

## OPTION FOR PURCHASE AND SALE

1. **PARTIES.** This \_\_\_\_ day of \_\_\_\_\_ 2023 (the “**Effective Date**”), **Rosamond J. Phinney, Personal Representative of the Estate of John Phinney**, with a mailing address of 16 Overlook Drive, Gorham, Maine (“**Seller**”), for consideration paid, the receipt and sufficiency of which is hereby acknowledged, grants to the **TOWN OF WINDHAM**, a Maine municipal corporation with a mailing address of 8 School Road, Windham, Maine 04602 (“**Buyer**”), the exclusive right and option to purchase the premises described in Paragraph 2 of this agreement.

2. **DESCRIPTION.** A certain lot or parcel of land located in Windham, Cumberland County, Maine, being approximately 86 acres, and being the premises described in the Warranty Deed from Raymond F. Phinney, dated April 23, 1984, and recorded in the Cumberland County Registry of Deeds in Book 6436, Page 0150, and being depicted as Book 3 on Town Tax Map 17 (the “**Premises**” or the “**Property**”).

3. **OPTION/CLOSING.** Seller grants Buyer the exclusive right and option to purchase (the “**Option**”) the Premises. Within 5 business days of the Effective Date, Buyer will deliver to the Town’s attorney Preti Flaherty (as “**Escrow Agent**”) a deposit in the amount of \$15,000.00 to secure the Option, to be held in escrow in accordance with the following terms and conditions, without interest, until the Closing Date or termination of this Agreement (the “**Deposit**”). The Deposit made hereunder shall be held by Escrow Agent as earnest money for the proper performance of this Agreement on the part of the Buyer subject to the terms of this Agreement and the terms and conditions set forth on Schedule 1. Buyer must exercise its Option on or before November 30, 2023 (the “**Option Term**”) by notice to Seller. The Deposit and the additional option payment deposit, if any, shall be refundable and shall be applied against the Purchase Price (defined below) at closing. The closing shall occur on or before December 31, 2023 (the “**Closing Date**”) by mail or at the office of Preti Flaherty, One City Center, Portland, Maine at 10:00 AM local time on the Closing Date, or at such other date, time and location as Seller and Buyer may mutually agree.

4. **APPROVALS.** This Agreement and each parties’ obligations hereunder are subject to, in the case of Buyer:

a. Grant approvals (see section 7(b)).

5. **DUE DILIGENCE.** For the period ending on the earlier of the Closing Date or December 31, 2023 (the “**Due Diligence Period**”), Buyer, and Buyer’s agents and transaction partners, shall have the right to perform any due diligence investigation they wish, and to enter

upon and examine the Property. If Buyer is not satisfied with its investigations and examinations of the Property, Buyer may elect to terminate this agreement by giving Seller written notice of such election on or before the expiration of the Due Diligence Period, in which event, the Deposit shall be refunded to Buyer, and thereupon this Agreement shall be void and without recourse to the parties hereto.

6. **TITLE/DEED.** Seller holds and will convey good, marketable, and merchantable title to the Property by Personal Representative's Deed of Sale to Buyer, free and clear of all liens and encumbrances.

7. **PURCHASE PRICE.**

- a. **Purchase Price.** The Purchase Price shall be \$300,000.00, payable at Closing in cash, by wire transfer or other immediately available funds acceptable to Seller.
- b. **Financing.** Buyer anticipates, but has no assurance of, receiving the following funds for this transaction: (i) private fundraising from individuals and private foundations; and (ii) grants from federal land conservation programs (collectively the "**Funding Agencies**"). Seller and Buyer understand that the Funding Agencies may impose additional conditions, and agree to cooperate in good faith to satisfy any such conditions prior to closing; provided, that Seller in no event shall be obligated to extend the Closing Date, or decrease the Purchase Price.
- c. **Prorations.** Real estate taxes will be prorated as of the date of Closing. Seller shall pay its share of real estate transfer tax, as required by Maine law. Each party shall pay the cost of its or their attorney and other advisors.

8. **CONDITIONS TO CLOSE.** Buyer's obligation to close hereunder is expressly subject to the following conditions, of which conditions (a) through (c) shall be at the sole cost and responsibility of Buyer:

- a. Satisfactory review of the status of Seller's title, including issuance to Buyer of a title insurance commitment satisfactory to Buyer, as well as satisfaction of all requirements for issuance of the title insurance policies as set forth in the title insurance commitment.
- b. An environmental assessment report (sometimes known as Phase I Environmental Site Assessment) satisfactory to Buyer.
- c. Completion of a survey of the Property satisfactory to Buyer.
- d. Land shall be sold forested, and between the Effective Date and the Closing Date Seller agrees to only harvest the forest selectively as prescribed by a Licensed Forester with a Forest Management Plan reviewed by the Buyer, with harvesting company mutually agreed to by Seller and Buyer. The parties agree that Richard Wing Logging is a mutually agreeable harvesting company. Such harvesting company must consult with Buyer prior to any harvesting operation. Buyer will allow timber to be removed from the Property. Buyer agrees to allow Seller to access

the Property for harvesting across Seller's adjacent parcel in a manner mutually agreed to by both parties. Notwithstanding the foregoing, if Seller is unable to harvest all of the timber on the Property prior to the Closing Date, and pursuant to a mutually agreeable Forest Management Plan, then Buyer shall permit Seller to continue to harvest timber from the Property for up to twenty-four (24) months following the Closing Date; subject to Seller, and its harvesting company, providing sufficient evidence of commercial general liability coverage, in amounts to be mutually agreed between the parties, naming Buyer as additional insured.

- e. Completion of a boundary walk with Seller or Seller's representative, Buyer using GPS to understand the boundaries of the Property.
- f. During the duration time to Closing allowed hunting to any person by the Seller is permissible (i.e. between the Effective Date and the Closing Date).

9. **POSSESSION AND CONDITION OF PREMISES.** Possession of the Premises free of all tenants and occupants is to be delivered at the Closing. Seller must deliver the Property free and clear from all liens at Closing. Seller agrees that it shall neither use nor consent to any use of the Premises for any purpose or in any manner that would adversely affect Buyer's intended use of the premises as a recreation and conservation area, and expressly agrees to refrain from any mining on the Premises during the option term.

10. **BROKERAGE.** Seller and Buyer each represent and warrant to the other that no brokers, agents or consultants other than \_\_\_\_\_ [if blank, NONE] have been employed with respect to this transaction by either of them. Notwithstanding, Seller agrees to pay any fees or commissions due to any broker, finder, or other person in connection with this Agreement and the sale contemplated herein.

11. **DEFAULT; DAMAGES.** If Buyer shall fail to fulfill Buyer's agreements herein, the Deposit, additional option payment deposit, and all other sums paid hereunder by Buyer to Escrow Agent shall be promptly delivered to Seller as liquidated damages and this shall be Seller's sole and exclusive remedy at law or in equity for any default by Buyer under this Agreement. Should Seller default, at Buyer's election, the Deposit, additional option payment deposit, and all other sums paid to Escrow Agent hereunder by Buyer shall be returned to Buyer, or Buyer shall have all available remedies, including specific performance.

12. **WARRANTIES, REPRESENTATIONS AND INDEMNIFICATION.**

- a. **By Seller.** Seller represents and warrants as of this date and as of each date through and including the Closing that:
  - 1. Seller is not a "Foreign person" within the meaning of Section 1445 of the Internal Revenue Code.
  - 2. Seller is a Maine "resident" within the meaning of 36 M.R.S.A. § 520-A.
  - 3. Seller the sole fee simple owner of, and has the authority to sell the Property.

4. There are no leases, subleases, licenses, tenancy or occupancy agreements covering or affecting the property.
5. Seller has not received notice from any governmental authority that the Property does not comply with any applicable law, ordinance or regulation.
6. There is no litigation, action, proceeding or investigation pending or threatened with respect to the Property.
7. Seller has not granted any other options or any other rights to acquire the Property or other interest in and to the Property to any other third party.
8. There are no current mortgages encumbering the Property, or if there is a mortgage encumbering the Property, that Seller has the right and ability to obtain a release of the Property from the mortgage at the time of Closing.
9. Seller does know of any, and has not received any notice of any “hazardous materials” as defined in CERCLA and other applicable federal and state law located on, in or under the Property.
10. Prior to Closing, Buyer and Seller will confer and mutually agree, which agreement will not be unreasonable withheld, conditioned or delayed, to the name to be given to the Property by the Town after Closing.

b. **By Buyer.** Buyer represents and warrants as of this date and as of each date through and including the Closing Date that:

1. Buyer is a municipal corporation organized and in good standing under the laws of the State of Maine with full capacity, power and authority to enter into and fully perform the transactions contemplated by this Agreement.
2. The execution and performance of this Agreement are within the lawful power of Buyer and have been duly authorized and approved by all necessary actions on behalf of Buyer.

c. **Survival.** Buyer’s performance under this Agreement is conditioned upon the truth and accuracy of Seller’s warranties and representations expressed herein as of the Closing. All warranties and representations expressed herein shall survive the Closing and termination of this Agreement for a period of one (1) year. Seller agrees to indemnify and hold the Buyer harmless from and against any liability, cost, damage, loss, claim, expense or cause of action (including, but not limited to, attorneys’ fees and court costs) incurred by or threatened against Buyer as a result of any breach of the Seller of any of the covenants, warranties or representations contained in the Agreement.

13. **NOTICE.** All notices required to be given pursuant to this Agreement, to be effective, shall be in writing and shall be (i) delivered by hand or (ii) certified mail, postage prepaid, return receipt requested, and shall be deemed delivered upon actual receipt or first

refusal of delivery to the below addresses, or when made by electronic mail transmission provided that notice under (i) or (ii) promptly follows:

a. If to Seller:

Rosamond J. Phinney, Personal Representative  
Estate of John Phinney  
16 Overlook Drive  
Gorham, Maine 04038207-838-8966mphinne@gmail.com

with copy to:

Nicholas J. Morrill, Esq.  
Jensen Baird  
Ten Free Street, 4<sup>th</sup> Floor  
P.O. Box 4510  
Portland, Maine 04112-4510  
207-775-7271 ext. 5919  
nmorrill@jensenbaird.com

b. If to Buyer:

Town of Windham  
Attn: Barry A. Tibbetts, Town Manager  
8 School Road  
Windham, ME 04602  
207-892-1907, ext. 1121  
batibbetts@windhammaine.us

with copy to:

Michael L. Lane, Esq.  
Preti Flaherty  
One City Center  
P.O. Box 9546  
Portland, ME 04112-9546  
207-791-3286  
mlane@preti.com

14. **MISCELLANEOUS:**

- a. This Agreement shall be binding upon the inure to the benefit of the respective heirs, successors and assigns of the parties.
- b. This Agreement supersedes all negotiations, commitments, and writings prior to the Effective Date pertaining to the subject matter of this Agreement.

- c. This Agreement may be executed in counterparts, each of which, when executed, shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Electronic signatures are binding.
- d. This Agreement shall be governed by and construed and enforced in accordance with the laws in effect in the State of Maine.

*[signature page follows]*

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date and year first above written.

WITNESS:

**ESTATE OF JOHN PHINNEY**

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: Rosamond J. Phinney

Its: Personal Representative

WITNESS:

**TOWN OF WINDHAM**

\_\_\_\_\_

By: \_\_\_\_\_

Barry A. Tibbetts, Town Manager

## SCHEDULE 1

### Preti Flaherty

#### Standard Escrow Terms and Conditions

In consideration of Preti Flaherty serving as the Escrow Agent ("Preti Flaherty" or "Escrow Agent") pursuant to that certain Purchase and Sale Agreement of near or even date between Buyer and Seller to which these Standard Escrow Terms and Conditions ("Escrow Terms") are attached as an Exhibit, the Seller and Buyer hereby acknowledge and agree as follows:

1. Acceptance by Preti Flaherty of its duties as Escrow Agent under the Purchase Agreement to which this Exhibit is attached, is subject to the following Escrow Terms, which all parties to the Agreement hereby agree shall govern and control the rights, duties and privileges of the Escrow Agent and shall be deemed incorporated by reference into the Agreement as if set forth in full therein (the escrow provisions of the Purchase Agreement and the Escrow Terms shall together be referred to as the "Escrow Agreement").

2. The duties of the Escrow Agent are to be determined solely by the express provisions of the Escrow Agreement, and the Escrow Agent shall have no responsibilities except the performance of such duties as are specifically set forth in the Escrow Agreement. The Escrow Agent shall not be deemed to be the agent of any party hereto with respect to its duties hereunder. The Escrow Agent shall not be liable for any error of judgment, any act taken or omitted by it, or any mistake in fact or law, except for its own willful misconduct. The parties acknowledge that the duties of the Escrow Agent hereunder are solely ministerial in nature and have been requested for their convenience. The Escrow Agent shall not be deemed to be the agent of any party hereto with respect to its duties hereunder. Without limiting the generality of the foregoing, the Escrow Agent shall not incur

liability and shall be fully protected in respect of any action taken, omitted or suffered by it in good faith.

3. The Escrow Agent shall be entitled to act on or rely upon any written notice, direction, request, waiver, consent, receipt or other document (including those transmitted by facsimile transmission, email, or other electronic transmission which is capable of producing a written record) which appears to the Escrow Agent to have been signed or presented by the party or parties entitled to execute or deliver such document, and the Escrow Agent shall have no duty to inquire of or investigate the authorization, signature or authenticity of such person or document.

4. The Funds are being deposited into a client trust IOLTA account of the law firm of Preti Flaherty for disbursement on behalf of the undersigned in accordance with the terms of the Purchase Agreement of even date, to which these a copy of which is attached hereto and made a part hereof. The funds (the "Funds") shall be held in escrow by Preti Flaherty in a non-interest bearing account in accordance with the terms and conditions set forth herein. In the event of an inconsistency between the provisions of this document and Escrow Terms, the provisions of these Escrow Terms shall govern. The Escrow Agent shall place any funds held in escrow in a non-interest bearing account and shall have no duty to



invest or earn interest on any such funds. The parties recognize that the amount of the funds deposited may exceed the amount of Federal Deposit Insurance Corporation or other insurance thereon and agree that the Escrow Agent shall have no responsibility for losses due to bank insolvency, whether or not the bank in which the funds are deposited was selected by it. Any payments by the Escrow Agent may be made, at the Escrow Agent's election, by check or by wire transfer.

5. The Escrow Agent may, but shall not be obligated to, in its sole and absolute discretion at any time and from time to time, for any reason or for no reason, commence an interpleader or other action, suit or proceeding for the resolution of any controversy regarding the Escrow Agreement or the subject matter of its escrow, and deposit the funds or other property held in escrow. Upon so depositing such property and filing its complaint in interpleader the Escrow Agent shall be relieved of all liability under the terms of the Escrow Agreement as to the property so deposited, and furthermore, the parties hereto for themselves, their heirs, legal representatives, successors and assigns do hereby submit themselves to the jurisdiction of said court and do hereby appoint the then Clerk or acting Clerk, of said Court as their agent for the service of all process in connection with such proceedings. The institution of any such interpleader action shall not impair the rights of the Escrow Agent hereunder.

6. The parties to the Escrow Agreement other than the Escrow Agent (collectively referred to as the "Indemnitors") jointly and severally agree to indemnify each of the Escrow Agent and its attorneys, employees and agents (collectively referred to as the "Indemnitees") against, and hold them

harmless of and from, any and all loss, liability, cost, damage and expense, including reasonable counsel fees (including those of the Escrow Agent computed at its regular hourly rates), which the Indemnitees may suffer or incur by reason of any action, claim or proceeding brought or threatened to be brought, whether by any party to the Escrow Agreement or by any other person or entity, against any Indemnitee or in which any Indemnitee may become involved arising out of or relating directly or indirectly in any way to the Escrow Agreement or any transaction to which the Escrow Agreement directly or indirectly relates (including any action, claim or proceeding to enforce any indemnity obligation or any other obligation of any party to the Escrow Agreement), excluding, however, any willful or intentional wrong doing on the part of the Escrow Agent. The provisions of this paragraph shall survive any termination of the Escrow Agreement, whether by disbursement of the property held in escrow, the resignation of the Escrow Agent or otherwise.

7. THE ESCROW AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MAINE APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REFERENCE TO CONFLICT OF LAWS PRINCIPLES, AND THE ESCROW AGREEMENT CANNOT BE CHANGED OR TERMINATED EXCEPT BY A WRITING SIGNED BY ALL OF THE PARTIES TO THE ESCROW AGREEMENT. THE PARTIES TO THE ESCROW AGREEMENT HEREBY AGREE THAT NO ACTION, SUIT OR PROCEEDING SHALL BE COMMENCED AGAINST THE ESCROW AGENT UNLESS (A) THE ESCROW

AGENT SHALL FIRST HAVE BEEN GIVEN 30 DAYS' WRITTEN NOTICE OF THE CLAIM AND (B) THE SAME IS BROUGHT IN A COURT OF COMPETENT JURISDICTION LOCATED IN THE STATE OF MAINE. THE PARTIES TO THE ESCROW AGREEMENT OTHER THAN THE ESCROW AGENT AGREE THAT IN ANY ACTION, SUIT OR OTHER PROCEEDING COMMENCED BY THE ESCROW AGENT, SERVICE BY MAIL AS PROVIDED HEREIN SHALL BE DEEMED GOOD, PROPER AND EFFECTIVE SERVICE UPON SAID PARTY, AND EACH CONSENTS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE STATE OF MAINE (OR ANY OTHER COURT SELECTED BY THE ESCROW AGENT) IN ANY ACTION, SUIT OR PROCEEDING UNDER OR IN CONNECTION WITH THE ESCROW AGREEMENT, HEREBY WAIVING ANY AND ALL RIGHT TO OBJECT TO THE JURISDICTION OR VENUE OF SAID COURT OR TO OBJECT THAT SUCH COURT IS AN INCONVENIENT FORUM.

8. If a controversy arises between one or more of the parties hereto, or between any of the parties hereto and any person not a party hereto, as to whether or not or to whom the Escrow Agent shall deliver the property held in escrow or any portion thereof, or as to any other matter arising out of or relating to the Escrow Agreement or the property held in escrow, the Escrow Agent shall not be required to make any inquiry or investigation, or make any determination as to such controversy, and need not make any delivery of such property but may retain it until the rights of the parties to the dispute shall have finally been determined by agreement in form, substance and

formalities satisfactory to the Escrow Agent or by final order of a court of competent jurisdiction from which final order the time for appeal has expired without an appeal having been taken.

9. All notices, requests and other communications which may or must be given hereunder shall be in writing (including facsimile transmission, email, or other electronic transmission which is capable of producing a written record) and shall be deemed to have been duly given upon the earliest of receipt or attempted delivery or 3 days after deposit when mailed by registered or certified mail, return receipt requested, to each of the parties at their addresses set forth in the Escrow Agreement, or such other address of which notice may be given to all parties from time to time.

10. The Escrow Agreement shall be binding upon and inure to the benefit of Escrow Agent, Seller and Buyer, and their respective heirs, personal representatives, successors and permitted assigns, but not to the benefit of any third party other than the Indemnitees. The Escrow Agreement and any rights thereunder may not be assigned without the written consent of the Escrow Agent, and any purported assignment without the Escrow Agent's written consent shall be null and void and of no effect whatsoever. The rights granted the Escrow Agent herein are cumulative and the exercise of any one or more rights hereunder shall not constitute a waiver of the Escrow Agent's right to assert all other legal and equitable remedies available to it under the circumstances. If one or more of the provisions or paragraphs of the Escrow Agreement shall be held to be illegal or otherwise void or invalid, the remainder of the Escrow Agreement shall not be affected and shall remain in full force and effect.

**11. Preti Flaherty acting as Escrow Agent and is holding the Funds in its account at the request of the Seller and Buyer, and each of Seller and Buyer acknowledge that Preti Flaherty represents Buyer for this transaction and does not represent Seller. The Seller and Buyer both hereby confirm their consent to Preti Flaherty's current and continued representation of Buyer in this transaction, any dispute, arbitration or litigation arising in connection herewith, including any dispute about the Funds, and any and all future representation of Buyer. In the event of a dispute between the parties, the commencement of an Interpleader action, or the resignation by Preti Flaherty as Escrow Agent, Preti Flaherty shall be free to continue to act as counsel for and represent Buyer, and each of Seller and Buyer hereby consent to such representation.**

12. That Preti Flaherty is not liable for any portion of the Funds in excess of the limit of FDIC insurance on the account and is not liable for losses due to failure of the bank in which the account is held.

13. That Preti Flaherty will not make any payment with respect to the Funds until it receives confirmation that the Funds are collected in its account.

