

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (the "Agreement") is made this ____ day of _____, 2024 (the "Effective Date") by and between the **TOWN OF WINDHAM**, a municipal corporation and body politic incorporated under the laws of the State of Maine with a place of business at and address of 8 School Road, Windham, ME 04062 (the "Town") and **WESTBROOK DEVELOPMENT CORPORATION**, a Maine Title 13-B non-profit corporation with a place of business at and mailing address of 30 Liza Harmon Drive, Westbrook, ME 04092 ("WDC"), and **GREAT FALLS BUILDERS, INC. D/B/A GREAT FALLS CONSTRUCTION** a Maine corporation with a place of business at and mailing address of 20 Mechanic Street, Gorham, ME 04038 ("GFB" and collectively with WDC, the "Purchaser").

1. **Property.** The Town agrees to sell and convey to Purchaser, and Purchaser agrees to purchase and acquire from the Town, a certain parcel of land and all improvements thereon located at 55 High Street, located in Windham, Cumberland County, Maine, and being further generally depicted on the Town of Windham Tax Map 37, Lot 24, and as described in a deed dated September 18, 2023 and recorded in the Cumberland County Registry of Deeds in Book 40367, Page 18 a copy of which is attached hereto as **Exhibit A** (the "Property"), together with, and subject to, all easements of record.

2. **Purchase Price.** Subject to the provisions below, the total fixed purchase price ("Purchase Price") for the Property is **THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$300,000.00)**, to be adjusted as provided in Paragraph 5 below and payable as follows:

- a. Within three (3) business days of the execution of this Agreement, as security for the Purchaser's agreement to perform its obligations hereunder, the Purchaser shall pay to Town's counsel, Jensen Baird, as Escrow Agent, the sum of Ten Thousand and 00/100 Dollars (\$10,000.00) (the "Deposit"). The Deposit shall be paid to the Town at Closing, as defined in Paragraph 3 below, or otherwise shall be applied in accordance with the terms of this Agreement.
- b. At Closing, the Purchaser shall pay the Town the balance of the Purchase Price by bank check or confirmed wire transfer.

3. **Closing.** The closing (the "Closing" or "Closing Date") shall occur, except as may otherwise be provided herein, no less than thirty (30) days' after written notice from the Purchaser to the Seller of the construction loan closing for the Affordable Housing Project (as defined in Section 15 herein), but no more than twenty-four (24) months from the Effective Date (the "Outside Closing Date"), at the offices of the Town's Counsel, or such other time or place as mutually agreed to by the Town and the Purchaser. In order to facilitate the Affordable Housing Project, if one or both of the Purchaser's have received a notice to proceed or commitment letter for financing the construction and development of the Affordable Housing Project (the "Financing Commitment"), then the Purchaser shall have the option to request, and so long as the Financing Commitment has not expired as of the date of the request, the Town shall grant, up to two (2)

twelve (12) month extensions to the Outside Closing Date (the "Extension Options").

The following shall occur at the Closing, each being a condition precedent to the others and all being considered as occurring simultaneously:

(i) the Town shall execute, have acknowledged and deliver to Purchaser, the Deed (defined below);

(ii) the Town shall deliver an executed title insurance affidavit solely as to mechanics and materialmen's liens and parties in possession. In no event shall the Town be required to provide a survey affidavit;

(iii) the Town shall deliver an affidavit indicating that the Town is not a foreign person and that the transaction is exempt from the requirements of 26 U.S.C. § 1445, or in lieu thereof, Purchaser shall be entitled to withhold and account for a portion of the Purchase Price as required by such statute and corresponding regulations;

(iv) the Town shall deliver an affidavit indicating that the Town is a Maine resident, or in lieu thereof or of another applicable exemption, Purchaser shall be entitled to withhold and account for a portion of the Purchase Price as required by 33 M.R.S. §5250-A;

(v) the Town and Purchaser shall execute a settlement statement satisfactory to both parties itemizing the various payments and prorations contemplated hereby.

4. **Conveyance; Title.** At the Closing, the Town shall execute and deliver to the Purchaser a good and sufficient Release Deed (the "Deed") conveying the Property in fee simple, with good and insurable title thereto, free and clear of all liens and encumbrances, except for: (a) real estate taxes which are not yet due or payable, if applicable; (b) zoning restrictions and land use matters, including without limitation, all terms and conditions of local, state and federal ordinances or regulations and permits relating to the Property, (c) those encumbrances or easements of record.

At Closing, the Town shall be entitled to use any portion of the Purchase Price to satisfy and discharge any monetary encumbrances affecting the Property.

5. **Prorations and Adjustments at Closing; Closing Costs.**

- a. **Prorations.** Current real estate taxes (if applicable) based on the municipality's fiscal year shall be prorated as of the date of Closing. The Town is responsible for paying any unpaid real estate and personal property taxes, including accrued interest, costs and fees, accrued prior to the Closing.
- b. **Closing Costs.** The Purchaser, at its sole cost and expense, shall be responsible to obtain and pay for all title insurance premiums attributable to the acquisition of the

Property, and the recording of the Deed, and any mortgage or other instrument related to Purchaser's financing, if any. The Town and the Purchaser will each pay their share of the transfer tax as required by the State of Maine. Each of the Town and the Purchaser shall be responsible for their own attorneys' fees.

6. **Contingencies to the Purchaser's Obligations.** The Purchaser's obligations under this Agreement shall be contingent upon the following:

- a. **Property Information.** Within **fifteen (15) business days** after the Effective Date, the Town shall provide Purchaser with all surveys, title policies, environmental reports, in its or its agents' possession including without limitation copies of any surveys of the Premises within the Town's or Town's agents' possession, and also agrees to promptly provide any updates or amendments to the foregoing within five (5) business days of the town's receipt of the same.
- b. **Title to Property.** The Purchaser's approval within ninety (90) days from the Effective Date of this Agreement, of a commitment of title insurance issued by a title insurance company of the Purchaser's choosing, with liability in the amount of the Purchase Price, showing title to the Property to be vested in the Purchaser, subject only to the Permitted Exceptions, as well as those exceptions approved by the Purchaser (the "Title Period"). If the Purchaser is not satisfied, in its sole discretion, with the results of its title review for any reason except the Permitted Exceptions, then the Purchaser shall have the right, by notice given to the Town on or before 5:00 P.M. on the last day of the Title Period, to either (i) terminate this Agreement and receive the return of its Deposit, in which case each party hereto shall be released from their obligations hereunder, or (ii) specify those matters in title that are not acceptable to the Purchaser, except for any mortgage, tax lien, mechanic's lien, judgment lien or other monetary lien or encumbrance for which no objection is required ("Title Defect Notice"). To exercise such termination right, the Purchaser shall give written notice of termination to the Town on or before 5:00 P.M. (EST) on the last day of the Title Period. If the Purchaser elects to give to the Town the Title Defect Notice on or before said deadline, then the Town shall notify the Purchaser, within five (5) business days after the Town's receipt of the Title Defect Notice, whether the Town will attempt to cure such title defects. If such defect is not removed by the Town prior to Closing, the Purchaser may either (a) terminate this Agreement and receive the return of its Deposit, in which case each party hereto shall be released from their obligations hereunder; or (b) consummate the purchase of the Property in accordance with this Agreement, with no reduction in the Purchase Price.
- c. **General Due Diligence.** Purchaser shall have ninety (90) days from the Effective Date of this Agreement (the "Due Diligence Period") to conduct general due diligence, which may include without limitation, general building and site assessment and inspection, financing, surveys (ALTA/NSPS land title survey),

geotechnical and environmental assessments (Phase I and, if necessary Phase II Environmental Site Assessment), an investigation of any zoning or other conditions affecting the Premises, and any other investigations Buyer may elect to perform (the "Inspections"). If in the sole discretion of Purchaser, it is dissatisfied with the results of its Inspections, then Purchaser may cancel this Agreement at any time prior to the expiration of the Due Diligence Period, and receive the return of the Deposit, in which case each party hereto shall be released from their obligations hereunder. Notwithstanding the foregoing, and solely with respect to the environmental assessment, in the event the Phase I Environmental Site Assessment returns results which require the additional investigation of a Phase II Environmental Site Assessment ("Phase II"), the Due Diligence Period shall be extended until a date that is sixty (60) days after the receipt of the final Phase II from a qualified environmental engineer.

During the Due Diligence Period, Purchaser and its agents shall have the right to enter, inspect and survey the Premises for the foregoing purposes and otherwise to make, or cause to be made, such surveys, tests, inspections, and investigations, including taking soil borings and other environmental analyses and studies of the Premises, and the Buyer further agrees to restore the Premises to substantially the same condition prior to such surveys, tests, inspections and investigations in the event that Buyer should not proceed with the acquisition of the Premises.

Purchaser shall indemnify and hold the Town harmless from any liens, claims or liability that may arise out of Purchaser and/or Purchaser's agent's entry on the Property and after any such activities Purchaser shall ensure that the Property is left in substantially the same condition as before the activities were conducted. Purchaser agrees to provide copies of written reports or analyses of the Inspections to the Town.

d. Financing Contingency. The Purchaser and the Town's obligation to Close is contingent upon the receipt of a notice to proceed or commitment letter for financing of the Affordable Housing Project (the "Financing Contingency"). Subject to any extensions herein, in the event that the Financing Contingency is not achieved by the Outside Closing Date, this Agreement shall terminate, the deposit shall be returned to the Purchaser, and neither party shall have any further obligation hereunder.

e. Environmental Approvals. To the extent required by the Affordable Housing Project lender, the Purchaser's obligation to close is contingent on receipt and approval of an updated Environmental Site Assessment (Phase I and II), and a Maine Department of Environmental Protection Voluntary Response Action enrollment, satisfactory to the Affordable Housing Project lender in its reasonable discretion (the "Environmental Contingency"). Subject to any extensions herein, in the event that the Environmental Contingency is not achieved by the Outside Closing Date, this Agreement shall terminate, the deposit shall be returned to the

Purchaser, and neither party shall have any further obligation hereunder.

f. **WDC Board Approval.** WDC's obligation to close is further conditioned upon the approval of its Board of Directors of the acquisition of the Property in accordance with the terms of this Agreement. WDC shall seek Board of Director Approval at the first regularly scheduled meeting following the Effective Date, which shall be not later than sixty (60) days from the Effective Date, and promptly notify the Town if the Board of Directors approved the acquisition contemplated herein.

7. **Acceptance of Deed.** The acceptance of the Deed by Purchaser at the Closing shall be deemed to be the full performance and discharge of every agreement, obligation and representation made on the part of the Town, except as expressly set forth herein or in the Deed. No provisions, agreements or representations herein shall survive the Closing except as specifically stated herein. The Property is being sold and will be conveyed in "as is" condition with all faults and defects, known or unknown as of the date of this Agreement, and specifically and expressly without any representation or warranties, either express or implied, as to habitability, merchantability, fitness, condition or otherwise. The Town shall maintain the Property consistent with the manner it has been operated and maintained prior to this Agreement and shall not mortgage, encumber or alter the use of the Property prior to closing without the prior consent of the Purchaser. Neither party is relying upon any statements or representations not embodied in this Agreement.

8. **Possession.** Possession shall be given to the Purchaser, free of all tenants or parties in possession, at Closing.

9. **Risk of Loss/Damage to Property.** The risk of loss or damage to the Property by fire or other casualty prior to the transfer of title at Closing shall remain with the Town. In the event of material loss or taking by condemnation or eminent domain prior to Closing, the Purchaser, at its sole option, shall have the right to cancel this Agreement by giving written notice to the Town, whereupon the Deposit shall be returned to Purchaser, whereupon this Agreement shall be null and void and of no further force and effect. If the Purchaser does not elect to cancel this Agreement, this Agreement shall remain in full force and effect and the Town shall pay over or assign to the Purchaser at the Closing any insurance or condemnation proceeds, rights or awards receivable or received as a result of such loss or taking.

10. **Real Estate Broker.** The Town and the Purchaser each hereby represent and warrant to the other that no real estate commission is due to any person or brokerage. The Town shall indemnify and hold the Purchaser harmless from and against the claims, including attorneys' fees, and all other costs and expenses incurred as a result of claims arising out of or by reason of the assertion by any other person of a claim for a real estate brokerage commission in this transaction, if the claim is based upon conversations, telephone calls, communications or dealings of any kind with the Town. The Purchaser shall indemnify and hold the Town harmless from and against the claims, including attorneys' fees, and all other costs and expenses incurred as a result

of claims arising out of or by reason of the assertion by any other person of a claim for a real estate brokerage commission in this transaction, if the claim is based upon conversations, telephone calls, communications or dealings of any kind with the Purchaser. Notwithstanding the foregoing, the indemnity provided under this Paragraph shall not be construed as a waiver of the Town's right to assert any and all defenses in response to claims made against the Town, its officers, agents, or employees pursuant to the Maine Tort Claims Act or any other privileges or immunities as may be provided by law. The provisions of this Paragraph shall survive the expiration or termination of this Agreement.

11. **Default.** In the event of default by the Purchaser which is not cured upon thirty (30) days written notice from the Town to the Purchaser, and if the Town has fully performed the Town's obligations hereunder, the Town may terminate this Agreement and receive the Deposit as liquidated damages. In the event of default by the Town which is not cured upon thirty (30) days written notice from the Purchaser to the Town, and if the Purchaser has fully performed the Purchaser's obligations hereunder, the Purchaser, as its sole remedy hereunder, may elect any of the following. (i) enforce specific performance of the Town's obligations under this Agreement if the nature of the Town's default has not rendered specific performance unavailable, (ii) waive the breach, or default or other closing condition and proceed to consummate the transaction contemplated hereby without any adjustment of the Purchase Price in accordance with the provisions of this Agreement; or (iii) terminate this Agreement, whereupon Purchaser shall receive a return of the entire Deposit.

12. **Mediation.** In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties which at the election of either party shall include non-binding mediation utilizing the American Arbitration Association's Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

13. **Duties and Responsibilities of Escrow Agent.** Escrow Agent shall deliver the Deposit to the Town or the Purchaser promptly after receiving a joint written notice from the Town and the Purchaser directing the disbursement of the same, such disbursement to be made in accordance with such direction. If Escrow Agent receives written notice from the Town or the Purchaser that the party giving such notice is entitled to the Deposit, which notice shall describe with reasonable specificity the reasons for such entitlement, then Escrow Agent shall (i) promptly give notice to the other party of Escrow Agent's receipt of such notice and enclosing a copy of such notice and (ii) subject to the provisions of the following paragraph which shall apply if a conflict arises, on the fourteenth (14th) calendar day after the giving of the notice referred to in clause (i) above, deliver the Deposit to the party claiming the right to receive it.

In the event that Escrow Agent shall be uncertain as to its duties or actions hereunder or shall receive instructions or a notice from the Town or the Purchaser which are in conflict with instructions or a notice from the other party or which, in the reasonable option of Escrow Agent,

are in conflict with any of the provisions of this Agreement, it shall be entitled to take any of the following courses of action:

(a) Hold the Deposit as provided in this Agreement and decline to take any further action until Escrow Agent receives a joint written direction from the Town and the Purchaser or any order of a court of competent jurisdiction directing the disbursement of the Deposit, in which case Escrow Agent shall then disburse the Deposit in accordance with such direction;

(b) In the event of litigation between the Town and the Purchaser, Escrow Agent may deliver the Deposit to the clerk of any court in which such litigation is pending; or

(c) Escrow Agent may deliver the Deposit to a court of competent jurisdiction and therein commence an action for interpleader, the cost thereof to Escrow Agent to be borne by whichever of the Town or the Purchaser does not prevail in the litigation.

Escrow Agent shall not be liable for any action taken or omitted in good faith and believed by it to be authorized or within the rights or powers conferred upon it by this Agreement and it may rely, and shall be protected in acting or refraining from acting in reliance upon an opinion of counsel and upon any directions, instructions, notice, certificate, instrument, request, paper or other documents believed by it to be genuine and to have been made, sent, signed or presented by the proper party or parties. In no event shall Escrow Agent's liability hereunder exceed the aggregate amount of the Deposit. Escrow Agent shall be under no obligation to take any legal action in connection with the Deposit or this Agreement or to appear in, prosecute or defend any action or legal proceedings which would or might, in its sole opinion, involve it in cost, expense, loss or liability unless, in advance, and as often as reasonably required by it, Escrow Agent shall be furnished with such security and indemnity as it finds reasonably satisfactory against all such costs, expense, loss or liability. Notwithstanding any other provision of this Agreement, the Town and the Purchaser jointly indemnify and hold harmless Escrow Agent against any loss, liability or expense incurred without bad faith on its part and arising out of or in connection with its services under the terms of this Agreement, including the cost and expense of defending itself against any claim of liability.

Escrow Agent shall not be bound by any modification of this Agreement, unless the same is in writing and signed by the Town, the Purchaser and Escrow Agent. From time to time on or after the date hereof, the Town and the Purchaser shall deliver or cause to be delivered to Escrow Agent such further documents and instruments that fall due, or cause to be done such further acts as Escrow Agent may reasonably request (it being understood that the Escrow Agent shall have no obligation to make any such request) to carry out more effectively the provisions and purposes of this Agreement, to evidence compliance with this Agreement or to assure itself that it is protected in acting hereunder.

Escrow Agent shall be entitled to reimbursement for expenses incurred hereunder, which expenses shall be paid and borne equally by the Town and the Purchaser, unless such expenses are

associated with litigation between the Town and the Purchaser, in which event they shall be borne by the party that does not prevail in the litigation. Escrow Agent executes this Agreement solely for the purpose of consent to and agreeing to be bound by the applicable provisions of this Agreement.

14. **Proposed Housing Units.** The parties acknowledge and agree that the Property is being conveyed to the Purchaser based upon the Purchaser's response to a request for proposal dated July 25, 2024 (the "RFP") which was for the development of no less than 18 units of affordable housing (the "Affordable Housing Units") and no less than 17 units of market rate housing (the "Market Rate Units"), a copy of the RFP is attached hereto as **Exhibit B**. Both the Town and the Purchaser's obligation to Close on the Property is contingent upon receipt of financing or funding for the construction of either the Affordable Housing Units or the Market Rate Units, allowing construction of either Units to proceed independently as necessary.

15. **General.**

- a. **Authority.** Each party hereto represents and warrants that it has full authority to execute this Agreement and perform all obligations contained herein. All such actions have been properly authorized by any required votes and the party signing on behalf of each party hereto is duly appointed to so act in said capacity to make this Agreement binding upon such party.
- b. **Notices.** Any demand or notice required or permitted hereunder, shall be given by either (A) personal delivery, (B) same-day or overnight delivery by independent courier, or (C) electronic mail addressed to the electronic mail address set forth in this Section for the party to be notified with a confirmation copy delivered by another method permitted by this Section 15. Notices may be sent and/or signed by a party's attorney. Notice to the Purchaser shall be delivered simultaneous to WDC and GFC. Notice given in accordance herewith for all permitted forms of notice, shall be effective upon the earlier to occur of actual delivery to the address of the addressee or refusal of receipt by the addressee (even if such addressee refuses delivery thereof); provided, however, that in the case of notice by electronic mail, if such notice is received after 5:00 PM eastern time, it shall be deemed to have been received on the next business day.

All notices required to be given, or which may be given hereunder, shall be in writing and if mailed, shall be sent by U.S. mail or overnight delivery by independent courier to the party to be notified as follows:

To the Town:

Town of Windham
8 School Street
Windham, ME 04062
Attn: Barry Tibbetts, Town Manager

batibbetts@windhammaine.us

With a copy to:

Jensen Baird
Ten Free Street, 4th Floor
P.O. Box 4510
Portland, ME 04112-4510
Attn: Charles M. Katz-Leacy, Esq.
ckatzleavy@jensenbaird.com

To the Purchaser:

Westbrook Development Corporation
30 Liza Harmon Drive
Westbrook, Maine 04092
Attn: Tyler Norod, Development Director
tnorod@westbrookdevelopmentcorpdc.org

Great Falls Construction
20 Mechanic Street
Gorham, ME 04038
Attn: Julie Curran
jcurran@greatfallsinc.com

With copies to:

Drummond Woodsum
84 Marginal Way, Suite 600
Portland, Maine 04101
Attn: Robert Liscord, Esq.
rliscord@dwmlaw.com

or to such other addresses as one party may from time to time hereafter designate by like notice to the other.

- c. Assignment. The rights and obligations of either WDC or GFC under this Agreement may be assigned by either WDC or GFC to one or more entities formed by WDC or GFC for the purpose of acquiring title to the Property and carrying out their respective housing projects at the Property without the consent of the Town provided that such assignee assumes all obligations of WDC or GFC or both hereunder.
- d. Waiver. The waiver of any provision of this Agreement shall be invalid unless

evidenced by a writing signed by the party to be charged with it. The waiver of, or failure to enforce, any provision of this Agreement shall not be a waiver of any further breach of such provision or of any other provision of this Agreement. The waiver by either or both parties of the time for performing an act shall not be a waiver of the time for performing any other act required under this Agreement.

- e. Modifications. No change or addition to this Agreement or any part of it shall be valid unless in writing and signed by each of the parties.
- f. Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the permitted successors and assigns of the respective parties.
- g. Governing Law. This Agreement shall be governed by the laws of the State of Maine.
- h. Headings. The headings in this Agreement are for convenience only and shall not be used to interpret this Agreement.
- i. Further Acts. Each party agrees to take such further action and to execute and deliver such further documents as may be necessary to carry out the purposes of this Agreement.
- j. Attorney Fees. Each party shall bear their own attorneys' fees incurred to enforce this Agreement or related to a breach of this Agreement by the other party unless otherwise ordered by a court of competent jurisdiction.
- k. Liability Limitation. Notwithstanding anything in this Agreement to the contrary, the Town's obligations under this Agreement are subject to and limited by the defenses, immunities, and limitations of liability or damages available to the Town under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the Town.
- l. Time. Time is of the essence of this Agreement.
- m. Faxed or Electronic Signatures. The parties agree that faxed or electronic signatures may be used to expedite the transaction contemplated by this agreement. Each party intends to be bound by its faxed or electronic signature and each is aware that the other will rely on the faxed or electronic signature and each acknowledges such reliance and waives any defenses to the enforcement of the documents effecting the transaction contemplated by this Agreement based on a faxed or electronic signature.

**[NO FURTHER TEXT ON THIS PAGE]
[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, the parties hereto, hereunto duly authorized, have executed and delivered this Agreement as of the Effective Date.

WITNESS:

TOWN:

TOWN OF WINDHAM,
a Maine municipal corporation

By: _____
Barry A. Tibbetts
Title: Town Manager

Date: _____, 2024

PURCHASER:

WESTBROOK DEVELOPMENT
CORPORATION

By: _____
Name:
Its:

Date: _____, 2024.

GREAT FALLS BUILDERS. INC.
DBA GREAT FALLS CONSTRUCTION

By: _____
Name:
Its:

Date: _____, 2024_

EXHIBIT A

EXHIBIT B

