

## PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (the "Agreement") is made this 12<sup>th</sup> day of December, 2024 (the "Effective Date"), by and between, **JONLEE WINDHAM LLC**, a Maine limited liability company with a place of business at and a mailing address of 5050 Belmont Avenue, Youngstown, OH 44505 ("Seller"), and the **Town of Windham**, a municipal corporation organized and existing under the laws of the State of Maine, with a mailing address of 8 School Road, Windham, ME 04062 ("Buyer").

### W I T N E S S E T H:

WHEREAS, Seller is the owner of a certain lot or parcel of real estate, containing approximately 5.02 acres of land, in the Town of Windham, County of Cumberland, and State of Maine, located at 795 Roosevelt Trail, shown in the Windham Tax Assessor's Records as Tax Map 70, Lot 14, and being the premises described in a Deed dated October 1, 1998, and recorded in the Cumberland County Registry of Deeds in Book 14194 Page 120 (the "Property") the Property shall not include the existing Veterans Memorial Drive; and

WHEREAS, subject to the terms and conditions set forth herein, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase from Seller, the Property, together with any improvements thereon and with all rights, privileges, easements and appurtenances thereto.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the foregoing and subject to the terms and conditions hereof, Seller and Buyer hereby agree as follows.

1. **Agreement to Sell/Buy.** Upon the terms and conditions hereinafter set forth, Buyer agrees to buy from Seller, and Seller agrees to sell to Buyer, the Property together with any improvements thereon and with all rights, privileges, easements and appurtenances thereto.

2. **Purchase Price. Purchase Price.** Subject to the provisions below, the total fixed purchase price ("Purchase Price") for the Property is **TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$250,000.00)**, 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 Buyer's agreement to perform its obligations hereunder, the Buyer shall pay to Buyers'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 Seller as a portion of the Purchase Price at Closing, as defined in Paragraph 3 below, or otherwise shall be applied in accordance with the terms of this Agreement.

3. **Closing.** The closing (the "Closing" or "Closing Date") shall occur, except as may otherwise be provided herein, within one hundred eighty (180) days of the Effective Date, at the offices of the Buyer's Counsel, or such other time or place as mutually agreed to by the Seller and the Buyer.

The following shall occur at the Closing, each being a condition precedent to the others and

all being considered as occurring simultaneously:

- (i) Seller shall execute, have acknowledged and deliver to Buyer, the Deed (defined below);
- (ii) Seller shall deliver all executed title insurance affidavits as may be reasonably required by Buyer's title insurance company.
- (iii) Seller shall deliver an affidavit indicating that is is not a foreign person and that the transaction is exempt from the requirements of 26 U.S.C. § 1445, or in lieu thereof, Buyer shall be entitled to withhold and account for a portion of the Purchase Price as required by such statute and corresponding regulations;
- (iv) Seller shall deliver an affidavit indicating that it is a Maine resident, or in lieu thereof or of another applicable exemption, Buyer shall be entitled to withhold and account for a portion of the Purchase Price as required by 33 M.R.S. §5250-A;
- (v) Seller shall provide satisfactory evidence of its authority to convey the Property to Buyer;
- (vi) the Buyer and Seller shall execute a settlement statement satisfactory to both parties itemizing the various payments and prorations contemplated hereby

4. **Deed.** The Property is to be conveyed by a good and sufficient Quit Claim Deed (the "Deed"), conveying good and clear record and marketable title to the Property, free from all liens and encumbrances, except easements, covenants and restrictions of record.

5. **Contingencies to Buyer's Obligations.** The Buyer's and Seller's obligations under this Agreement are contingent upon satisfaction of the following:

- a. **Appropriation of Funds and Authorization to Contract.** Buyer's purchase of the Property, and the appropriation of the purchase price, have not been authorized by Town Meeting of Buyer and accordingly, the obligations of Buyer hereunder are subject to subsequent approval by Town Meeting, on or about December 12, 2024. If Buyer fails to authorize the purchase of the Property, or fails to appropriate funds to pay the purchase price hereunder, then Buyer shall have no further obligations hereunder, upon written notice of the same being provided to Seller.
- b. **Title to Property.** Subject to this Section 5b, Seller agrees to convey good and marketable title to the Property to Buyer at Closing, free and clear of all liens and encumbrances, except easements, covenants and restrictions of record that do not, in the sole discretion of the Buyer, adversely affect Buyer's contemplated use of the Property, and excluding real property taxes not yet due or payable, and other items approved by Buyer.

Buyer shall have the right, at its sole cost and expense, to examine title to the Property, no later than sixty (60) days from the Effective Date (the "Title Period"), and receive a

commitment of title insurance issued by an agent of Buyer's choosing, with liability in the amount of the Purchase Price, showing title to the Property to be vested in Buyer, subject only to those exceptions approved by Buyer.

If Buyer determines, in its sole but reasonable discretion, that it is not satisfied for any reason with the title to the Property as disclosed by the commitment for title insurance obtained by Buyer during the Title Period, Buyer may either (a) terminate this Agreement, in which case all parties hereto shall be released from their obligations hereunder; or (b) notify Seller in writing of those matters in title that are not acceptable to Buyer. If Buyer elects to deliver a title defect notice to Seller on or before the expiration of the Title Period, then Seller shall notify Buyer, within five (5) business days after Seller's receipt of the such notice, whether Seller will attempt to cure such title defects. In connection with any new defect in title that arises after the expiration of the Title Period, Buyer shall notify Seller of such defect in title on or before the Closing. If Buyer notifies Seller of any such title defect on or before said deadline, then Seller shall notify Buyer within five (5) business days after receipt of Buyer's notice of title or Survey defects, whether Seller will attempt to cure such title or Survey defects pursuant to the provisions of the paragraph immediately below.

Notwithstanding anything to the contrary contained in this Agreement, Buyer agrees that Seller shall have no obligation to remove any title defects or to incur any cost or expense in connection therewith other than to remove (i) any mortgage or other monetary lien affecting the Property, (ii) any monetary lien that resulted from Seller's failure to pay any amount due and payable by Seller, and (iii) any real estate tax or assessment liens affecting the Property. With respect to the title defects described in clauses (i), (ii), and (iii) Seller agrees to remove the same on or before the Closing; and Buyer acknowledges and agrees that Seller may use any portion of the Purchase Price to satisfy the same. With respect to any other title defect, if Seller does not agree to attempt to cure such title or survey defects by notice given to Buyer on or before the expiration of said five (5) business day period, Buyer shall have the right, by written notice given to Seller within five (5) business days after the earlier to occur of the expiration of said five (5) business day period or Buyer's receipt of Seller's notice, either to waive the defect and close without abatement or reduction of the Purchase Price, or terminate this Agreement. If Seller agrees to attempt to cure such title defect, then Seller shall have thirty (30) days after Seller's receipt of Buyer's notice of title defect to remove the same. Seller agrees to use commercially reasonable efforts to remove such title defect within said thirty (30) day period. In the event Seller has not removed such title defect within said thirty (30) day period, then Buyer shall have the right, by written notice given to Seller within five (5) business days after the expiration of said thirty (30) day period, to either to waive the defect and close title without abatement or reduction of the Purchase Price, or terminate this Agreement. If Buyer elects to terminate this Agreement then all parties hereto shall be released from their obligations hereunder.

The parties acknowledge and agree that the Closing shall be postponed by the number of days required to allow the parties to respond within the aforesaid time periods and, if applicable, to allow Seller to attempt to cure such title or defects; provided, however, such postponement shall not exceed an aggregate of thirty (30) days.

- c. Due Diligence. Buyer shall have the right, at its sole cost and expense, to conduct physical inspections and tests of the Property, including an Environmental 1 Survey, and to perform such other due diligence with respect to the Property as Buyer deems reasonably necessary, no later than ninety (90) days from the Effective Date (the "Due Diligence Period").

If Buyer determines, in its sole but reasonable discretion, that it is not satisfied for any reason with the information obtained by Buyer during the Due Diligence Period, Buyer may terminate this Agreement, in which case all parties hereto shall be released from their obligations hereunder.

Buyer has had the opportunity to inspect the Property and perform any investigations it wishes. Seller makes no, and is deemed to have made no, representations, warranties or endorsements of any kind or nature whatsoever as to the physical, environmental or other condition of the Property.

OTHER THAN AS EXPRESSLY PROVIDED HEREIN AND/OR AS SET OUT IN THE CLOSING DOCUMENTS, THE SALE OF THE PROPERTY IS MADE ON AN "AS IS, WHERE IS AND WITH ALL FAULTS" BASIS, AND BUYER EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENTS OF SELLER SET FORTH HEREIN, SELLER MAKES NO WARRANTY OR REPRESENTATION AND BUYER IS NOT RELYING UPON ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PROPERTY OR ANY PORTION THEREOF. IT IS EXPRESSLY UNDERSTOOD THAT THIS PROVISION IS A SPECIALLY NEGOTIATED TERM OF THIS CONTRACT BETWEEN SELLER AND BUYER, WHICH HAS BEEN TAKEN INTO ACCOUNT IN DETERMINING THE PURCHASE PRICE TO BE PAID BY BUYER TO SELLER FOR THE PROPERTY. THE PROVISIONS OF THIS ENTIRE PARAGRAPH 6 SHALL SURVIVE THE CLOSING OF THE SALE OF THE PROPERTY.

Further, Buyer waives, releases and holds Seller harmless from any and all claims and agrees to defend and indemnify Seller from and against any demands, causes of action, liens, loss, damage, liabilities, costs and expenses (including reasonable attorneys' fees, court costs, consultant's fees, remediation, clean up or other response costs) of any and every kind or character, known or unknown, fixed or contingent, relating to the Property, under the Resource Conservation and Recovery Act, as now existing or hereafter amended, 42 U.S.C. §§ 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, as now existing or hereafter amended, 42 U.S.C. §§ 9601 et seq.; the Hazardous Materials Transportation Act, as now existing or hereafter amended, 49 U.S.C. §§ 5101 et seq.; the Clean Water Act, as now existing or hereafter amended, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, as now existing or hereafter amended, 42 U.S.C. §§ 7401 et seq.; the Toxic Substances Control Act, as now

existing or hereafter amended, 15 U.S.C. §§ 2601 et seq.; or any other applicable federal, state or local laws, rules, ordinances, permits, approvals, orders or regulations as they now exist or may subsequently be modified, supplemented or amended, except for any claims arising from the fraud of Seller. Buyer further agrees and commits to comply with all such laws, rules, ordinances, permits, approvals, orders or regulations at the Property in such a manner as to ensure that no liability or claims will be asserted against Seller.

d. Declaration.

During the Due Diligence Period, Buyer and Seller shall have agreed upon the terms and provisions of a access, drainage and use agreement (“**Declaration**”) which Declaration shall be recorded at Closing and include among other things:

(i) the provision of access easements for vehicular ingress and egress;

(ii) the provision of utility easements and storm water management, including without limitation, an easement on portions the property for snow disposal, maintain and repair any septic and storm water drainage system, and related facilities now or hereafter located on said property;

(iii) restrictions upon the property such that no portion shall be used or occupied, either directly or indirectly for (i) the retail sales (ii) restaurants, (iii) offices (other than in furtherance of Buyer’s operation, and (iv) other uses agreed upon .

6. e. Consents. Seller obtaining the consent from any third party required pursuant to the terms of any agreement affecting the Property. **Prorations and Adjustments at Closing.** The following prorations or adjustments shall be made at Closing:

- a. Current real estate taxes and personal property taxes based on the municipality’s fiscal year shall be prorated as of the date of Closing. Seller is responsible for paying any unpaid real estate and personal property taxes, including accrued interest, costs and fees, accrued prior to the Closing.
- b. Seller and Buyer will each pay their share of the transfer tax as required by the State of Maine, if applicable.

7. **Closing Documents.** At the Closing, and in addition to any other documents referred to in this Agreement to be delivered to Buyer at the Closing, Seller shall execute and acknowledge as necessary, and deliver, the following documents, and such other documents as Buyer’s attorneys may reasonably require, to complete the transaction contemplated herein, including without limitation (a) the Deed, (b) transfer tax declaration, (c) non-foreign person affidavit pursuant to § 1445 of the Internal Revenue Code relieving Buyer of any obligation to withhold, (d) Form 1099-S, (e) certificate of Maine residency, REW-1 affidavit pursuant to 36 M.R.S. § 5250-A relieving Buyer of any obligation to withhold, and (f) oil storage tank certification in accordance with 38 MRS § 563 evidencing that, to the best of Seller’s knowledge, the Property contains no underground oil storage facility, and no aboveground oil

storage facility with underground piping, except as may be previously disclosed to Buyer.

8. **Possession.** Full possession of the Property free of all tenants and occupants, is to be delivered to Buyer at the Closing.

9. **Risk of Loss/Damage to Property.** Until the Closing, the risk of loss or damage to the Property or destruction of the Property by fire or otherwise is assumed solely by Seller. Said Property shall, at Closing, be substantially in the same condition as at present, unless otherwise agreed to by the Parties in writing. If the Property is damaged or destroyed prior to Closing, Buyer may either terminate this Agreement, or close this transaction and accept the Property in its "as is" state, together with the assignment of any insurance proceeds relating thereto.

10. **Real Estate Broker.** Each party represents to the other that no real estate broker was involved in this transaction. If either party engages the services of a real estate broker then they shall be solely responsible to pay any commissions due.

11. **Default.** In the event of default by Buyer which is not cured upon ten (10) days written notice, and if Seller has fully performed Seller's obligations hereunder, Seller may terminate this Agreement and receive the Deposit, in which case the Parties shall be relieved of all further obligations under this Agreement. In the event of default by Seller which is not cured upon ten (10) days written notice, and if Buyer has fully performed Buyer's obligations hereunder, then Buyer's sole and exclusive remedy at law or in equity for Seller's default shall be to either (i) terminate this agreement, in which case the Deposit shall be returned to Buyer,; or (ii) seek specific performance of this Agreement.

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 .

13. **Duties and Responsibilities of Escrow Agent.** Escrow Agent shall deliver the Deposit to the Town or the Buyer promptly after receiving a joint written notice from the Town and the Buyer directing the disbursement of the same, such disbursement to be made in accordance with such direction. If Escrow Agent receives written notice from the Seller or the Buyer 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 (14<sup>th</sup>) 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 Seller or the Buyer 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 Buyer 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 Seller and the Buyer, 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 Seller or the Buyer 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 Buyer 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 Buyer and Escrow Agent. From time to time on or after the date hereof, the Town and the Buyer 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 serve hereunder without fee for its services as escrow agent, but shall be entitled to reimbursement for expenses incurred hereunder, which expenses shall be paid and borne equally by the Town and the Buyer, unless such expenses are associated with litigation between the Town and the Buyer, in which event they shall be borne by the party that does not prevail in the litigation. Escrow Agent agrees that it will not seek reimbursement for its services but only for its actual and reasonably incurred out-of-pocket expenses. 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. **Assignment.** Neither party may assign their rights under this Agreement without the prior written consent of the non-assigning party.

15. **Notices.** Except where expressly stated otherwise, any notice relating in any way to this Agreement shall be in writing and shall be delivered to the other party by (a) registered or certified mail,

return receipt requested, (b) overnight by a nationally recognized courier, or (c) hand delivery obtaining a receipt therefor to the parties as follows:

To Seller: JONLEE WINDHAM, LLC  
c/o Redstone Investmentss  
5050 Belmont Avenue  
Youngstown, Ohio 44505

Attn: Lee Burdman

To Buyer: Town of Windham  
8 School Road  
Windham, ME 04062

With copy to: Charles M. Katz-Leavy, Esq.  
Jensen Baird  
PO Box 4510  
Portland, Maine 04112

Notices shall be deemed delivered upon such hand delivery, or upon the earlier of either (i) the date delivered or (ii) the date of delivery, refusal or non-delivery as indicated on the return receipt, in the case of notice by registered or certified mail or overnight courier as provided above. Parties may, by such manner of notice, substitute persons or addresses for notice other than those listed above.

16. **Counterparts.** This Agreement may be executed by counterpart signatures, and each of which when so executed and delivered shall be an original, but which together shall constitute one and the same instrument. Signatures delivered by fax, email or electronic signature (such as DocuSign or Kofax) shall be as effective as an original.

17. **Days.** Except where otherwise set forth herein, the term “days” used herein shall mean calendar days, provided however, that if the date for performance of any action under this Agreement shall fall on a weekend or a holiday on which banks in the State of Maine are closed, such deadline shall be the next business day thereafter. Where the term “business days” is used herein such term shall mean any day except Saturdays, Sundays or holidays on which banks in the State of Maine are closed.

18. **Miscellaneous**

- a. The parties agree that snow disposal shall continue in the areas designated on Exhibit A, provided that the parties may agree to an alternative snow disposal location at a later date.
- b. Buyer shall maintain the current storm water detention areas located on the Property

19. **General.**

- a. **Prior Agreements.** Any and all prior and contemporaneous discussions, undertakings, agreements and understandings of the parties are merged in this Agreement, and the exhibits referenced herein, which alone fully and completely express their entire agreement.



- b. 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.
- c. Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which this Agreement is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- d. 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.
- e. Heirs, Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the permitted heirs, successors and assigns of the respective parties.
- f. Governing Law. This Agreement shall be governed by the laws of the State of Maine.
- g. Headings. The headings in this Agreement are for convenience only and shall not be used to interpret this Agreement.
- h. 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.
- i. 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.
- j. Time. Time is of the essence of this Agreement.
- k. 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.

[SIGNATURE PAGE FOLLOWS]

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

SELLER:  
Jonlee Windham LLC

\_\_\_\_\_  
Witness:

By: \_\_\_\_\_  
Lee Burdman  
Its: Manager

BUYER:  
TOWN OF WINDHAM

\_\_\_\_\_  
Witness:

By: \_\_\_\_\_  
Barry A. Tibbetts  
Its: Town Manager