

PURCHASE AND SALE AGREEMENT

1. **PARTIES.** This 6th day of October 2021 (the “**Effective Date**”), **TIMOTHY L. MORRELL, Sr.** and **LINDA S. MORRELL**, with a mailing address of 18 Haskell Road, Windham, Maine 04062 (collectively, the “**Seller**”), agree to give the exclusive right and option to purchase; and the **TOWN OF WINDHAM**, a Maine municipal corporation with a mailing address of 8 School Road, Windham, Maine 04602 (“**Buyer**”), agrees to buy, upon the terms hereinafter set forth, the premises described in Paragraph 2 of this Agreement.

2. **DESCRIPTION.** The premises to which this Agreement applies are land and building(s) thereon located in Windham, Cumberland County, Maine, approximately 597 acres of what is formerly the Morrell parcels, as delineated on the attached map, a reduced-sized copy of which is attached hereto as Exhibit A, more particularly described as:

- a. Town of Windham Tax Map 16, Lot 43, Map 17, Lot 4, Map 17, Lot 4A, and Map 17, Lot 16, as described in the deed from Skylark, Inc. to Timothy L. Morrell and Linda S. Morrell, dated September 27, 1993, and recorded in the Cumberland County Registry of Deeds (the “**Registry**”) in Book 11045, Page 316; (approx. 331 acres)
- b. Town of Windham Tax Map 34, Lot 20, as described in the deed from Larry J. Kennedy and Karan L. Kennedy to Timothy L. Morrell and Linda S. Morrell, dated April 23, 1998, and recorded in the Registry in Book 13811, Page 62; (approx. .6 acres)
- c. Town of Windham Tax Map 16, Lot 48, as described in the deed from Larry J. Kennedy and Karan L. Kennedy to Timothy L. Morrell, Sr. and Linda S. Morrell, dated April 23, 1998, and recorded in the Registry in Book 13811, Page 63; (approx. 48 acres)
- d. Town of Windham Tax Map 17, Lot 22, as described in the deed from Grace L. Roberts to Timothy L. Morrell, Sr. and Linda S. Morrell, dated June 10, 2003, and recorded in the Registry in Book 19750, Page 286; (approx. 48 acres)
- e. Town of Windham Tax Map 16, Lot 47, as described in the deed from Ada J. Morrell to Timothy L. Morrell a/k/a Timothy L. Morrell, Sr. a/k/a Timothy Lee Morrell, dated July 12, 2004, and recorded in the Registry in Book 21553, Page 135; (approx. 66 acres)
- f. Town of Windham Tax Map 16, Lot 47-1 and Map 16B, Lot 4-A (includes agreement with CMP for passage and parking), as described in the deed from Ada J. Morrell to

Linda S. Morrell, dated July 12, 2004, and recorded in the Registry in Book 21553, Page 137; (approx. 65.5 and 4.5 acres) including 30 (thirty) foot ROW to Nash Road;

- g. Town of Windham Tax Map 16, Lot 54, as described in the deed from Philip E. MacDonald, Jr. to Timothy L. Morrell, Sr., dated April 24, 2006, and recorded in the Registry in Book 23880, Page 201; (approx. 11 acres)
- h. Parcels (Map 16 Lot 47-1, Map 34 Lot 20 and Map 16 Lot 48) abutting Little Duck Pond represent approx. 1545 linear feet of Pond frontage.

collectively, the “Premises” or the “Property”.

3. **OPTION/CLOSING.** Seller grants Buyer the exclusive right and option to purchase (the “Option”) the Premises. Buyer must exercise its Option on or before 18 months from the Effective Date (the “Option Term”). If Buyer has not exercised its Option by the end of the Option Term, Buyer may extend the Option Term for an additional 6 months by depositing with the Escrow Agent (as defined in Paragraph 7.b.) an additional option payment deposit of \$5,000.00. The option payment deposit, including any additional option payment, shall be refundable and shall be applied against the Confirmation Purchase Price (defined below) at Closing. The Closing shall occur either on or before 18 months from the Effective Date or at the termination of the Option Term (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, approval by the Town of Windham Town Council.

5. **DUE DILIGENCE.** For the period ending 30 days before the Closing Date (the “Due Diligence Period”), Buyer and Buyer’s agents and transaction partners shall have the right to enter upon and examine the Property. If Buyer is not satisfied with its examination of the Premises, 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 (defined below) shall be refunded to Buyer, and thereupon this Agreement shall become 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 Quitclaim Deed with Covenant to Buyer.

7. **PURCHASE PRICE.**

- a. **Preliminary Purchase Price.** The agreed Preliminary Purchase Price, based on the May 2021 appraisal by Jesse Studley of Legacy Appraisal, attached hereto as Schedule 1, for the Premises payable at Closing in cash, by wire transfer or other immediately available funds acceptable to Seller, shall be \$2,040,000.00.
- b. **Deposit.** Within 5 business days of the Effective Date, Buyer will deliver to the Town attorney Preti Flaherty (as “Escrow Agent”) a deposit in the amount of \$30,000.00 to secure the Option, to be held in escrow in accordance with the

following terms and conditions, without interest until the Closing or termination of this Agreement (the "Deposit"). The deposit made hereunder shall be held by Preti Flaherty (the "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 shall be invested by said Escrow Agent in its IOLTA account through the Closing Date. Documentation of such deposit shall be provided to the Seller. In the event that a dispute arises and the transaction has not closed by the Closing Date, the Escrow Agent agrees that the deposits made hereunder shall continue to be held in an FDIC insured account until final resolution of such dispute. The Escrow Agent shall disburse the escrowed funds only upon the signed written direction of both Seller and Buyer or the final order of a court of competent jurisdiction beyond any appeal period without perfection of an appeal. The Escrow Agent may reasonably rely upon the validity of any judgment, order or written direction delivered to it in connection with its activities as Escrow Agent under this Agreement. In the event of litigation regarding the earnest money deposit, the losing party shall be solely responsible for the payment of the legal fees of the Escrow Agent. The provisions of this paragraph shall survive the Closing or any expiration or termination of this Agreement. The Escrow Agent shall not be entitled to any compensation for its services hereunder. At Closing the Deposit shall be applied as a credit against the Purchase Price.

- c. **Financing.** Buyer anticipates, but has no assurance of, receiving the following funds for this transaction: (i) private fundraising from individuals and private foundations; (ii) grants from the Land for Maine's Future Program ("LMF") of the Maine Department of Agriculture, Conservation and Forestry and other state land conservation programs; and (iii) 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.
- d. **Confirmation Purchase Price.** As a result of anticipated requirements of the Funding Agencies and the length of the Option Term, the parties agree that, once Buyer is prepared to exercise this option, or at any other time mutually agreed upon by the parties, the parties shall set a confirmation purchase price based on fair market value of the Property, determined as follows, if necessary: Buyer shall select an appraiser and cover the costs to perform an updated appraisal who is competent to perform an appraisal to the standards as required by the actual Funding Agencies who are contributing funds to Buyer to complete the transaction ("Actual Funding Agencies"). If either party disputes the appraisal conducted by the first appraiser, the parties agree that the dissatisfied party may, at their sole cost, hire a second appraiser to conduct a second appraisal to the Actual Funding Agencies' standards. If either party does not agree with the second appraisal, then the parties agree to share the costs to hire a third appraiser who shall be selected mutually by the first two appraisers and must be acceptable to the Actual Funding Agencies and who shall review the first two appraisals and select a value between the values determined by the first two appraisals that best reflects the fair market value of the Property. If the parties have not agreed as to value earlier, the determination of the third appraisal shall be final. As soon as the parties have come to agreement on the fair market value

as determined by the above-described process, this shall set the “**Confirmation Purchase Price**” as long as it is within the timeline required by the Actual Funding Agencies. The Confirmation Purchase Price must be approved by both the Actual Funding Agencies Boards of Directors and Town of Windham Town Council.

- e. **Prorations.** Real estate taxes will be prorated as of the date of Closing. Seller and Buyer shall each pay one half (1/2) of the any transfer tax. 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:

- a. Satisfactory review of the status of Seller’s title, including issuance to Buyer of a title insurance commitment satisfactory to Buyer and Actual Funding Agencies, 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 and the Actual Funding Agencies.
- c. Completion of a survey of the Property satisfactory to Buyer and the Actual Funding Agencies.
- d. Seller, at its cost and expense, shall remove all trash from the Property prior to Closing.
- e. 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.
- f. Completion of a boundary walk with Seller, Buyer, and partners using GPS to understand the boundaries of the Property.
- g. Evidence of completion by Buyer of fundraising sufficient to provide the funds necessary to pay the Confirmation Purchase Price and project costs (as determined by the Buyer and partners), including trail and trailhead building on the Property. The Buyer and partners shall engage in fundraising for a stewardship for sustainable trail maintenance.
- h. 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).
- i. Existing gravel stored on the Property will be allowed usage by the Seller for personal use, balance of gravel will be for Town usage.

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 timber cutting or 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, all sums paid hereunder by Buyer shall be retained by 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, all sums paid hereunder by Buyer shall be returned to Buyer and Buyer shall have all available remedies, including specific performance, and reasonable attorneys' fees. This provision survives Closing.

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. 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:

Timothy L. Morrell, Sr
Linda S. Morrell
18 Haskell Road
Windham, ME 04062

with copy to:

[insert attorney information]

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:

Sammy Hodgman

Timothy L. Morrell, Sr.
TIMOTHY L. MORRELL, Sr

Sammy Hodgman

Linda S. Morrell
LINDA S. MORRELL

WITNESS:

Sammy Hodgman

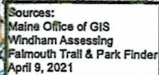
TOWN OF WINDHAM

By: Barry A. Tibbetts
Barry A. Tibbetts, Town Manager

EXHIBIT A

[Insert Morrell Map]

N



SCHEDULE 1

[Attach Appraisal]



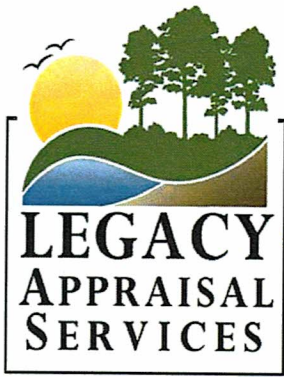
PHONE: 207.735.5858 FAX: 352.336.4877
422 MEADOW ROAD, HAMPDEN, ME 04444

MORRELL PROPERTY
APPRAISAL REPORT OF A 585.48-ACRE
PROPERTY LOCATED IN WINDHAM,
CUMBERLAND COUNTY, MAINE

PREPARED FOR
TOWN OF WINDHAM
8 SCHOOL ROAD
WINDHAM, ME 04062

EFFECTIVE DATE: APRIL 28, 2021
DATE OF REPORT: JUNE 14, 2021

PREPARED BY
JESSE STUDLEY
LEGACY APPRAISAL SERVICES, LLC
422 MEADOW ROAD
HAMPDEN, ME 04444



PHONE: 207.735.5858 FAX: 352.336.4877
422 MEADOW ROAD, HAMPDEN, ME 04444

June 14, 2021

Town of Windham
8 School Road
Windham, ME 04062

RE: Morrell Property – as of April 28, 2021

To Whom It May Concern:

We are pleased to submit this appraisal of a 585.48-acre property located in Windham, Cumberland County, Maine. The property is currently owned by Linda S. and Timothy L. Morrell. The intended use of the appraisal is to establish a market value of the subject property as a basis for negotiating a potential acquisition of the property. The client and intended user is the Town of Windham. The estate appraised is a fee simple interest, subject to minor encumbrances, in 585.48 acres of vacant land.

Based on an inspection of the property and our investigation and analyses of market data, the estimated market value of the subject property, as of April 28, 2021, is:

TWO MILLION FORTY THOUSAND DOLLARS

\$2,040,000

\$3,484 per acre

This appraisal is documented in an Appraisal Report. The following report presents assumptions and limiting conditions, pertinent facts about the market and the subject property, and the reasoning leading to our conclusions. It conforms to the *Uniform Standards of Professional Appraisal Practice* (USPAP) and the Appraisal Institute's Code of Professional Ethics and Standards of Professional Appraisal Practice. The signed Certification of Value is attached as Appendix A.

Sincerely,

Jesse Studley
ME CGA #2851
Legacy Appraisal Services