances incurred or assumed by Seller which secure the payment of money, provided the total amount thereof does not exceed the Purchase Price, and Seller shall use reasonable efforts to remove other defects in title, or to deliver possession as provided herein, or to make the Premises conform to the provisions hereof.

At the end of the extended period, if all such defects have not been removed, or the Seller is unable to deliver possession, or the Premises do not conform with the requirements of this Agreement, Buyer may elect to terminate this Agreement and to receive back all deposits, upon receipt of which all obligations of the parties hereto shall cease.

At the original or extended time for performance, Buyer may elect to proceed with the Closing upon payment of the full Purchase Price reduced by an amount sufficient to remove all mortgages, attachments and other encumbrances which secure the payment of money which have not been removed by Seller, but otherwise without deduction. In the event that the reason the Premises do not conform is damage to the Premises caused by fire or other casualty insured against, and Seller has not restored the Premises to their former condition and Buyer elects to proceed, Seller shall assign all insurance proceeds to Buyer and the Purchase Price shall be reduced by:

- a. the amount of any insurance proceeds received by Seller; and
- b. any deductible amount under Seller's insurance policy.



**2.12** The acceptance of a deed by Buyer (or Buyer's Nominee) shall be a full performance and shall discharge every agreement and obligation herein except any agreements which by their terms are to be performed after the Closing. These include, without limitation, the following, which shall survive the delivery of the deed: the agreements and undertakings in Rider B, Special Conditions (except the last sentence of the first paragraph); Rider D, Easement to be granted by Buyer; and Rider F, the Letter of Intent to Lease. Except as expressly indicated otherwise, all representations and warranties under this Agreement shall survive the delivery of the deed.

**2.13** If Buyer shall fail to fulfill Buyer's part of this Agreement, all deposits made hereunder shall be forfeited and become the property of Seller as liquidated damages, which shall constitute Seller's sole remedy at law or in equity for Buyer's default under this Agreement. Both parties specifically consent to the deposits as the acceptable measure of Seller's damages regardless of the amount of any subsequent sales price which Seller may receive for the Premises.

**2.14** Buyer's designating a Nominee to take title to the Premises shall not relieve Buyer of any obligation hereunder. Any note, mortgage or other document to be delivered from Buyer to Seller shall be executed by and be the personal obligation of Buyer, or be unconditionally guaranteed by Buyer, unless otherwise specified herein.

**2.15** Buyer warrants and represents that Buyer has dealt with no broker or agent with respect to this transaction or these Premises and agrees to indemnify and hold Seller harmless from all claims for brokerage or commission on account of this sale by any person.

**a.** Seller gives Buyer prompt notice of the claim;

**b.** Buyer is afforded an opportunity to defend against the claim;

**c.** The claimant produces evidence that claimant dealt with Buyer with respect to the Premises; and,

**2.16** If a party hereto is a corporation, no shareholder, or if a party hereto is a trust, no trustee or beneficiary of the trust, shall be personally liable for any obligation, express or implied, hereunder. If Seller or Buyer discloses in this Agreement that either of them is acting in a representative or fiduciary capacity, only the principal or estate represented shall be bound. If more than one person is named herein as Buyer or Seller their obligations hereunder are joint and several.

**2.17** Omitted

**2.18** This Agreement, including all Riders, is to be construed as a Massachusetts contract, is binding upon and inures to the benefit of the parties hereto and their respective successors and





assigns, and may be modified or amended only by a written instrument executed by Buyer and Seller.

**2.19** Any matter or practice arising under or relating to this Agreement which is the subject of a Title Standard or a Practice Standard of the Real Estate Bar Association for Massachusetts (REBA) shall be governed by said Standard to the extent applicable.

**2.20** Except as provided in Paragraph 2.21 all notices required or permitted to be given hereunder shall be in writing and delivered in hand, or sent by Federal Express or other recognized overnight delivery service, or mailed postage prepaid, by registered or certified mail, addressed to Buyer or Seller at the appropriate address as specified in Paragraphs 1.3 and 1.4 or 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 in hand or, if sent by Federal Express or other recognized overnight delivery service, on the next business day after deposit with said delivery service, or, if so mailed, three (3) business days after deposit with the U.S. Postal Service.

**2.21** (This Paragraph is applicable only if the Buyer's Inspection Contingency Date has been specified in Paragraph 1.15.) See Rider "B"

The Buyer's obligations hereunder are contingent upon Buyer's receipt, prior to 5:00p.m. on the Inspection Contingency Date, of information satisfactory to Buyer regarding code compliance matters, as described in the "Inspection" portion of Rider B. Should the information be unsatisfactory to Buyer, Buyer may cancel the Agreement by written notice received by the Seller no later than 5:00 p.m. on the day after the Inspection Contingency Date, whereupon all obligations of the parties shall cease and Buyer's deposits shall be promptly returned in full. Buyer's failure to give such notice shall be a waiver of Buyer's right to cancel under this Paragraph.

**2.22** The Riders listed below and attached to this Agreement are incorporated herein by reference:

Rider "A" – Copy of Deed  
Rider "B" – Special Conditions  
Rider "C" – Real Estate Broker  
Rider "D" – Easement to be granted by Buyer  
Rider E – Code compliance letter  
Rider F –Letter of intent to lease  
\*\*\*Survey

Executed under seal by the Parties hereto as of the date of this Agreement.

WHEN EXECUTED, THIS WILL BE A BINDING CONTRACT AND AN ATTORNEY SHOULD BE CONSULTED BEFORE SIGNING.

A handwritten signature in black ink, appearing to be a stylized 'A' or 'B' followed by a flourish.

20 CASTLE STREET, LLC

By

Edward A. H. Burke

MANAGER

Title:

12/31/13

Buyer

TOWN OF GREAT BARRINGTON

By its Board of Selectmen

[Signature]

[Signature]

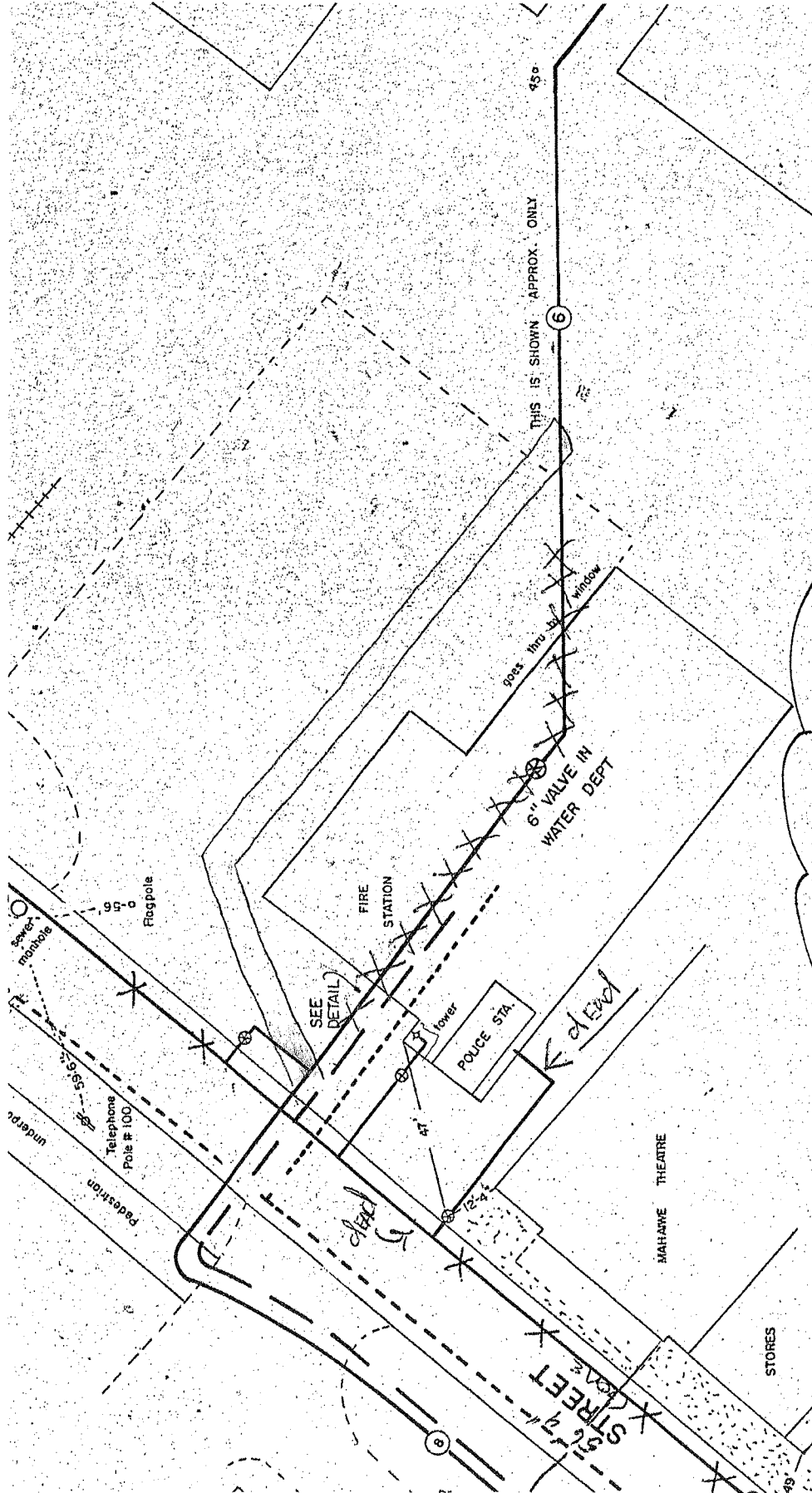
[Signature]

[Signature]

[Signature]

Seller

Castle St. Fires.



*[Handwritten signature]*

RIDER "A"

Copy of deed attached

KNOW ALL MEN BY THESE PRESENTS

That, The GREAT BARRINGTON FIRE DISTRICT, a duly authorized municipal corporation under the laws of the Commonwealth of Massachusetts,  
~~corporation under the laws of the Commonwealth of Massachusetts~~  
of Great Barrington, Berkshire County, Massachusetts  
~~and in full consideration of ONE DOLLAR (\$1.00)~~

and in full consideration of ONE DOLLAR (\$1.00)  
grant to THE INHABITANTS OF THE TOWN OF GREAT BARRINGTON

X

with warranty covenants

the land in the Town of Great Barrington, Berkshire County, Massachusetts,  
bounded and described as follows:

~~(DELETED SECTION)~~

PARCEL I. A certain tract or parcel of land situated in Great Barrington, bounded and described as follows: Beginning at a set stone which marks the southwesterly corner of land of the Great Barrington Fire District and southeasterly corner of the premises hereby conveyed, said stone being located in or near the north line of said Castle Street; thence westerly on said Castle Street 55.9 feet to an iron pipe which marks the southeasterly corner of land now or formerly of G. E. Nettleton; thence north by line parallel with the west line of the house located on the premises hereby conveyed and 2 feet distant therefrom and on the east line of said Nettleton 141.8 feet to an iron pipe standing in the south line of land now or formerly of the George A. Stevens Lumber Company; thence easterly on line of land now or formerly of said George A. Stevens Lumber Company and land formerly of Gimlich & White to the northwesterly corner of land of the Great Barrington Fire District; thence southerly in the west line of the said Great Barrington Fire District to the place of beginning.

Being all and the same premises as were conveyed to the Great Barrington Fire District by deed of Irene Carson dated October 18, 1966 recorded in the Southern Berkshire Registry of Deeds in Book 354, Page 252.

1976 00417227  
Bk: 417 Pg: 0227 Doc: DEED  
Page 1 of 3 08/31/1976 12:00PM

PARCEL 2. A certain tract or parcel of land situated on the northerly side of Castle Street, in said Great Barrington, bounded and described as follows: Beginning at an iron pin set in the ground at the northeast corner of the premises hereby conveyed (it being supposed to be also the northwest corner of premises formerly owned by Maria O. Manning); thence south,  $35\frac{1}{2}$  degrees west, 8 rods and 5 links to the northerly line of Castle Street; thence westerly along the line of said Castle Street 75 feet; thence northerly, in a line parallel with the easterly line, and 75 feet distant therefrom, to land formerly of Silas Sprague, deceased; thence easterly, on said Sprague's southerly line 75 feet to the place of beginning.

Meaning and intending hereby to convey a portion of the same premises described in a certain deed from Richard H. Moore to Martha E. Norton, dated April 1, 1895, and recorded in the Southern Berkshire Registry of Deeds in Book 171, Page 444. The said premises are hereby conveyed subject to the reservation and agreement in relation to sewer, which are contained in said deed.

Being all and the same premises as were conveyed to the Inhabitants of the Great Barrington Fire District by deed of Martha E. Norton dated August 9, 1899, recorded in said Registry of Deeds in Book 180, Page 31.

PARCEL 3. A certain tract or parcel of land situated on the northerly side of Castle Street, in said Great Barrington, bounded and described as follows: Beginning at the northeast corner of the tract hereby conveyed, it being also the northwest corner of other premises

conveyed by Martha E. Norton, to said inhabitants of the Great Barrington Fire District; thence south  $35\frac{1}{2}$  degrees west, 8 rods and 5 links, to the northerly line of Castle Street, thence westerly, along the line of said Castle Street, 6 feet, thence northerly, in a line parallel with the easterly line of the tract hereby conveyed, and 6 feet distant therefrom, to land formerly of Silas Sprague, deceased, thence easterly on said Sprague's southerly line 6 feet, to the place of beginning; being a portion of the premises described in a certain deed from Richard H. Moore to said Martha E. Norton, dated April 1, 1895, and recorded in the Southern Berkshire Registry of Deeds in Book 171, Page 444. The said premises are hereby conveyed subject to the reservation and agreement in relation to sewer, which are contained in said deed.

Being all and the same premises as were conveyed to The Inhabitants of the Great Barrington Fire District by deed of Martha E. Norton, dated August 9, 1899, recorded in said Registry of Deeds in Book 178, Page 41. This conveyance is subject to reservations of the Great Barrington Fire District to continue the use of the said building on the above described parcels presently being used by said Fire District for Water Department purposes. Said use of building shall be without cost to the said District.

Reference is made to Article 16 of the 1976 Annual Meeting of the Great Barrington Fire District and Article 20 of the 1976 Annual Meeting of the Town of Great Barrington accepting Chapter 136 of the Acts of 1975 authorizing the Town to take over the fire and sidewalk duties and responsibilities of the Great Barrington Fire District.

IN WITNESS WHEREOF, the GREAT BARRINGTON FIRE DISTRICT has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by its PRUDENTIAL COMMITTEE, this 22<sup>nd</sup> day of August, 1976.

GREAT BARRINGTON FIRE DISTRICT  
PRUDENTIAL COMMITTEE

*Mortimer T. Cavanaugh*  
Mortimer T. Cavanaugh

*Robert O. Hammer*  
Robert O. Hammer

*John B. O'Hara*  
John B. O'Hara

*Armand L. Ferron*  
Armand L. Ferron

*Edward J. McNeill*  
To all

Berkshire,

The Commonwealth of Massachusetts

August 23, 1976

Then personally appeared the above named Mortimer T. Cavanaugh, Robert O. Hammer, John B. O'Hara, and Armand L. Ferron and acknowledged the foregoing instrument to be the free act and deed of the Great Barrington Fire District

before me

*Edward J. McNeill*  
Notary Public - Southern Berkshire

My commission expires Nov 17, 1978

Received Southern Berkshire Registry of Deeds Aug. 31, 1976 at 11:02 A.M.

*Catherine B. Comerford*

Register

## **RIDER "B"**

### **VISION**

The Buyer confirms that the long-term vision for the Premises remains that which was contained in the Buyer's original proposal submitted to the Seller. First, the restoration of the exterior of the firehouse building on the Premises (the "Building"), second, the development of a pedestrian walkway on the Westerly side of the Premises, facilitating the flow of pedestrian traffic between Castle street and Railroad Street, and third, the development of the interior space of the Building in a manner focused towards vocational careers. It is anticipated that the Buyer's long-term investment to complete this undertaking shall approach \$4,000,000.

The Buyer agrees to design and construct a retaining wall within the Premises, about 30 feet to the west of the façade of the Building. This work will include removing a portion of the embankment to expand the so-called western alley to about 30 feet wide, removing the flag pole area and surrounding mound and grading the alley. (The Buyer shall prepare a sketch plan depicting the work.) Seller agrees to cooperate with Buyer on that portion of land owned by Seller where removal of the flag pole will be necessary for regrading, as well as along the north/south property line on the westerly side of the Premises for construction of the retaining wall. Buyer agrees that during the period of exterior repair it shall not close down the western alley and the eastern alley simultaneously.

### **INSPECTION**

To complement and supplement the Code Compliance Letter (see Rider E), Buyer is engaging an architect to review all the potential code requirements which may be required in various scenarios of the Building's future use. This may require the architect to engage an engineer to report on seismic reinforcing. Buyer shall have the right to terminate the Agreement during the Inspection Contingency Period, based on reports of the architect or engineer related to State Code compliance and seismic reinforcing requirements.

### **WATER MAIN RELOCATED**

- The Parties acknowledge that the Great Barrington Fire District relocated a portion of the water main that was underneath the Building to the alleyway on the westerly side of the Building. The Parties acknowledge that the Fire District will require an easement for the permanent placement of the water main in the relocation area, and that the Buyer intends to grant such an easement once it takes title to the Premises. The Seller will provide to the Buyer, for informational purposes only, a sketch or plan showing the relocated water main portion.



## BUYER TO APPLY FOR LOCAL and FEDERAL TAX BENEFIT PROGRAMS

- The Seller confirms that 20 Castle Street is located within an Economic Opportunity Area (EOA.) The EOA status was granted by the Massachusetts Economic Assistance Coordinating Council on June 26, 2012.
- The May 7, 2012, Great Barrington Town Meeting authorized the Board of Selectmen to enter into a Tax Increment Financing ("TIF") Agreement and Tax Increment Financing Plan and / or a Special Tax Assessment ("STA") Agreement and related agreements, with the Buyer or its Nominee, pursuant to the provisions of M.G.L. Chapter 40, Section 59 or any other enabling authority, in connection with the development of the Premises.
- It is incumbent upon the Buyer to apply for the benefits of a TIF or STA program directly with the Economic Assistance Coordinating Council. The Seller agrees to provide technical assistance to the Buyer in its application.
- The Buyer is engaged in exploring opportunities for a TIF Agreement or STA Agreement in connection with Buyer's restoration and redevelopment of the Premises, as described herein. The Seller's Town Manager and the Buyer have conducted a conference with the appropriate officials in the Massachusetts Office of Business Development (MOBD) and representatives of Buyer and Seller for the purpose of discussing the requirements of the TIF and STA programs and the eligibility of the Premises for the applicable tax benefit thereunder. The Buyer understands that it is required to, and intends to, submit an application to MOBD for approval of the applicable tax benefit program. In the event the Buyer does not receive reasonable assurance from MOBD that the application will be approved, the Buyer may terminate the Agreement by giving notice to the Seller no later than 50 days after the date of this Addendum.

## ENVIRONMENTAL WORK

- Buyer understands and Seller acknowledges that certain environmental remediation and removal activities will be required for development of the Property ("Remediation Activities"). Remediation Activities shall be defined as actions required to comply with the requirements of applicable Environmental Laws, or orders issued thereunder by an authorized person. "Environmental Laws" shall mean, collectively, any federal, state, or local law, rule or regulation, code or by-law pertaining to protection of the environment or regulation of pollution of air, water or land, and any judicial interpretation thereof.
- Reports have been provided by Tighe & Bond, Inc. to Seller and Buyer, as identified in Paragraph 1.17.b.

- The parties agree that the Buyer will accept the responsibility of performing, managing and overseeing all of the remediation work. Accordingly, the Buyer agrees to complete all necessary and required remediation work. This includes hiring and managing the contractors and consultants and complying with all regulatory requirements and inspections.
- The Seller will reimburse the Buyer for environmental remediation costs incurred after the Closing up to \$270,000. The Seller will reimburse the Buyer, within 30 days, for the expenses after review of the invoices and receipt of any and all reports that indicate the completion of the work for which reimbursement is requested.
- The Buyer will pay for additional remediation costs which exceed the \$270,000, up to a total cost of \$320,000. Remediation costs that exceed this amount shall be paid for by the Seller. Seller must obtain approval for funding at Town Meeting.

#### MISCELLANEOUS

- The Buyer shall execute an affidavit of compliance with the provisions of G.L. Chapter 7C, Section 38.
- The Buyer shall execute, as required under G.L. Chapter 60, Section 77B, an affidavit of non-conviction of crimes relating to arson and that it is not delinquent in the payment of any real estate taxes, or is current in a pre-existing repayment agreement with any taxing authority, whether within the Commonwealth of Massachusetts or elsewhere.

RIDER "C"

REAL ESTATE BROKER

The Buyer and Seller warrant and represent to each other that neither one has dealt with a real estate broker or agent with respect to this transaction or these premises.

## RIDER "D"

The parties acknowledge and agree that upon Buyer taking title to the Premises they shall enter into an Easement Agreement by which the Buyer will convey an easement to the Seller upon the following terms, the final form of which shall be contained in such Easement Agreement.

The purpose of the Easement Agreement is to provide abutting property owners and merchants ("merchants"), as well as the Buyer, the ability to continue their business operations with access to the rear alley adjacent to the Premises and to minimize any impact of Buyer's development and use of the Premises on businesses adjacent to the Premises and future operations.

### WESTERN ALLEY

The Buyer agrees to design and construct a retaining wall within the Premises, about 30 feet to the west of the Building façade. This work will include removing a portion of the embankment to expand the so-called western alley adjacent to the Building to about 30 feet wide. In addition, the flag pole area will be removed and the alley will be graded.

The western alley will be divided into the following sections:

- A 12-foot wide mixed use western lane for designated vehicular access as outlined below and for use as a pedestrian walkway when appropriate (Lane A); and
- An 18-foot wide area to be used by the owners and tenants of the Premises (Lane B).

The Buyer will provide the Seller with an easement for Lane A.

Lane A is to be the alternative delivery and vehicular access route for the merchants only when there is no other means available.

Until such time as the alley work described herein is completed, the western alley, as it currently exists, will be available under the Operation Plan terms described below. When the work is completed, the Operation Plan will apply to Lane A only.

### OPERATION PLAN FOR LANE A

Emergency and public safety vehicles shall have the unrestricted right of access and egress, as needed, through Lane A at all times. Any rights conveyed to others in the easement area shall not in any way, implied or otherwise, limit this unrestricted access.

Trash collection may occur in Lane A between 5 AM and 7 AM, Monday through Friday, exclusive of federal or town holidays.

No parking at any time.

No engine or auxiliary engine idling at any time.

No unattended vehicles.

Delivery vehicles for merchants are permitted to use Lane A only when other delivery routes are not available, specifically the alley to the east of the Premises and next to the Mahaiwe Theater and Castle Street.

When other routes are not available:

1) Vehicles under 25 ft. (including cars) may use Lane A.

2) Large delivery trucks (semi-trailers, so-called 5<sup>th</sup> wheel vehicles, over 25 feet) may use Lane A for deliveries between the hours of 5 AM and 10 AM, Monday through Friday, but not on holidays. Large truck deliveries may not exceed one per day per merchant

3) Buyer agrees to consider special requests for additional deliveries to be made on Lane A, to accommodate recognized needs as may exist, from time to time.

4) Buyer agrees to consider requests from seller or others to allow Seller to issue entertainment permits for special events on Lane A or any other uses which may be deemed beneficial or appropriate, provided the Town Manager had determined that ingress and egress of safety vehicles can still function appropriately.

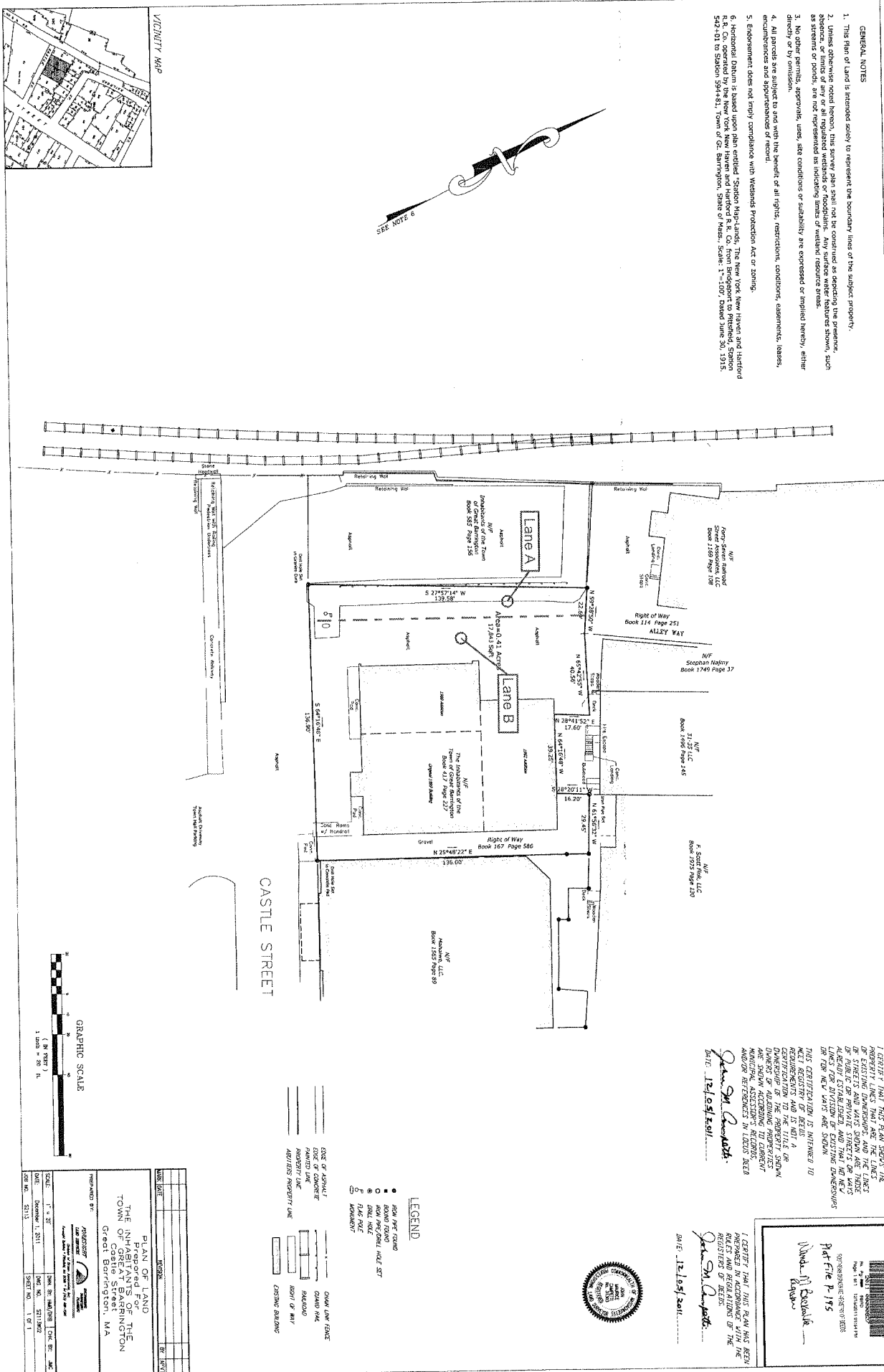
#### ENFORCEMENT

It will be the obligation of the Seller to enforce the Operation Plan provisions of the Easement Agreement. This shall include, but not be limited to: tickets, fines, or court action, to ensure enforcement.

A sign will be placed at the western alley that lists the regulations.

1. This plan of land is intended solely to represent the boundary lines of the subject property

3. This form of a statement is intended solely to represent the secondary lines of the subject property.
4. Unless otherwise noted herein, this survey plan shall not be construed as depicting the presence, absence, or limits of any of or irregular wetlands or floodplain. Any surface water features shown, such as streams or rivers, are not represented as including man-made or wetland associated structures.
5. No other rights, approvals, uses, title conditions or publicity are expressed or implied hereby, either directly or by omission.
6. All parcels are shown to and with the benefit of all rights, restrictions, conditions, easements, leases, encumbrances and appurtenances to the benefit of the record.
7. Easements and appurtenances do not imply compliance with Wetlands Protection Act or zoning.
8. Horizontal Datum is based upon data entitled "Station High-water", The New York New Haven and Hartford R.R. Co. Station High-water, New Haven and Hartford R.R. Co. Station High-water, 1:25,000, dated June 30, 1915, R.R. Co. Station High-water, New Haven and Hartford R.R. Co. Station High-water, 1:25,000, dated June 30, 1915, R.R. Co. Station High-water, New Haven and Hartford R.R. Co. Station High-water, 1:25,000, dated June 30, 1915.



Jennifer Tabakin  
Town Manager

E-mail: [jtabakin@townofgb.org](mailto:jtabakin@townofgb.org)  
[www.townofgb.org](http://www.townofgb.org)



Town Hall, 334 Main Street  
Great Barrington, MA 01230

Telephone: (413) 528-1619 x2  
Fax: (413) 528-2290

## TOWN OF GREAT BARRINGTON MASSACHUSETTS

OFFICE OF THE TOWN MANAGER

December 12, 2013

20 Castle Street, LLC  
c/o Tom Borshoff  
536 Stone Road  
Pittsford, NY 14534

Dear Members of 20 Castle Street, LLC:

It is the intent of the Town of Great Barrington to represent at the time of transfer of title to 20 Castle Street, LLC that the premises at 20 Castle Street have no reported and open code violations and that the building is occupied and used on a daily basis by employees of the Town and members of the public.

I am aware that 20 Castle Street, LLC intends to spend more than 30% of the building's assessed valuation on the repair of the building's exterior and improvements to the so-called westerly alley. 20 Castle Street, LLC has acknowledged that this may trigger (subject to possible exceptions related to the historic designation of the building) a requirement for the building to meet current State Building Codes. For your informational purposes, the Town is informing you that code requirements are controlled by various provisions of state law and regulations, which you and your designers may review. These include the State Building Code, 780 CMR; accessibility regulations of the Architectural Access Board, 521 CMR; and section 26G of Chapter 148 of the General Laws relating to automatic sprinklers for non-residential buildings, and major alterations to such buildings, with more than 7,500 gross square feet of floor area. These provisions currently contain certain limitations for existing buildings.

*[Handwritten signature]*

20 Castle Street, LLC

December 12, 2013

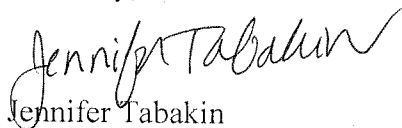
Page 2.

Under the AAB regulations there is an exception for exterior work consisting of roof repair or replacement, or repointing and masonry repair, unless the cost exceeds \$500,000 or work is being done to an entrance or toilet. (521 CMR 3.3.1) If work, including exempted work, amounts to 30% or more of the full and fair cash value of a building the whole building must comply with the regulations. (521 CMR 3.3.2) For work performed over a period of time in phases, the total cost in any 36 month period is used in applying the existing building requirements. (521 CMR 3.5)

An advisory memorandum of the Automatic Sprinkler Appeals Board of the Massachusetts Fire Safety Commission in 2009 stated the Board's intent to use two presumption guidelines for the purpose of determining what qualifies as a major alteration: when the work affects 33% or more of the total gross square footage, and when the total cost of the work (excluding sprinkler installation costs) is 33% or more of the assessed value at the date of application for the building permit.

The building is currently open for use under an existing certificate of occupancy. If there are no new tenants or occupants until the planned interior work is complete, a new certificate of occupancy would not be required until that time.

Sincerely,



Jennifer Tabakin  
Town Manager

JT/hk

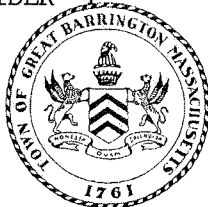




RIDER "F"

Jennifer Tabakin  
Town Manager

E-mail: [jtabakin@townofgb.org](mailto:jtabakin@townofgb.org)  
[www.townofgb.org](http://www.townofgb.org)



Town Hall, 334 Main Street  
Great Barrington, MA 01230

Telephone: (413) 528-1619 x2  
Fax: (413) 528-2290

## TOWN OF GREAT BARRINGTON MASSACHUSETTS

OFFICE OF THE TOWN MANAGER

December 12, 2013

20 Castle Street, LLC  
c/o Tom Borshoff  
536 Stone Road  
Pittsford, NY 14534

Dear Members of 20 Castle Street, LLC:

This letter confirms the intent of the Town of Great Barrington (as Lessee) to enter into a lease agreement with 20 Castle Street, LLC (as Lessor) for an approximately 7,500 square foot portion of the Castle Street fire station building following the Town's sale of the building to 20 Castle Street, LLC pursuant to the parties Purchase and Sale Agreement dated February 13, 2012 and following compliance with the requirements of Section 16 of the Uniform Procurement Act, Chapter 30B of the Mass General Laws. Such lease to be for a period of six years with no rent for the first year and a monthly rent of \$2,500 for the following years, with the right of the Lessee to sublease the leased area upon the consent of the Lessor and upon such other terms and conditions as are agreed to by the parties.

Sincerely,

Jennifer Tabakin  
Town Manager

ACKNOWLEDGED AND AGREED TO:

20 Castle Street, LLC  
By   
Name and Title MANAGER  
Date: 12/31/13