



Town of Lexington
Town Manager's Office

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Thomas V. Griffiths
Lexington Friends of the Arts, Inc.
d/b/a Munroe Center for the Arts
1403 Massachusetts Avenue
Lexington, MA 02420

RE: Sale of Munroe School – Request for Proposals #10-11 – AWARD LETTER

Dear Tom:

As you know, the **Board of Selectmen** has voted to accept the response of Lexington Friends of the Arts, Inc. d/b/a Munroe Center for the Arts (the "Munroe Center") that was submitted on _____, 2009 to the captioned request for proposals for the sale of the Munroe School property (the "Premises"). Lexington's acceptance of the Munroe Center's response (the "Response") is subject to the following conditions:

1. Approval of the sale by Town Meeting and all other necessary municipal boards, committees and entities in accordance with the terms of the RFP, the Response and this letter.
2. Approval of the final Purchase and Sale Agreement for the Premises by Lexington Town Counsel.
3. Amendment of Section 4.01(D) of the Purchase and Sale Agreement by inserting "(for pedestrian, vehicular and utility access)" after "non-exclusive access easement" and before "appurtenant to the Premises running from the Town."
4. Amendment of Section 10 of the Purchase and Sale Agreement by deleting the first sentence and replacing it with the following: "Each party represents that it has not dealt with a broker or real estate agent in connection with this transaction."
5. Revisions to Section 11 of the Purchase and Sale Agreement so that it includes the following concepts, provided that these concepts may be further and more fully articulated in the final Purchase and Sale Agreement:

11. Option to Purchase.

11.01 If Buyer elects to sell the Premises at any time, Seller shall have the option to purchase the Premises at a purchase price of \$1,000 plus the residual value, if any, of Capital Improvements (as defined below) after

annual depreciation (the “Residual Value”) financed by Buyer through Loans, Gifts or Grants (subject to the terms of Section 11.03(e) hereof) (the “Repurchase Price”); provided, however, that the residual value of any Capital Improvements that have been funded by the Seller shall not be included in the purchase price, including without limitation any Capital Improvements funded under the Community Preservation Act. The terms of this Option to Purchase shall be included in the deed to Buyer.

Prior to offering the Premises for sale to third parties or accepting any third party offers, Buyer shall give written notice (“Buyer’s Notice”) to Seller of Buyer’s desire to sell the Premises. If Seller is interested in buying the Premises, Seller shall give written notice (“Seller’s Notice”) to Buyer of Seller’s desire to purchase the Premises at the Repurchase Price within sixty (60) days after Seller’s receipt of Buyer’s Notice.

If Seller so elects to purchase the Premises, such election shall be binding and the parties shall do such things as shall be preferable or necessary in order to enable the purchase of the Premises to be made by Seller on the date specified therefor by notice from Seller to Buyer (the “Repurchase Closing Date”), including requesting Town Meeting approval of such purchase by Seller. The Repurchase Closing Date shall be no later than ninety (90) days after the date of Seller’s Notice. Notwithstanding the foregoing, Seller shall not be required to purchase the Premises if Town Meeting has not approved the purchase and any required funding before ninety (90) days after the date of Seller’s Notice. In such a situation, Seller shall be entitled to terminate its option to purchase by written notice to Buyer and Buyer shall be entitled to sell the Premises to a third party in accordance with the terms of this Article 11 set forth below.

On the Repurchase Closing Date, Buyer shall convey title to the Premises in accordance with, and the Premises shall otherwise be in compliance with, the following standards:

(a) Title Standard: On the Repurchase Closing Date, Buyer shall by quitclaim deed convey to Seller good and clear record and marketable title to the Premises subject to and with the benefit of the following matters only:

(i) Those matters of record subject to which the Premises was conveyed by Seller to Buyer plus any customary utility-industry easements in place for utility upgrades at the building (located with the access way shown on Exhibit D).

(ii) Real estate taxes not yet due and payable and special assessments which are not yet due and payable.

(iii) Such other matters as Seller shall have agreed in writing to accept.

The closing of the repurchase shall occur at such time on the Repurchase Closing Date and at such location in the Greater Boston Area as Seller shall specify. At and as a condition to the closing the parties shall: (1) execute and deliver all instruments reasonably necessary or appropriate to consummate the transaction, as determined by Buyer's and Seller's counsel, and (2) be in compliance with the respective conditions for the benefit of the other as hereinafter set forth. Without limiting the generality of the foregoing, but subject to the provisions of this Article 11, Seller shall have no obligation to proceed to acquire the Premises, notwithstanding its election to do so, unless the Premises in all respects (including condition and rights of possession) shall be in compliance with the Title Standard set forth hereinabove on the Repurchase Closing Date.

If Seller does not exercise its option to purchase the Premises as provided herein, Buyer may sell the Premises to a third party at any price for a period of one (1) year from the date of Buyer's Notice, after which time the provisions of this Article 11 will once again apply to Buyer.

The provisions of this Article 11 shall not be construed to apply to (a) bona fide mortgages to recognized lending institutions of the Premises, or any part thereof, or to sales or other proceedings for the foreclosure thereof; or (b) to easements to any municipality or utility company required for the installation and/or maintenance of drainage, sewage, electric, gas, water and electric lines and appurtenance to and from the Premises; provided, however, that the provisions of this Article 11 and the option to purchase set forth herein shall apply to a subsequent sale of the Premises after foreclosure proceedings or the grant of a utility easement and shall run with the Premises.

11.02 Prior to undertaking any Capital Improvement, Buyer shall submit to Seller, at a minimum, a description of the proposed capital work, relevant plans and specifications, an estimate for the cost of the work and any additional information reasonably required by Seller to (a) determine whether the capital work qualifies as a Capital Improvement hereunder and (b) implement, monitor and enforce the terms of this option to purchase. Notwithstanding anything set forth herein to the contrary, if Buyer fails to submit all of the aforementioned information to Seller in advance of undertaking a Capital Improvement, the Residual Value thereof will not be included in the option price calculation set forth above.

11.03 For the purposes of this Section 11:

(a) "Capital Improvements" shall mean any improvement listed on the schedule attached hereto as Exhibit A and any improvement that Seller agrees in advance is related to the structure of the building (e.g., roof and windows), the systems of the building (e.g., HVAC, elevators, plumbing, mechanical and electrical/distribution) and/or capital improvements on the Premises (e.g., parking lots, driveways and exterior lighting); provided, however, that capital improvements shall not include leasehold

improvements (e.g., flooring, office fit-out work and light fixtures) or repair and maintenance items. Notwithstanding the foregoing, to qualify as a Capital Improvement, the cost of each improvement must be at least (i) \$25,000 within ten (10) years following the date of this Agreement; (ii) \$35,000 after ten (10) years and until twenty (20) years following the date of this Agreement; and (iii) an amount to be agreed upon by Seller and Buyer after the expiration of the immediately aforementioned period.

(b) The “Residual Value” of Capital Improvements shall be the value of any such improvement that remains after depreciation calculated based on the Life Expectancy Guidelines – (Life Expectancy to be the number of years between Average to Good Quality), provided by Marshall Valuation Service – Marshall & Swift/Boeckh, LLC, published annually (or a similar resource should this company and publication cease to exist).

(c) “Loans” shall mean commercial loans funded by commercial banks or other institutional lenders.

(d) “Gifts” shall mean donations to Buyer from particular individuals, families or entities totaling \$5,000; provided, any such donations are made during the five (5) years after the execution of this Agreement.

(e) “Grants” shall mean any grants issued to Buyer to finance Capital Improvements; provided, however, that Buyer shall consult with Seller prior to submitting an application for any such grant to obtain a determination by Seller concerning whether the value of the Capital Improvement will qualify as Residual Value to be included in the option price mentioned in Section 11.01 above. To enable Seller to make such a determination, Buyer shall deliver all relevant information concerning a grant application to Seller before applying for any such grant. Seller shall provide its determination within ten (10) business days after the delivery by Buyer of the information mentioned above; provided, however, that (i) Seller may request approval by Buyer of an extension of that period, which approval shall not be unreasonably withheld or denied and (ii) if Buyer has delivered the information mentioned above and Seller fails to provide a determination to Buyer within the aforementioned 10-day period, the Capital Improvement that is to be financed by the relevant grant shall be included in the option price mentioned in Section 11.01 above.

11.04 In addition to the foregoing, Seller shall have a right of first refusal to match any bona fide, third-party offer for the purchase of the Premises.

11.05 To avoid any claim of the application of the Rule Against Perpetuities, the parties agree that all performance under the Option to Purchase and the right of first refusal described in Section 11.04 hereof must occur within ninety (90) years of the date of this Agreement.

The parties also agree that the terms of this Article 11 shall remain in effect as long as Buyer retains ownership of the Premises. Should Buyer convey the Premises and the Town fails to exercise the Option to Purchase or its right of first refusal to repurchase the Premises, the subsequent owner shall not be governed by the provisions of this Article 11.

6. The parties agree that the Payment in Lieu of Taxes described in Article 12 of the Purchase and Sale Agreement will survive delivery of the deed and will apply during Buyer's ownership of the Premises.

7. The following language shall be added to the Purchase and Sale Agreement as Section 13.11:

Any change in the identity of the persons or entity controlling the activities of Buyer, whether by sale, transfer of voting shares, asset transfer, or the like, shall be regarded as an assignment of the control of the Munroe School (hereinafter, "Assignment of Control"). Any such proposed Assignment of Control shall be invalid unless approved in writing by the Town, which approval shall not be unreasonably withheld or delayed. The provisions of this Section 13.11 shall survive delivery of the deed hereunder and shall be set forth therein.

8. Buyer shall use reasonable efforts to make space in the building on the Premises available for use by local groups and organizations at no cost to those groups or organizations other than the direct costs to Buyer of permitting such use.

If the conditions that are set forth herein are acceptable to you, please sign below to evidence your acknowledgement and acceptance thereof.

Sincerely,

Carl F. Valente
Town Manager

Acknowledged and Agreed

LEXINGTON FRIENDS OF THE ARTS, INC.
D/B/A MUNROE CENTER FOR THE ARTS

2009

By: _____

Its: President

Hereunto duly authorized

Date: November ____,

2009

By: _____

Its: Treasurer

Hereunto duly authorized

Date: November ____,