



Action Item # 5772/18
Docket Date: June 27, 2018

City of Newport
REQUEST FOR CITY COUNCIL ACTION

To: Mayor Henry F. Winthrop & Members of the City Council
From: Joseph J. Nicholson, Jr., Esq., City Manager
Date: June 19, 2018
Subject: Purchase and Sale Agreement – Former Triplett School Property, 435 Broadway
Staff Presentation:

RECOMMENDATION:

City Administration recommends approval of the attached resolution authorizing the Mayor to sign, on behalf of the City and pending final City Solicitor review and approval, the Purchase and Sale (P&S) Agreement between the Island Moving Company and the City of Newport for the City-owned property located at 435 Broadway (Plat 6; Lot 11) formerly known as the Triplett School.

BACKGROUND AND FINDINGS:

The former Triplett School property was relinquished by the School Department to the City of Newport for disposition.

We have been discussing for some time now the potential sale of the Triplett School property to the Island Moving Company. We are at the point now of presenting that proposal to the Council for consideration.

The terms of the proposal are set forth in the attached purchase and sale agreement but can be summarized as follows:

1. Entire parcel to be purchased by the Island Moving Company.
2. Purchase price of \$900,000.
3. The sum of \$408,000 to be paid at closing with the balance to be paid over a 5 year period. Promissory note to carry an interest rate at 3.5%. Note to be secured by a mortgage on the property.
4. The proposal is contingent on the buyer subdividing the lot into 5 lots: the makeup which would be 4 residential lots for single family homes and one lot dedicated to the IMC. The IMC would construct a theatre complex on the lot they would retain. The remaining lots conveyed to a developer to construct 4 single family homes.
5. The property would remain on the tax rolls regardless.
6. Property is limited to a ballet and dance theatre facility with a covenant running with the land to that effect. The remaining property as indicated no more than 4 single family homes.
7. City of Newport has a right of first refusal on the property that is coterminous with the note and mortgage.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

Currently Budgeted (Account _____) Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

Resolution
Purchase and Sale Agreement

Finance Dept. Review: 6/21/18 Date By: LS (if applicable)

THE CITY OF NEWPORT

RESOLUTION

**OF THE
COUNCIL**

No.

WHEREAS: the former Triplett School property located at 435 Broadway (Plat 6, Lot 11) was relinquished by the School Department for disposition and redevelopment. NOW THEREFORE, BE IT

RESOLVED: the City of Newport approves the Purchase and Sale (P&S) Agreement between the Island Moving Company and the City of Newport for the City-owned property located at 435 Broadway, (Plat 6, Lot 11), formerly known as the Triplett School. AND BE IT FURTHER

RESOLVED: that the Mayor is authorized to sign said Agreement and any necessary closing documents in connection with the sale of said property, on behalf of the City, upon review of the City Solicitor's office.

IN COUNCIL
READ AND PASSED

Laura C. Swistak
City Clerk

REAL ESTATE PURCHASE & SALE AGREEMENT

**TRIPLETT SCHOOL
Newport, Rhode Island**

This Purchase and Sale Agreement (the "Agreement") is made and entered into as of the 2nd day of May, 2018, by and between the **City of Newport**, a municipal corporation organized and existing under the laws of the State of Rhode Island (the "Seller"), and **Island Moving Company**, a Rhode Island non-profit corporation with its principal place of business in the City and County of Newport, State of Rhode Island (the "Buyer").

W I T N E S S E T H

WHEREAS, Seller is the owner of that certain real property located at 435 Broadway, Newport, Rhode Island, (the "Property");

WHEREAS, Seller has accepted Buyer's offer to purchase the aforesaid property and desires to sell the property to Buyer, and Buyer desires to purchase the property from Seller;

NOW, THEREFORE, in consideration of the premises and of the agreements and covenants herein contained, the parties hereto agree as follows:

SECTION 1. Property to be Purchased by Buyer

1.01 Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions hereinafter set forth, all of Seller's right, title and interest in that certain real estate located at Newport, Rhode Island, being further identified as Plat 6, Lot 11, on the Tax Plats of the City of Newport, as presently constituted, being the location of the property known as Triplett School, together with all of Seller's right, title and interest in and to all buildings, structures, fixtures and improvements situated on the aforesaid real estate (hereinafter, the aforesaid real estate and buildings, structures, fixtures and improvements collectively referred to as the "Premises"), and all easements, right of way, licenses, privileges, and appurtenances, if any, inuring to the benefit of the Premises.

SECTION 2. Payment of Purchase Price

2.01 The purchase price to be paid by Buyer for the Premises shall be Nine Hundred Thousand Dollars (\$900,000.00) (the "Purchase Price"), subject to the adjustments and pro-rations hereinafter described.

2.02 The purchase price shall be paid as follows:

(a) The sum of One Thousand and 00/100 (\$1,000.00) (the "Deposit") has been paid upon execution of this Agreement to the City of Newport;

(b) The sum of Four Hundred Seven Thousand Dollars (\$407,000.00) shall be paid by certified or bank check or wire transfer at the Closing, hereinafter defined.

(c) Four Hundred Ninety-two Thousand Dollars (\$492,000.00) shall be paid at the Closing by the delivery of a Promissory Note (the "Note") from Buyer to Seller with an interest rate of 3.5% per annum with monthly payments of principal and interest amortized over fifteen (15) years commencing on the first of the month after the month in which the Closing takes place, with accrued interest and outstanding principal owed paid on or before five (5) years from the date of Closing.

SECTION 3. Permitted Encumbrances: Deeds

At the Closing, Seller shall convey the Premises to Buyer or Buyer's nominee by a good and sufficient warranty deed in statutory form (hereinafter referred to as the "Deed") conveying good, marketable, record and insurable fee simple title, free and clear of all liens and encumbrances whatsoever, excepting only: (a) easements, encumbrances and restrictions of record reasonably acceptable to Buyer; (b) provisions of existing building, zoning and subdivision laws; and (c) betterment and other assessments, which assessments shall be adjusted as hereafter provided (hereinafter collectively referred to as the "Permitted Encumbrances"). Buyer shall immediately determine whether Seller has good and marketable record title in fee simple to the premises, subject only to Permitted Encumbrances. If written objection to title is made by Buyer within ninety (90) days hereof, Seller shall use Seller's best efforts to seek to cure all such title defects at Seller's sole cost and expense. If such defect(s) is or are not cured by Seller or waived by Buyer within sixty (60) days after the date of receipt by Seller of written notice of Buyer's objection to title as herein above provided, Buyer may terminate this Agreement without incurring any liability whatsoever, whereupon the Deposit shall be promptly returned

and this Agreement shall be null and void and of no further force and effect. In the event any lien is filed or encumbrances or any defect or cloud of title arises against the Premises from and after the date of said notice through the Closing, Seller shall, at its sole cost and expense, take appropriate action to ensure delivery of title in accordance with the provisions contained herein and the Closing Date shall be extended for up to thirty (30) days to allow for any such action by Seller.

If the Buyer receives the required permits for Buyer's plans, including approval to subdivide the Premises to include four (4) single family residential lots, then at Closing, subject to the payment of the full purchase price by the Buyer as provided for in Section 2 of this Agreement, then at Buyer's instruction, the Seller agrees to convey the portion of the subdivided Premises containing the four (4) single family residential lots to the nominee of the Buyer by separate deed.

SECTION 4. Closing Date

4.01 Unless some other time and place shall be mutually agreed upon in writing, the conveyance of title to the Premises and payment of the unpaid portion of the Purchase Price (the "Closing") shall take place within thirty (30) days from the date of the termination of the Permitting Period as that term is hereinafter defined at Newport City Hall, 43 Broadway, Newport, Rhode Island, or elsewhere as mutually agreed to by the parties hereto.

4.02 Effective with the delivery of the Deed, beneficial ownership and the risk of loss of the Premises shall pass from Seller to Buyer.

SECTION 5. Adjustments

The following are to be apportioned at the Closing, such apportionment to be through the Closing Date, as follows:

5.01 Electricity, gas, water and other utility charges for periods prior to the Closing Date shall be paid by Seller upon readings (obtained by Seller and furnished at the Closing) made on or immediately prior to the Closing Date; provided, however, that Buyer shall be responsible to arrange for the transfer and continuance of such utility services in Buyer's name on and after the Closing Date.

5.02 Real estate taxes assessed against the Premises on the December 31st preceding the Closing date are to be pro-rated on a fiscal year basis, the Seller paying pro-rata for the period from such date of assessment to the

Closing and the Buyer paying or assuming the balance of the taxes. The valuation used for assessment purposes shall reflect fair market value as of December 31 of the year of the last revaluation of City properties.

5.03 Any betterment or other assessments constituting a lien on the Premises which are payable over a period of more than one year shall be apportioned in such manner that Seller shall pay all installments due through the December 31st immediately preceding the Closing Date and any such installment due thereafter for the calendar year in which the Closing is held shall be apportioned in the same manner as above provided for taxes, and Buyer shall pay or assume the balance of all such assessments.

SECTION 6. Access to Premises

6.01 Buyer or Buyer's agents or representatives shall have the right at all reasonable times to enter upon the premises to inspect and test the premises as contemplated by this Agreement, and to enter the premises for all other reasons necessary to consummate this Agreement, including compliance with the State of Rhode Island Environmental Laws and Regulations, and for any reason pertaining to the proposed development or financing of the Premises. Buyer hereby releases Seller and its agents and agrees to indemnify and hold harmless Seller from and against any and all claims, cost, liabilities, and expenses which Seller incurs arising out of the entry upon the Premises by Buyer or its agents as contemplated by this Agreement. Buyer shall also at its cost immediately repair and restore any damage or disturbance made to the Premises as a result of its inspections, testing and entry upon the Premises. The provisions of this Section 6.01 shall survive the Closing.

6.02 Feasibility Period. Buyer, in Buyer's sole discretion, shall have until the end of the one hundred twentieth (120th) day from the date of this Agreement ("Due Diligence Period") to terminate this Agreement as a result of Buyer's dissatisfaction with the result of any inspection referenced in Section 6.01 herein, or for any other reason (or for no reason), all in Buyer's sole and absolute discretion by delivering written notice of termination to the Seller. (Nothing in the foregoing sentence or elsewhere in this Agreement limits or diminishes Buyer's termination rights pursuant to other provisions of this Agreement.)

In the event Buyer delivers a notice of termination with respect to this Agreement on or before the termination of the Due Diligence Period, then this Agreement shall have no further force or effect and the Parties shall have no further rights or obligations hereunder (except for Buyer's indemnification and

restoration obligations or other obligations which by the terms of this Agreement survive the Closing).

6.03 Permitting Period. The Buyer shall have until the one hundred eightieth (180th) day from the date of this Agreement as a Permitting Period. During the Permitting Period, the Buyer shall use commercially reasonable, diligent and good faith efforts to obtain the issuance of municipal zoning and/or planning approvals and any required municipal or state permits necessary for the development of its plans to subdivide the Premises to provide for a theatre/ballet performance and education use on a front lot and four (4) single family residential lots in the remaining area of the Premises ("Buyer Plans"). The zoning and/or planning approvals and other municipal or state permits shall be referred to in this Agreement as "Permit". In the event the Permit is issued, or approved for issuance, with any condition which Buyer, in its sole discretion, shall deem to be unacceptable, then Permit shall be deemed in that event to have been refused by the City of Newport. In addition, the Permit shall not be considered "obtained" unless and until the appeal period relative to such Permit has expired with no appeal having been taken. The Permitting Period shall also terminate after the appeal period has ended once the Permit has been granted if sooner than 180 days from the date of this Agreement. The Buyer shall be solely responsible for any and all costs and expenses incurred in obtaining the Permit.

If Buyer has used commercially reasonable, diligent and good faith efforts to obtain the Permit and has been unable to obtain the Permit within the Permitting Period, then the Permitting Period will be extended for an additional sixty (60) days.

If Buyer is unable to obtain the Permit prior to the expiration of the Permitting Process, the Buyer may, in its sole discretion, terminate this Agreement by written notice to the Seller. If Buyer elects to terminate this Agreement under this subsection, then all deposits paid shall be refunded to Buyer. After notice of termination, and refund of the Deposit to Buyer, this Agreement shall have no further force or effect and the Parties shall have no further rights or obligations hereunder (except for Buyer's indemnification and restoration obligations or any other obligations of the parties which are intended to survive the Closing).

In the event Buyer does not deliver to Seller a notice of termination with respect to this Agreement on or before the last day of the Permitting Period, then Buyer shall be precluded from terminating this Agreement pursuant to this Section.

SECTION 7. Default

If Buyer or Seller shall default in the performance of their obligations hereunder, then the non-defaulting party shall have the right to terminate this Agreement and pursue all of their remedies at law or in equity.

SECTION 8. Condition of Premises

The Premises are being sold in an "as is" condition with no representation or warranties as to its condition and Buyer shall take the Premises in its then "as is" condition with all faults and defects.

SECTION 9. Brokerage

Buyer and Seller represent to each other that there is no broker involved in this transaction and therefore no person who can claim a commission, finder's fee or other compensation in connection with the execution of this document. Each party agrees to indemnify the other on account of any claim of a commission, finder's fee or other compensation by any third party.

SECTION 10. Casualty and Fire Insurance

Seller will maintain in full force and existence the casualty and fire insurance that now exists on the Premises. Seller agrees that the insurance shall be kept in force until the Closing. Any loss or damage by fire before the Closing shall constitute grounds for rejection of title to the property. In case of fire, however, Seller upon closing shall allow Buyer on account of the purchase price any amount received by the Seller for the policies of fire insurance or shall pay such amount to Buyer. If at the time of Closing payment for the loss has not been made by the insurance company or companies insuring the premises, Seller will assign the Buyer all policies of fire insurance held by the Seller on the premises, together with all rights and claims thereunder. In the event of casualty, the Purchase Price will be reduced by the amount of the deductible under the insurance.

SECTION 11. Condemnation

If prior to the Closing, the Premises or any part hereof is taken by eminent domain or condemnation such that the remaining portion of the Premises cannot be used for Buyer's Plans, Buyer shall have the right,

exercisable by giving written notice of such decision to Seller within twenty (20) days after receiving written notice from Seller of such taking, to terminate this Agreement, and thereupon the Deposit, and all interest earned thereon, shall be fully refunded to Buyer, and this Agreement shall be null and void and parties hereto shall be relieved of all further obligations and liability, except those obligations intended to survive the Closing. If Buyer does not so terminate this Agreement, then Buyer shall remain obligated to purchase the Premises with an assignment by Seller to Buyer of all condemnation awards paid or payable by reason of such condemnation not in excess of the Purchase Price.

SECTION 12. Successors and Assigns

This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

SECTION 13. Notices

In the event notice is necessary or desirable under the provisions of this Agreement, it shall be deemed given when given by delivery to the person entitled thereto at the following address, (a) either by hand; (b) by depositing the same in United States mail, certified, return receipt requested, and postage prepaid; (c) by facsimile with confirmation of transmission; or (d) by electronic mail.

Any notice provided to Seller shall be given to:

Christopher J. Behan, Esq.
City Solicitor, City Hall
43 Broadway
Newport, Rhode Island 02840

Any notice provided to Buyer shall be given to:

Michael W. Miller, Esq. and/or Turner C. Scott, Esq.
Miller Scott & Holbrook
122 Touro Street
Newport, Rhode Island 02840

SECTION 14. Miscellaneous

14.01 Intentionally Omitted.

14.02 The Buyer's Plans for the use and development of the Premises shall be limited to a subdivision of the Premises in to a front lot abutting Broadway which shall be used for a ballet and dance theatre and education facility or for other arts organizations and the remaining area of the Premises shall be limited to no more than four (4) single family residential lots which restrictions shall be a covenant running with the land and be binding upon the Buyer, its successors and assigns.

The Buyer shall bear all costs and expenses related to obtaining any and all permits and approvals for Buyer's Plans and for any and all costs and expenses related to demolition of structures and environmental remediation.

14.03 The Buyer shall grant the Seller a Right of First Refusal for the front lot created pursuant to the Buyer's Plans. If at any time after the Closing, the Buyer or any of its successors and assigns, receives a bona fide offer to purchase this lot from a third party, then Buyer shall provide Seller with a copy thereof and a letter of transmittal offering to sell the property to Seller upon the same terms and conditions contained in said third party offer to purchase. Seller shall have thirty (30) days from receipt of this letter of transmittal to either decline the offer or exercise its right of first refusal.

If Seller notifies the Buyer of its refusal to accept said offer, then the Buyer may accept the offer to purchase from the third party but in no event shall the property be sold for less than the price and conditions offered to the Seller.

In the event that Seller elects to exercise its right, it shall notify the Buyer on or before the 30th day as set forth above. Thereafter, Seller shall purchase the property upon the same terms and conditions as contained in the third party bona fide offer, except for the date for delivery of the deed which shall occur no sooner than sixty (60) days from the date of Seller's notification to Buyer of its intent to purchase said lot. The provisions of this Section 14.03 shall survive the closing.

The Right of First Refusal shall terminate after five (5) years from the date of the Closing.

14.04 The Buyer agrees that the Premises in its entirety will remain on the tax rolls of the City of Newport and Buyer shall not seek an exemption from

the payment of property taxes assessed by the City of Newport. The provisions of this Section 14.04 shall survive the Closing.

14.05 If either party institutes an action or proceeding against the other relating to the provisions of this Agreement or any default hereunder, the unsuccessful party to such action or proceeding shall reimburse the successful party therein for the reasonable attorney's fees, disbursements and litigation expenses incurred by the successful party.

14.06 If any clause or provision of this Agreement is illegal, invalid or unenforceable under any present or future law, the remainder of this Agreement shall not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible which would be legal, valid and enforceable.

14.07 Neither this Agreement or any of the provisions hereof shall be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought, and then only to the extent set forth in such instrument.

14.08 This Agreement is made and delivered in the State of Rhode Island, is designed and intended to be performed entirely in the State of Rhode Island, and shall be construed and enforced in accordance with the laws of the State of Rhode Island. In the event of any dispute under this Agreement, including those provisions dealing with the escrow agent, the parties agree that the State of Rhode Island will have jurisdiction to resolve any such dispute.

14.09 This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall comprise one and the same original.

14.10 This Agreement embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this Agreement.

14.11 If Seller is unable to convey title to the premises in good faith, Buyer may elect to accept such title as Seller is able to convey without reduction to the purchase price or rescind the agreement and receive the return of the deposit.

14.12 Each party agrees to provide corporate or other authorized resolutions, Certificates of Good Standing, Encumbrances Certificates and any other matters which may reasonably be requested by a title insurance company or lender, including without limitation certificates of release of corporate or other tax liens which could encumber the Premises.

14.13 The Buyer may not assign this Agreement without the express written approval of the Seller. This Agreement shall be binding upon the successor and assigns of the Buyer.

14.14 Buyer and Seller certify that this Agreement accurately reflects the sales price for the Premises. Buyer and Seller understand and agree that this information shall be disclosed to the Internal Revenue Service as required by law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized representatives who have hereunto set their respected hands all as of the day and year first above written.

In the Presence of:

Seller: THE CITY OF NEWPORT, RHODE ISLAND

By _____
Title

Buyer: ISLAND MOVING COMPANY



By 
Title *Executive Director*

Approved as to form:

Christopher J. Behan, Esq.
Newport City Solicitor

4.25.18 revision