

PURCHASE AND SALE AGREEMENT

1. **PARTIES.** **The Town of Winchester**, having an address of Winchester Town Hall, 71 Mt. Vernon Street Winchester, MA 07890, hereinafter called the SELLER, agrees to sell, and Justin Kao and Jessica Qu, having an address of 18 Glenwood Avenue Winchester, MA 01890 or PURCHASER, agrees to buy, upon the terms hereinafter set forth, the following described premises.

The BUYER has been selected by the SELLER via a Request for Proposals (RFP) process to have the right to purchase the Premises. All terms of the RFP are hereby incorporated by reference into this Purchase and Sale Agreement.

2. **PREMISES.** A parcel of land located at 20 Glenwood Avenue in Winchester, Massachusetts, containing approximately .064 acres, and described in a tax taking recorded with the Middlesex South County Registry of Deeds in Book 71047, Page 221, (the "premises").

3. **BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES.** The premises consists of a structure and land.

4. **TITLE DEED.** Said premises are to be conveyed by a release deed or a quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven business days before the deed is to be delivered as herein provided. If a release deed, SELLER will convey the premises without covenants. If a quitclaim deed, SELLER shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

- (a) Provisions of existing building and zoning laws;
- (b) Existing rights and obligations in party walls which are not the subject of written agreement;
- (c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
- (d) Any liens for municipal betterments assessed after the delivery of the deed; and
- (e) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of said premises as its current use.

5. **PLANS.** If said deed refers to a plan necessary to be recorded therewith the BUYER shall, at its sole cost and expense, prepare a survey plan in form adequate for recording or registration.

6. **TIME FOR PERFORMANCE; DELIVERY.** Such deed is to be delivered at 11:00 a.m. on October 27, 2023 at Winchester Town Hall or another place as designated by Seller. The SELLER may permit a closing by mail, at SELLER's sole discretion. If the closing date shall fall on a weekend or holiday on which the Registry of Deeds is closed, the closing shall take place on the next business day thereafter. It is agreed that time is of the essence of this agreement.

7. **PURCHASE PRICE.** The agreed purchase price for said premises is Forty

Thousand and 00/100 Dollars (\$40,000.00), of which:

\$ 10.00	has been paid as a deposit, to be credited to the deposit
\$ _____	has been paid as the balance of deposit on this day; and
\$ <u>39,990.00</u>	are to be paid at the time of delivery of the deed by attorney
	IOLTA check or by wire transfer, at SELLER'S
	<u>discretion</u>
<u>\$40,000.00</u>	TOTAL

8. POSSESSION AND CONTROL OF PREMISES. Full possession of said premises free of all tenants and occupants is to be delivered at the time of the delivery of the deed, said premises to be then (a) in the same condition as they were at the time of BUYER's RFP, reasonable use and wear thereof excepted, and (b) in compliance with provisions of any instrument referred to in Section 4 hereof. The BUYER shall be entitled personally to inspect said premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.

9. EXTENSION TO MAKE TITLE OR PREMISES CONFORM. If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of the delivery of the deed the premises do not conform with the provisions hereof, then the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of up to thirty calendar days or such shorter time to bring the premises back into conformity with this Agreement. In no event, however, shall reasonable efforts require the SELLER to expend more than \$400.00, including attorneys' fees.

10. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM. If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, or if at any time during the period of this agreement or any extension thereof, the holder of a mortgage on said premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

11. BUYER'S ELECTION TO ACCEPT TITLE. The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said premises in their then condition and to pay therefore the purchase price, without deduction, in which case the SELLER shall convey such title.

12. ACCEPTANCE OF DEED. The acceptance of a deed by the BUYER shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

13. INSURANCE. Until the delivery of the deed, the SELLER shall maintain insurance on said premises as presently insured. All risk of loss to remain with the SELLER until delivery and recording of the deed.

14. ADJUSTMENTS. A payment in lieu of taxes shall be paid in accordance with G.L.c.44, §63A as of the day of performance of this agreement and the net amount thereof shall be added to the purchase price payable by the BUYER at the time of delivery of the deed.

15. ADJUSTMENT OF UNASSESSED AND ABATED TAXES. If the amount of said taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding fiscal year.

16. DEPOSIT. All deposits made hereunder shall be held in escrow by the Treasurer of the Town of Winchester as escrow agent, in a non-interest bearing account, subject to the terms of this agreement and shall be duly accounted for at the time for performance of this agreement. In the event of any disagreement between the parties, the escrow agent may retain all deposits made under this agreement pending instructions mutually given by the SELLER and the BUYER.

17. BUYER'S DEFAULT; DAMAGES. If BUYER shall fail to fulfill the BUYER'S agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as SELLER'S sole and exclusive remedy at law and equity for BUYER'S breach of this agreement.

18. LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, etc. If the SELLER or BUYER executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

19. WARRANTIES AND REPRESENTATIONS. The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has BUYER relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the additional warranties and representations, if any, made by either the SELLER or the Broker(s): NONE.

20. MORTGAGE CONTINGENCY CLAUSE. Intentionally deleted

21. BROKERS. BUYER and SELLER each represent and warrant to the other that each has not contacted any real estate broker in connection with this transaction and was not directed to the other as a result of any services or facilities of any real estate broker. BUYER and

SELLER agree to defend, indemnify the other against and hold the other harmless, to the extent permitted by law, from any claim, loss, damage, costs or liabilities for any brokerage commission or fee which may be asserted against the other by any broker in connection with this transaction. The provisions of this paragraph shall survive the delivery of the deed.

22. CONTINGENCIES. The obligations of SELLER are contingent upon the satisfaction of each of the following conditions:

- (a) Compliance with the provisions of G.L.c.30B, §16; and
- (b) Compliance with any other requirements of the Massachusetts General or Special Laws relative to the sale of the premises by the SELLER.

23. CLOSING DELIVERIES.

On the Closing Date, Buyer shall each execute and deliver to Seller, the following documents, duly and validly executed, attested, notarized and acknowledged, as appropriate:

- (a) A completed form filed with the Division of Capital Asset Management and Maintenance pursuant to G.L. c. 7C §38, which shows proof it was filed prior to the conveyance of the Premises.
- (b) A completed form filed with the Department of Revenue pursuant to G.L. c. 62C §49A, which shows proof it was filed prior to the conveyance of the Premises.
- (c) A completed Certification of Good Faith evidencing this Agreement has been obtained in good faith and without collusion or fraud.
- (d) a duly executed settlement statement.
- (e) an affidavit under the provisions of Massachusetts General Laws Chapter 60 Section 77B.
- (f) such other documents, certificates, or agreements as may be reasonably and customarily necessary to consummate the transaction contemplated by this Agreement.

On the Closing Date, Seller shall each execute and deliver to Buyer, the following documents, duly and validly executed, attested, notarized and acknowledged, as appropriate:

- (a) the Deed duly executed and acknowledged by the Seller containing the following statement: "In connection with the conveyance hereby made, there has been full compliance with the provisions of Section 63A of Chapter 44 of the Massachusetts General Laws.";
- (b) reasonable and customary affidavits executed by the Seller regarding mechanics' and materialmen's liens and parties in possession as required by the title company;

- (c) a so-called FIRPTA affidavit executed by the Seller as to its non-foreign status within the meaning of Sections 1445 or 7701 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder;
- (d) a duly executed settlement statement; and
- (e) such other documents, certificates, or agreements as may be necessary to consummate the transaction contemplated by this Agreement.

24. HAZARDOUS MATERIALS/USE OF PREMISES. BUYER acknowledges that BUYER has not been influenced to enter into this transaction and that it has not relied upon any warranties or representations not set forth in this agreement. BUYER represents and warrants that it or its agents have conducted a full inspection of the premises, and based upon BUYER'S investigation, BUYER is aware of the condition of the premises and will accept the premises "AS IS" as of the time of BUYER's RFP. BUYER acknowledges that SELLER has no responsibility for hazardous waste, oil, hazardous material or hazardous substances, as those terms are defined by any applicable law, rule or regulation, including, without limitation, the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G. L. c. 21E, the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. (herein collectively referred to as "Hazardous Waste") on, in, under or emitting from the premises or for any other condition or defect on the premises. The provisions of this Section shall survive delivery of the deed.

Verbal descriptions by the Town of Winchester, its Agents, or anyone connected with this sale shall not invalidate nor become part of this sale. The Town of Winchester, and its Agents, shall not be liable for any reason whatsoever as to the accuracy of the description of the listed premises, the bounds, area involved, building and/or buildings, or taxes.

The Buyer acknowledges that he/she/they is/are aware that the property is being sold "**AS IS**" as of **the date of BUYER's RFP** and further acknowledge(s) that no representations or warranties of any kind regarding the property have been made by the Seller. The SELLER makes no representation that the lot is buildable. The Town cannot make a determination of allowable uses as those uses may vary by potential owner. All such research must be done by the BUYER.

The Buyer acknowledges that it is the Buyer's obligation to demolish the existing structure on the premises, per the Notice of Award Letter attached hereto. The Buyer shall demolish the structure within nine months of taking title to the premises. The provisions of this Section shall survive delivery of the deed. The BUYER shall be liable for all fees and cost incurred by the SELLER to enforce this clause.

The SELLER makes no representation or warranty with respect to the property, including, without limitation, the value, quality or character of the property or its fitness or suitability for any particular use and/or the physical and environmental condition of the property.

Any use by Buyer inconsistent with the Town's Protective Zoning Bylaws, if available, may require a special permit, variance, site plan approval, or other approval(s) from the Planning Board, Board of Health, or other Town agencies. The Town makes no representations or guarantees regarding the availability of zoning relief or the likelihood, or not, of the applicant's success in obtaining such approvals, variances or permits.

25. ASSIGNMENT. BUYER shall not assign this agreement or any of its rights hereunder without prior written consent of SELLER, which may be withheld in the SELLER'S sole and absolute discretion.

26. TITLE OR PRACTICE STANDARDS. Any matter or practice arising under or relating to this agreement which is the subject of a title standard or a practice standard of the Massachusetts Real Estate Bar Association at the time for delivery of the deed shall be covered by said title standard or practice standard to the extent applicable.

27. CLOSING. The deed and other documents required by this agreement are to be delivered and the Purchase Price paid at the Date and Time of Closing and at the Place of Closing. Unless the Closing takes place at the appropriate Registry of Deeds, all documents and funds are to be delivered in escrow subject to prompt rundown of title and recording, which term shall include registration in the case of registered land.

28. BUYER'S WARRANTIES. BUYER hereby represents and warrants:

- (c) This agreement and all documents to be executed by BUYER and delivered to BUYER at the closing are, or at the time of the closing will be, duly authorized, executed and delivered by BUYER.
- (d) BUYER hereby acknowledges and agrees that, the BUYER has not relied upon nor been induced by any representations, warranties, guarantees, promises or statements, whether written or oral, express or implied, or whether made by the SELLER or any employee or representative of the SELLER.

29. NOTICE. Any notice required or permitted to be given under this Agreement shall be in writing and signed by the party or the party's attorney or agent and shall be deemed to have been given upon the earlier of: (i) two business days after deposit with the United States Postal Service, if sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one business day after deposit with an express courier service such as Federal Express; (iii) actual receipt, or (iv) confirmed email transmission (provided such facsimile notice is promptly followed by other acceptable means of sending notice), addressed in the case of:

SELLER:

Town of Winchester
Town Hall
71 Mt. Vernon Street
Winchester, MA 01890
Telephone: (781) 721-7133
Facsimile: (781) 756-0505

With a copy to:

Jason R. Talerman
Joseph Ruotolo, Jr.
Mead, Talerman & Costa LLC
730 Main Street Suite 1F
Millis, MA 02054
Telephone: 774-993-5000
jay@mtclawyers.com
joe@mtclawyers.com

In the case of BUYER:

Justin Kao
Jessica Qu
18 Glenwood Ave
Winchester, MA 01890

with a copy to:

David J. Mahlowitz, Esq.
Mahlowitz & Kanarek, LLC
907 Massachusetts Avenue
Cambridge, MA 02139
Telephone (617) 230-7200
Facsimile (617) 765-0115
Email: david@makalaw.com

By such notice, either party may notify the other of a new address, in which case such new address shall be employed for all subsequent deliveries and mailings.

30. CONDEMNATION. Notwithstanding anything herein to the contrary, in the event of a taking of all or substantially all of the premises by eminent domain by an entity other than the Town of Winchester, then SELLER or BUYER, may, at its option, terminate this agreement, whereupon all deposits made by BUYER under this agreement shall be returned to BUYER. “Substantial part” shall be defined as that portion of the premises which if damaged or taken by eminent domain would materially and adversely affect the use of the premises for the purposes set forth herein.

31. INTENTIONALLY DELETED.

32. POST CLOSING COMPLIANCE AND ADJUSTMENTS. If any errors or omissions are found to have occurred in any calculations or figures used in the settlement statement signed by the parties (or would have been included if not for any such error or omission) and notice hereof is given within ninety (90) days of the date of the delivery of the deed to the party to be charged, then such party agrees to make a payment to correct the error or

omission. This provision shall survive delivery of the Deed.

33. EXTENSIONS. BUYER and SELLER hereby authorize their respective attorneys (as the case may be) to execute on their behalf any extensions to the time for performance and any change of location and/or time for delivery of the deed. BUYER and SELLER shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge before the execution or other consent to such extensions, that either party has disclaimed the authority granted herein to bind them. For purposes of this agreement, facsimile signatures shall be construed as original.

34. CONSTRUCTION. This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both SELLER and BUYER. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it.

35. The Seller's obligations under this Agreement shall be expressly subject to and contingent upon the receipt of all municipal approvals, including, without limitation, the approval of this Agreement, and satisfaction of all requirements of Applicable Laws necessary for the consummation of the transaction contemplated hereby, to the Town of Winchester's satisfaction.

36. *Title Provisions:*

It is understood and agreed by the parties that the premises shall not be in conformity with the title provisions of this agreement unless:

- (a) All buildings, structures and improvements, including but not limited to, any driveways, garages, cesspools, dry wells, and all means of access to the premises shall be located completely within the boundary lines of said premises and shall not encroach upon or under the property of any other person or entity unless by duly recorded easement;
- (b) No building, structure or improvement of any kind belonging to any other person or entity shall encroach upon or under said premises unless by duly recorded easement;
- (c) The premises shall abut a public way, duly laid out or accepted as such by the City or Town in which said premises are located;
- (d) Title to the premises is insurable, for the benefit of the Buyer, by a title insurance company, in a fee owner's policy of title insurance at normal premium rates, in the American Land Title Association form currently in use, subject only to those printed exceptions to title normally included in the "jacket" to such form or policy. In the event an owner's policy of title insurance can only be written with so-called affirmative coverage against a known title defect, then BUYER shall have the right (based on opinion and judgment of counsel) to deem such title

unmarketable in which event all deposits shall be returned and this Agreement shall be terminated;

- (e) In the event there are Order of Conditions of record applicable and enforceable as to the premises, Sellers shall obtain and record at or prior to the closing such Certificate of Compliance as are necessary to release such Orders of Conditions.

37. Seller is not aware of any suits, actions, orders, decrees, claims, writs, injunctions or proceedings pending or threatened against the Seller or affecting all or any part of the Premises or the operation thereof before any court or administrative agency or officer which, if adversely determined, would have material adverse effect upon the Premises.

38. The representations and warranties contained in this Agreement refer to the date of execution of this Agreement, unless otherwise herein provided. SELLER will promptly notify BUYER of any material change in facts, which SELLER becomes aware of, which arise prior to the Closing which would make any such representation or warranty untrue if such state of facts had existed on the date of execution of this Agreement (“SELLER Notice”) and unless SELLER shall rectify the cause of such change by the original or extended time for Closing hereunder, BUYER shall have the option of canceling this Agreement by notifying the SELLER thereof in writing in which event all deposits made by the BUYER hereunder, together with the accrued interest, shall be forthwith refunded to BUYER and this Agreement shall be null and void and without recourse to the Parties hereto.

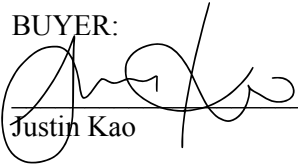
[signature page follows]


Executed this 28th day of September, 2023.

SELLER:

Town of Winchester
By Its Select Board

BUYER:


Justin Kao


Jessica Qu