

Option for Purchase of Easement: Beaver Brook Greenway

This Option made by and between **Peter A. Flinker and Stephanie J. Flinker**, with a mailing address of 502 Haydenville Road, Leeds, MA 01053, ("Optionor" or "FLINKER") and the **City of Northampton**, ATTN: Wayne Feiden, Planning & Development, 210 Main Street, Northampton, MA 01060, a Massachusetts municipal corporation or its assigns ("Optionee" or "CITY").

For and in consideration of the Sum of One Dollar (\$1.00), the receipt and sufficiency of which is hereby acknowledged, the Optionor hereby grants to the Optionee an exclusive right and option to purchase all an easement for trail purposes, roughly as shown on the attached plan and meaning to be a ten foot easement along the FLINKERS' southerly property boundary. Said property is a portion of the property described in a deed to FLINKER recorded at the Hampshire Registry of Deeds at Book 3080, Page 218 (10/28/1987).

Purchase Price and Terms.

The purchase price for the Optionors' interest in LAND shall be **One Dollar** (\$1.00).

The Optionor agrees that upon payment of the purchase price, Optionor shall execute and deliver to the Optionee a good and sufficient grant of an easement with quitclaim covenants running to the Optionee free of any liens and encumbrances, other than encumbrances of record which do not materially affect the value or intended use of the LAND, and free of tenants and occupants.

If Optionor cannot convey the LAND free of encumbrances as provided for herein, Optionee may still elect to purchase the LAND. Optionee reserves the right to acquire the LAND by eminent domain to clear title or for any other reason, in accordance with the terms of this option, Optionor shall agree to waive any rights to contest the taking or the award, provided the price paid is not less than the option price contained herein, the LAND is taken prior to the expiration of this option or any extensions which may be agreed upon, and all terms of this Option remain the same as provided herein.

Exercise of Option and Closing.

The Optionee's commitment to exercise the Option shall be delivered no later than March 31, 2020. The Option shall be exercised by mailing, certified mail, or hand delivering written notice of Optionee's intent to exercise this Option to Optionor's address listed above, said mailing to occur on or before said date. The Optionee may assign its right to purchase all or a portion of the LAND upon giving written notice of such assignment to Optionor, provided it arranges for simultaneous closing on the LAND and all terms of this Option remain the same.

The closing shall occur on or before April 30, 2020. It is the CITY'S intent to close earlier if possible. The CITY'S obligations are contingent on City Council approval, funding, title, and survey.

The easement shall be used as a greenway trail open to the public and consistent with open space purposes.

Right of Entry: During the term of this Option, the CITY and the CITY's authorized agents shall have the right to enter upon the Land for any and all purposes consistent with surveying, inspection, testing, measurement, or other considerations of CITY relating to the use of the Land, including such limited cutting of brush as needed to allow measurements.

Non-Exercise of Option, Liquidated Damages: In the event this Option is not exercised in accordance with the terms herein contained, the consideration paid simultaneously with the execution hereof shall be forfeited by the CITY to Optioner and shall be liquidated damages to Optioner. Such forfeiture, together with any other benefits accruing to Optioner under the terms of this Option shall preclude the imposition of liability at law or in equity against either party and no further obligation hereunder; and the Option granted herein shall expire without the necessity of any further action or recording by either party. If the Option is not exercised by the due date, the option is null and void.

Broker: The parties each represent and warrant that the CITY has not engaged or entered into any agreement with any real estate broker nor any other person who could be entitled to a real estate commission with respect to the transactions contemplated herein and that if the Optioner has an agreement with a real estate broker they are solely responsible for those costs (using the proceeds of this sale or otherwise) with no other obligation from the buyer.

Hazardous Materials: Optioner represents and warrants that to the best of its knowledge and belief, there are no underground storage tanks on the LAND, nor of any release or threat of release of oil or hazardous materials on the Land, as these terms are defined by M.G.L. c.21E. This provision shall survive the closing.

Survey: IF the City elects to prepare a survey, it shall be at the CITY'S sole cost and expense to prepare a recordable survey for the Land, and the Optioner will deliver a deed to the CITY with the description from the CITY'S survey.

Entire Agreement: This Option contains each and every agreement and understanding existing between the parties relating to the subject matter hereof and supersedes all previous negotiations, representations, commitments and writings. Any changes, modifications or additions to this Option shall be in writing and signed by both parties. The City shall cover its standard closing costs (including but not limited to city attorney, title abstract, survey, recording fee) and the seller shall be responsible for their own legal fees and other cost and taxes and fees prorated to the date of closing.

Governing Law: This Option shall be construed under the laws of the Commonwealth of Massachusetts and shall inure to the benefit of and bind the parties and their respective heirs, executors, administrators, personal representatives, successors and assigns.

Certification: Pursuant to M.G.L. Chapter 62C, Section 49A, Optioner certifies under the penalties of perjury that it has, to its best knowledge and belief, complied with the law of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support. Optioner further authorizes the CITY to deduct from the amounts due under this contract, any overdue taxes, real or personal, or any other fees due to the CITY from the Optioner which become due and payable by the Optioner or its officers, directors or agents during the term of this contract or until the final amounts due under this contract are paid in full.

IN WITNESS WHEREOF, FLINKER and CITY have executed this Option as a sealed instrument this ____ day of July, 2019.

FLINKER, Optionor:

Peter A. Flinker

Stephanie J. Flinker

City of Northampton, Optionee:

Wayne Feiden, FAICP, Director of Planning & Sustainability

Joyce Karpinski, City Auditor, as to appropriation

Joe Cook, Chief Procurement Officer, as to procurement

David J. Narkewicz, Mayor

