

Town of Winchester
Spring Annual Town Meeting



ARTICLE 31

To see if the Town will authorize the Board of Selectmen to sell or otherwise transfer all or a portion of a parcel of land consisting of approximately 12.54 acres located off 78 Ridge Street, Winchester, commonly known as Lots D and E of the Wright-Locke Farm, in accordance with the provisions of the Massachusetts General Laws, Chapter 30B, Section 16 to a qualified purchaser for not less than \$7,000,000; said portion includes all options identified in the Request for Proposals for the Proposed Disposition of Town-Owned Property at Wright-Locke Farm issued October 2014, and to enter into a purchase and sales agreement and development agreement with the successful bidder containing other terms and conditions which the Selectmen consider in the best interests of the Town, or take any other action in relation thereto.

(Board of Selectmen)

MOTION:

That the Board of Selectmen be authorized to sell, assign, convey and / or otherwise transfer the land shown as Lots D & E, so called, of the Wright Locke Farm, (more particularly shown on a plan of land attached to this Motion as Appendix A), to the Wright-Locke Farm Land Trust, Inc., for a purchase price of \$8.6million, and pursuant to such other terms and conditions to be contained in a Purchase and Sale Agreement and a Development and Operating Agreement as the Board determines to be in the best interest of the Town of Winchester. A draft version of the Purchase and Sale Agreement and summaries of the other exhibits there to, are attached as Appendix B.

BACKGROUND:

After a detailed process encompassing a wide variety of community feedback together with management and consultant recommendations, including land use analysis and appraisal work, the Board of Selectmen developed a "Request for Proposals For the Proposed Disposition of Lots D and E a Portion of Town-owned Property at Wright-Locke Farm 78 and 82 Ridge Street, Winchester, Massachusetts" in conformance with M.G.L. Chapter 30B §16. This was the third in a series of Town efforts to sell this land on terms and conditions acceptable to the Town. All of the material pertaining to this disposition effort can be found at <http://www.winchester.us/360/Wright-Locke-Farm>

In response to the RFP the Town received four (4) filings on or before January 6, 2015. One proponent, KMC Land Development, eventually withdrew. Over the last several months, the Board and management team, together with a team of consultants, have reviewed and analyzed the three remaining proposals. The Board interviewed each of the proponent teams and the proponents have supplemented their proposals in reaction to the Board's deliberations. All of this information is also on the Town's website.

Based upon all of the information presented in accordance with the RFP, the Board on May 11, 2015, voted: 4 in the affirmative, 1 in the negative, to make the Wright-Locke Land Trust, Inc. the “designated purchaser/bidder” for a sales price of \$8.6million. The essence of the Land Trust’s proposal can be found at the same website at <http://www.winchester.us/360/Wright-Locke-Farm>

The terms and conditions of this proposed sale will be conditioned on the successful negotiation of both a Purchase and Sales Agreement and a Development and Operating Agreement, drafts of which are attached to this Motion and Background in support of Article 31. Additionally, there will be a full presentation made by the Board on May 28th supporting the Board’s request under this article.

DRAFT 5/19/2015

PURCHASE AND SALE AGREEMENT

(78 RIDGE STREET and 82 RIDGE STREET)

between

TOWN OF WINCHESTER

Seller

and

WRIGHT-LOCKE LAND TRUST, INC.

Buyer

Dated as of: May ____, 2015

Purchase and Sale Agreement (this "Agreement"), by and between the Town of Winchester, a municipal corporation having an address at Town Hall, 71 Mt. Vernon Street, Winchester, Massachusetts 01890 ("Seller"), acting by and through its Board of Selectmen, and Wright-Locke Land Trust, Inc., a Massachusetts non-profit corporation, having an address at 78 Ridge Street, Winchester, Massachusetts 01890 - Attention: Thomas R. Howley ("Buyer").

WITNESSETH:

In consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

1. Purchase and Sale. Seller hereby agrees to sell, assign, transfer and convey to Buyer and Buyer hereby agrees to purchase from Seller, upon the terms and conditions hereinafter set forth, fee simple title to the parcel of land more particularly described as Lots D and E in Exhibit A attached hereto (the "Land"), together with all buildings, structures and improvements now or hereafter existing thereon, together with all of Seller's right, title and interest in and to any streets, ways or alleys abutting or adjoining thereon, any strips, gores, trees, shrubs, plants, fixtures, easements, hereditaments and appurtenances in or affecting the Land, any water courses or water bodies abutting the Land and mineral rights in and to the Land (collectively, the "Property").

2. Conveyance: Title. The Property is to be conveyed by a good and sufficient Massachusetts Quitclaim Deed (the "Deed") running to Buyer or a nominee owned or controlled by Buyer. Buyer shall accept title to the Property subject only to the following (the "Permitted Encumbrances"):

(a) Provisions of existing laws, regulations, restrictions, requirements, ordinances,

resolutions and orders (including, without limitation, any relating to building, zoning and environmental protection) as to the use, occupancy, subdivision or improvement of the Property;

(b) Any liens for municipal betterments assessed on the Property by the Town of Winchester after the date hereof;

(c) Easements, liens, restrictions, encumbrances, encroachments, agreements and other matters of record as of the date hereof, if any, affecting the Property or any part thereof, provided the same do not materially adversely affect the use of the Property as proposed in the Wright-Locke Land Trust Inc. Development Agreement to be entered into between Buyer and Seller, as it may be amended (the "Development Agreement"), and the Conservation Easement between the Buyer and Seller in the care and custody of its Conservation Commission pursuant to M.G.L. ch 40 § 8C (the Conservation Easement);

(d) The state of facts (including encroachments and projections onto adjoining streets) that a current accurate survey would show as of the Time of Closing (as hereinafter defined), provided that such state of facts does not materially adversely affect Buyer's ability to use the Property as proposed in the Land Trust Proposal;

(e) Any state of facts that a personal inspection of the Property might disclose;

(f) Any lien or encumbrance encumbering the Property as to which Seller shall deliver to Buyer, or to Buyer's title company at or prior to the Time of Closing, evidence that payment has or will be made sufficient at the time of the Closing to satisfy the obligations secured by such lien or encumbrance (in the case of liens or encumbrances, if any, which secure the payment of money) or proper instruments, in recordable form, which upon recordation at the time of the Closing will cancel such lien or encumbrance, together with any other instruments necessary thereto and the cost of recording and canceling the same; and

(g) The Development Agreement.

(h) The Conservation Easement

3. ANR Plan. Seller has prepared a surveyed plan of the Land, at its own expense, which has been endorsed by the Planning Board pursuant to G.L. c. 41, s. 81P (the "ANR Plan") and recorded at the Middlesex South District Registry of Deeds. (Exhibit "A").

4. Purchase Price. The agreed purchase price for the Property (the "Purchase Price") is Eight Million Six Hundred Thousand Dollars (\$8,600,000), of which the amount of

(a) One hundred and fifty thousand to be paid as a deposit upon the execution of this agreement.

(b) Eight million fifty thousand (\$8,050,000) to be credited to the then unpaid balance of the Purchase Price, is to be paid at the time of delivery and recording of the Deed, subject to adjustment as provided in Section 14 hereof, by wire transfer in accordance with wiring instructions provided by Seller at or prior to the Time of Closing or by bank checks drawn on a Massachusetts banking institution, provided Seller has fulfilled all of its obligations hereunder. Acceptance of the deed by Buyer shall mean that Seller has

fulfilled all its obligations hereunder and that there shall be no reduction, deferment or other diminution of the Purchase Price, except as provided in Section 14 hereof.

- (c) Additional Development Contingent Payment. The Land Trust will pay an additional \$400,000 to the Town (the "Residential Development Payment"), upon the sale by the Land Trust of the land identified on the site plan attached to this agreement as Exhibit "C" and consisting of an approximately 75,000 square foot development area to be created in Development Zone 3 near the stub road in the southwest corner of Lot D (the "Residential Development Area"), and to be offered and intended to be developed for at least two and up to three residential housing units.

The Residential Development Payment is contingent upon the sale by the Land Trust of the Residential Development Area. The Land Trust will make commercially reasonable efforts to market the Residential Development Area to bona fide third parties who are qualified to purchase and complete the residential development and will act in good faith to enter into a purchase and sale agreement with a qualified purchaser, that will be subject to the purchaser's receipt of all necessary permits and public approvals, and to the purchaser's compliance with terms and conditions of the RFP, including requirements about affordable housing payments, as well as, Architectural Design and Site Plan Guidelines. The payment to the Town of the Residential Development Payment will occur at the time of the Land Trust's transfer of the Residential Development Area to the third party purchaser. The Land Trust anticipates that this will occur within two (2) years of the Land Trust's acquisition of Lots D & E. After payment to the Town of the Residential Development Payment any remaining proceeds from the sale by the Land Trust of the Residential Development Area shall be retained by the Land Trust in furtherance of its tax exempt purposes, including the repayment of the three year \$1,000,000 loan from John Moriarty & Associates as described in the Land Trust Proposal. Any other conditions related to the obligation of the Land Trust to make the Residential Development Payment upon the sale of the Residential Development Area shall be provided either the Development Agreement or in the Purchase and Sale Agreement as it may be amended to be made between the Town and the Land Trust in the event that the Land Trust's Proposal is approved at Town Meeting.

5. Time of Closing. The Deed is to be delivered at 10:00 o'clock a.m. July __, 2015 (the "Time of Closing") except as hereinafter described. The closing shall take place at the offices of Welch & Donohoe, 655 Summer Street, Suite 203, Boston, Massachusetts 02210 or at the offices of the counsel to Buyer unless otherwise agreed upon in writing. The time at which the deed is delivered, as the same may be extended pursuant to the provisions of this Agreement, is referred to herein as the "Closing." It is agreed that time is of the essence of this Agreement.

6. Seller's Closing Documents. In addition to the Deed, and the Development Agreement Seller shall deliver to Buyer or its nominee at the Time of Closing, as a condition of Buyer's obligations under this Agreement, the following documents, duly executed and acknowledged as provided therein, where necessary:

(a) such customary affidavits as Buyer's title insurance company may reasonably require in order to issue so-called owner's and lender's title insurance policies insuring Buyer's title to the Property subject to the matters set forth herein or in the Development Agreement; and

(b) if requested by the Buyer's title insurance company, an opinion of Town Counsel, addressed to the title insurance company and in form and substance acceptable to the title insurance company, opining on the due authorization of the Seller to dispose of the Property and the compliance of the Seller with applicable statutes in connection with the disposition of the Property and the execution and delivery of the Deed.

6A. Payment of Recording Costs and Professionals.

(a) Buyer shall pay for the recording of the Deed (not including real estate transfer taxes), any mortgages and any other instruments to be recorded.

(b) Buyer and Seller shall each pay its own attorneys' fees, except as otherwise set forth herein.

7. Condition of Property. Except as otherwise set forth herein, Buyer agrees to accept the Property "as is" in its present condition on the date hereof, reasonable wear and tear excepted, and further agrees that Seller shall not be liable for any latent or patent defects in the Property.

In the event that the Property does not comply with the provisions of this Section 7 by the Closing, the Seller shall take reasonable efforts to have the Property so comply, such reasonable efforts not to require the expenditure of more than \$25,000.00. The Closing shall be extended for a reasonable period of time, to be agreed upon by Seller and Buyer, to enable Seller to bring the Property into compliance with the provisions hereof.

Buyer will allow Seller to pay from the balance of the Purchase Price as much thereof as may be necessary to satisfy any lien or encumbrance which Seller is obligated or elects to pay or to cure hereunder and will provide Seller at the Time of Closing with separate certified and/or official bank checks or effect such additional wire transfers, payable as directed by Seller for such purpose out of the balance of the Purchase Price.

8. Title to the Property.

(a) Buyer may but shall not be required to order from a national title insurance company licensed to do business in the Commonwealth of Massachusetts or an agent of such company (the "Title Insurer") a title insurance report and commitment for an owner's title insurance policy (the "Commitment") and on or before thirty (30) days from the date hereof, shall furnish to Seller (i) a copy of the Commitment, and (ii) a written statement specifically identifying any liens or encumbrances affecting, or other defects in or objections to title to the Property other than the Permitted Encumbrances, together with Buyer's reasons for objecting to the same. Except as expressly provided in this Agreement, Seller shall have no obligation to remove any exception to title. If exceptions to title appear on the Commitment which Seller is not obligated to remove as provided in Section 8(b) below, and which are not Permitted Encumbrances, and if Seller is unable to or elects not to eliminate such exceptions

to title and, accordingly, is unable to convey title to the Property in accordance with the provisions of this Agreement, Seller shall so notify Buyer and Buyer, within ten (10) days thereafter, shall either (x) elect to terminate this Agreement by notice given to Seller upon which the Deposit paid hereunder by Buyer shall forthwith be refunded to Buyer less any amounts that may be due pursuant to Section 4(a)(i) hereof and all obligations of the parties hereto shall cease, and this Agreement shall be void and without recourse to the parties hereto, or (y) elect to accept title to the Property subject to such exceptions, without any abatement of the Purchase Price and without any liability on the part of Seller, in which case Seller shall convey at the Time of Closing such title to the Property without any abatement of the Purchase Price. If Buyer shall not make such election within such (10) day period, Buyer shall be deemed to have elected clause (y) above with the same force and effect as if Buyer had elected clause (y) within such ten-(10) day period.

(b) If the Commitment discloses exceptions (other than the Permitted Encumbrances) which (i) may be removed solely by delivery of an affidavit, reasonably requested by the Title Insurer, which affidavit can be delivered by Seller and which can be removed by the title insurer or (ii) Seller willfully placed of record subsequent to the date hereof, or (iii) may be removed or satisfied by the payment of a liquidated sum of money not in excess of Twenty Five Thousand Dollars (\$25,000.00) in the aggregate, then Seller shall make reasonable efforts to remove such exceptions. Seller shall be entitled to one or more adjournments of the Time of Closing to remove such exceptions. Notwithstanding the foregoing, Seller, at its option in lieu of satisfying such liens or encumbrances, may deposit with the Title Insurer such amount of money as may be determined by the Title Insurer as being sufficient to induce it to insure Buyer against collection of such liens and/or encumbrances, including interest and penalties, out of or against the Property (and to omit such exceptions from any mortgagee policy in favor of Buyer's lender and Owner's policy in favor of Buyer), in which event such liens and encumbrances shall not be objections to title.

(c) Buyer will allow Seller to pay from the balance of the Purchase Price as much thereof as may be necessary to satisfy any lien or encumbrance which Seller is obligated or elects to pay or to cure hereunder and will provide Seller at the Time of Closing with separate certified and/or official bank checks or effect such additional wire transfers, payable as directed by Seller for such purpose out of the balance of the Purchase Price.

(d) The premium for Buyer's title insurance policy, to be issued by the Title Insurer, shall be paid by Buyer.

9. Acceptance of the Deed. The acceptance of the Deed by Buyer shall be deemed to be a full performance and discharge of every agreement and obligation of the Seller herein contained or expressed, except for those provisions of this Agreement which expressly provide that any obligation of Seller shall survive the Time of Closing.

10. Representations and Warranties.

(a) Seller represents, covenants and warrants to and agrees with Buyer, as of the date of this

Agreement and as of the Time of Closing, as follows:

(1) Seller has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder and the execution and delivery of this Agreement and the performance by Seller of its obligations hereunder (1) have been duly authorized by all necessary municipal actions and (2) will not conflict with, or result in a breach of, any of the terms, covenants and provisions, any judgment, writ, injunction or decree of any court or governmental authority, or any agreement or instrument to which Seller is a party or by which Seller is otherwise bound. Each person executing this Agreement has the authority to do so on behalf of the Seller;

(2) Seller has received no written notice, and is not otherwise aware that all or any part of the Property is in violation of any zoning, subdivision, building, health, traffic, environmental, flood control or other applicable rules, regulations, ordinances or statutes of any local, state or federal authorities or any other governmental entity having jurisdiction over the Property;

(3) Seller has not received written notice and is not otherwise aware of any condemnation or eminent domain proceeding pending or threatened against all or any part of the Property nor is the Town of Winchester planning or contemplating any such proceeding;

(4) Seller is not aware of any agreements or contracts affecting all or any part of the Property or the use thereof to which Seller or any predecessor in interest is a party which would be binding upon or otherwise affect the Buyer or its nominee that would not be terminable at will by Buyer without penalty from and after the Time of Closing;

(5) Seller is not aware of any suits, actions or proceedings pending or threatened with respect to all or any part of the Property, this Agreement, or Seller's proposed actions herein;

(6) Seller has not received any notice from any insurance carrier concerning any defects or inadequacies in the Property which, if not corrected, would result in the termination of insurance coverage or increase the cost thereof; and

(7) Seller has not granted to any person other than Buyer, a right of first refusal, option to purchase or other right to purchase all or any part of the Property.

(b) Buyer represents, covenants and warrants to and agrees with Seller, as of the date hereof, as follows:

(1) Buyer is a non-profit corporation, duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts;

(2) Buyer has the legal right, power and authority to enter into this Agreement and

to perform all of its obligations hereunder and the execution and delivery of this Agreement and the performance by Buyer of its obligations hereunder (i) have been duly authorized by all necessary corporate acts of Buyer and (ii) will not conflict with, or result in a breach of, any of the terms, covenants and provisions of the Operating Agreement, Articles of Organization or ByLaws of Buyer, or, to the best of Buyer's knowledge, of any judgment, writ, injunction or decree of any court or governmental authority, or any agreement or instrument to which Buyer is a party or by which it is bound; and

(3) Buyer has the financial resources adequate to fully perform its obligations under this Agreement and the Development Agreement.

(c) The representations and warranties of Seller set forth in Section 10(a) above are subject to the following express limitations:

(1) as and to the extent Seller has delivered to Buyer copies of the documents and other materials referred to herein and such documents and other materials contain provisions inconsistent with or different from the representations and warranties made in this Section 10, then such representations and warranties shall be deemed modified to conform them to the provisions of such documents and materials;

(2) Seller shall have no obligation to take steps to cure, remedy or otherwise address-any note or notice of violation from any governmental authority having jurisdiction over the Property noted or issued on or after the date hereof;

(3) all of the representations and warranties of Seller contained in this Agreement are made to Seller's actual knowledge and without any obligation on the part of Seller to make any inquiry or investigation beyond such actual knowledge; and

(4) whenever the knowledge of Seller is required hereunder, the parties intend that such knowledge will-include and be limited to the actual knowledge of the members of the Board of Selectmen of the Town of Winchester, and Town Counsel.

(d) The representations and warranties of Seller contained in Section 10(a) will survive the Time of Closing, provided, that any claim based upon any alleged breach thereof must be asserted in writing, and action then commenced in a court of competent jurisdiction, within one (1) year after the Time of Closing.

(e) All of the representations, warranties and agreements of Buyer set forth in this Agreement will survive the Closing, provided, that any claim based upon any alleged breach thereof must be asserted in writing, and action then commenced in a court of competent jurisdiction, within one (1) year after the Time of Closing.

(f) Buyer further represents, warrants and agrees that:

(1) Subject to Section 18 hereof, Buyer has examined the Property and is familiar

with the general surface physical condition thereof and has conducted such investigation of the conditions of the Property as Buyer has considered appropriate;

(2) Except as specifically contained herein, neither Seller nor any of the employees, agents or attorneys of Seller have made any verbal or written representations, warranties, promises or guaranties whatsoever to Buyer, whether express or implied, and, in particular, that no such representations, warranties, promises or guaranties have been made with respect to the physical condition or operation of Property, the zoning and other laws, regulations and rules applicable to the Property or the compliance of the Property therewith, the use or occupancy of the Property or any part thereof or any other matter or thing affecting or related to the Property or the transactions contemplated hereby; and

(3) Except for those contained herein, Buyer has not relied upon any such representations, warranties, promises or guaranties or upon any statements made in any written materials provided by Seller with respect to the Property and has entered into this Agreement after having made and relied solely on its own independent investigation, inspection, analysis, appraisal, examination and evaluation of the facts and circumstances.

11. Operation of the Property. Seller shall not be obligated to take any action with respect to physical condition of the Property and the maintenance thereof prior to the closing other than to maintain the Property in its "as is" condition, reasonable wear and tear excepted, and as otherwise set forth herein.

12. Use of Money to Clear Title. To enable Seller to make conveyance as herein provided, Seller may, in accordance with Section 8 hereof, at the Time of Closing, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests which Seller is obligated or elects to clear hereunder, provided that provision reasonably satisfactory to Buyer's and Buyer's lender's attorneys and the Title Insurer is made at the Time of Closing for prompt recording of all instruments so procured.

13. Risk of Loss: Insurance.

(a) If, prior to the Time of Closing, all or any significant portion (as defined in this Section 13(a)) of the Property is taken by eminent domain (or is the subject of a pending taking which has not yet been consummated), Seller shall notify Buyer of such fact and Buyer shall have the right to terminate this Agreement by giving notice to the Seller not later than ten (10) days after the giving of Seller's notice. For the purposes hereof, a "significant portion" of the Property shall mean such a portion of the Property as shall have a material adverse impact, as reasonably determined by the Buyer, on either the cost of the Project (as defined in the Development Agreement) or on the design of such Project. If Buyer elects not to terminate this Agreement as aforesaid, or if an "insignificant portion" (i.e., anything other

than a significant portion) of the Property is taken by eminent domain (or becomes the subject of a pending taking), there shall be no abatement of the Purchase Price and Seller shall assign to Buyer (without recourse) at the Time of Closing the rights of Seller to the awards, if any, for the taking, and Buyer shall be entitled to receive and keep all awards for the taking of the Property or such portion thereof. If Buyer elects to terminate this Agreement pursuant to the provisions of this subsection (a), then the Deposit shall be returned to Buyer, all obligations of the parties hereto shall cease and there shall be no further recourse hereunder.

(b) If there is damage to or destruction of the Property by fire or other casualty, Buyer shall still be obligated to purchase the Property, there shall be no abatement of the Purchase Price and Seller shall assign to Buyer (without recourse) at the Time of Closing the rights of Seller to the proceeds, if any, under Seller's insurance policies covering the Property with respect to such damage or destruction, and Buyer shall be entitled to receive and keep any monies received from such insurance policies. If received by Seller prior to the Time of Closing, Seller shall pay such proceeds to Buyer at the Time of Closing.

(c) Until the Time of Closing, Seller will maintain in full force and effect the existing policies of insurance relating to the Property and provide evidence thereof to Buyer at its written request.

14. Adjustments. Real estate taxes calculated pursuant to M. G. L. Chapter 44, Section 63A shall be apportioned as of the Time of Closing and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price.

15. Broker: Indemnity. Seller and Buyer each represent and warrant to the other that it has dealt with no real estate broker or other person who would be entitled to be paid a commission by reason of the procurement of this Agreement or the transaction -which is the subject matter hereof and each agrees to indemnify and hold the other harmless from and against any loss, cost, damage or expense arising out of any breach by the indemnifying party of the foregoing representation and warranty. The provisions of this Section 15 shall survive the Time of Closing and any termination of this Agreement.

16. Deposits.

At this execution of this agreement, Buyer shall pay a deposit of One Hundred and Fifty Thousand Dollars (\$150,000) to be held by Seller's counsel in his Iolta account and to be credited to the Buyer at closing.

17. Remedies. If Buyer shall fail to fulfill Buyer's obligations hereunder or under the Development Agreement and Seller elects to terminate this Agreement and the Development Agreement, then fifteen (15) days after written notice to Buyer of Seller's intention to exercise its rights hereunder, the remainder of the Deposit which has not then been received by Seller, together with any and all interest thereon, shall be due and payable to Seller as full and complete liquidated

damages and not as a penalty, and shall be Seller's sole remedy at law or in equity, and upon receipt of the full amount thereof all obligations of Seller and Buyer hereunder shall terminate without recourse to either party; provided, however, that Buyer may use said fifteen day period to fulfill its obligations hereunder. In the event that the full amount of the Deposit is not received by Seller as described above and Buyer fails to perform its obligations hereunder, Seller may pursue any actions or remedies available to it pursuant to the terms hereof or of the Development Agreement.

18. Inspections.

(a) From and after the date of this Agreement and upon reasonable notice and at reasonable times, Seller shall afford to the officers, employees, attorneys, accountants, engineers, surveyors, architects, landscape architects, consultants and other authorized representatives of Buyer reasonable access in order that Buyer may have full, opportunity to inspect, take measurements, conduct surveys, perform tests including soil and water tests, show the Property to contractors, architects, surveyors, engineers, insurers, banks and other lenders or investors, and to make legal, financial, engineering, accounting and other reviews or investigations of the Property.

(b) The Buyer agrees to indemnify, defend (with counsel of Buyer's selection but subject to approval of the Seller, which shall not be unreasonably withheld), and save harmless the Seller from and against any claims, costs and liabilities arising directly or indirectly out of the exercise of Buyer's rights under this Section 18.

19. Notices. All notices required or permitted to be given hereunder shall be in writing and delivered by hand, by e-mail, or mailed postage prepaid, by registered or certified mail or by nationally recognized overnight courier, addressed in the case of Seller and Buyer to the respective address for each set forth above or in case of either party to such other address as shall be designated by written notice given to the other party in accordance with the provisions of this Section 19. Any such notice shall be deemed given when so delivered by hand, by e-mail or if so mailed, when deposited with the U.S. Postal Service. Copies of all notices to Seller shall simultaneously be sent to:

Richard C. Howard, Town Manager
c/o Board of Selectmen
2nd Floor, Town Hall
71 Mt. Vernon Street
Winchester, MA 01890

With a copy to:

Wade M. Welch
Town Counsel
655 Summer Street, Suite 203
Boston, MA 02210

and all notices to Buyer shall simultaneously be sent to:

Wright-Locke Land Trust Inc.
Attn: Thomas R. Howley, President
78 Ridge Street
Winchester, MA 01890

20. Miscellaneous.

- (a) This Agreement, executed as of the date first above written, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, and may be canceled, modified or amended only by a written instrument executed by both Seller and Buyer.
- (b) Buyer may not assign its rights and obligations hereunder, in whole or in part, other than to an affiliated company owned and controlled by Buyer, without the prior written consent of Seller. Any assignment without such prior written consent shall be deemed null and void. Subject to and without limiting the preceding two sentences, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- (c) This Agreement and the Exhibits referred to herein, which are hereby made a part hereof, constitute the entire agreement between the parties hereto with respect to the Property and no verbal statements made by anyone with regard to the transaction which is the subject of this Agreement shall be construed as a part hereof unless the same be incorporated herein by writing.
- (d) This Agreement may be executed in any number of identical counterparts and, if so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall collectively constitute an agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
- (e) The parties agree to execute any and all additional instruments and documents as may be reasonably required in order fully to effectuate the terms of this Agreement.
- (f) Buyer and Seller each acknowledge that the persons executing this Agreement are doing so in a representative or fiduciary capacity, that only the principal represented shall be bound by the terms hereof and that none of the persons executing this Agreement shall be personally liable for any obligation, express or implied hereunder. Buyer also acknowledges that none of the members of the Board of Selectmen of the Town of Winchester, nor any employee, consultant or board member (collectively, the "Released Parties") shall be liable for any representation, warranty, covenant or obligation, express or implied hereunder and Buyer hereby releases the Released Parties and their representatives from any and all claims arising from or related to the subject matter of this Agreement.
- (g) Prior to the Closing, Seller shall not remove any vegetation or items of Personal

Property from the Property, other than in connection with normal maintenance and repair of the Property.

(h) The recording by Buyer of this Agreement, or of any notice hereof, or of the Development Agreement prior to the Closing, or of any notice thereof shall have the effect of automatically terminating all rights of Buyer hereunder and shall be deemed to be a failure by Buyer to comply with the terms hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

TOWN OF WINCHESTER
Acting by and through its Board of Selectmen

WRIGHT-LOCKE LAND TRUST, INC.

By: _____

Name: Thomas R. Howley

Title: President

Approved as to Matters of Form:

By: _____

Wade M. Welch

Town Counsel:

LIST OF EXHIBITS

- A. ANR Plan showing Lots D & E to be conveyed
- B. Bullet Points of Development Agreement
- C. Site Plan, Wright-Locke Farm. John G. Crowe Associates Inc.
- D. Bullet Points of Conservation Easement

1668211.1

DEVELOPMENT AGREEMENT

BULLET POINTS

1. Within 30 days after delivery of The Deed, Buyer shall prepare a plan for endorsement by The Planning Board settling fourth the land to be leased to the Wright-Locke Conservatory, the lots to be developed, and the land area to be designated the Conservation Area;
2. Within 30 days after endorsement of the Plan by The Planning Board, the Buyer shall execute a lease of the land to be lease to the Conservatory in a form to be approved by The Conservatory and The Selectmen;
3. Within 30 days after endorsement of the Plan by The Planning Board, the Buyer shall execute a Conservation Easement for Wright-Locke Farm substantially in this form attached to the Purchase and Sale Agreement as an "Exhibit D";
4. Buyer shall obtain approval of The Selectmen, The Planning Board and The Conservatory of the design of the single family units to be constructed price to the execution of a P&S with the buyer of the single family house lots;
5. The \$400,000 payment to The Town from the proceeds of the sale of the two house lots shall be paid as follows; \$200,000 after the closing of each lot, or two years, whatever occurs first;
6. Should the \$400,000 payment not be made within 2 years of the delivery of The Deed to The Buyer, The Town shall notify The Buyer of such failure and if failure is not cured within 90 days after notice, The Town shall have the right to step into the shoes of the buyer relating to the development of the single family lots.



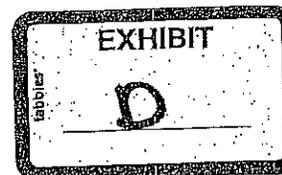
**CONSERVATION EASEMENT
FOR WRIGHT-LOCKE FARM**

Thomas R. Howley, President of the Wright-Locke Land Trust, Inc., a Massachusetts non-profit corporation with a principal office at 78 Ridge Street, Winchester, Massachusetts 01890 ("Grantor"), for consideration paid but for no monetary consideration, donates and grants to the Inhabitants of the Town of Winchester, a Massachusetts municipal corporation, having a mailing address of Town of Winchester, Town Offices, 71 Mt. Vernon Street, Winchester, Massachusetts 01890 ("Grantee"), in the care and custody of the Winchester Conservation Commission pursuant to Massachusetts General Laws, Chapter 40, Section 8C, with Quitclaim Covenants, the perpetual right and easement to use that portion of the land located off Ridge Street in Winchester, Middlesex County, Massachusetts, shown as the area labeled "Conservation Easement" on a plan entitled "Wright-Locke Farm," by John C. Crowe Associates, Inc., dated January 2, 2015 ("the Conservation Area") for all purposes consistent with the promotion and development of the natural resources of the Town and which are consistent with "Rules and Regulations governing the use of Conservation Land in the Town of Winchester as adopted by the Winchester Conservation Commission and as may be amended from time to time, for which conservation land, i.e., Town owned land under the control and custody of the Conservation Commission, is now or may hereafter be used in the Town of Winchester ("the Town"), including without limitation the promotion and development of the natural resources of the Town; the protection of the watershed resources of the Town; passive recreation such as picnicking, walking, cross-country skiing, snowshoeing, hiking, fishing, occasional horseback riding; and cutting, pruning and planting ground cover, plants, shrubs and trees incidental to watershed management ("the Conservation Easement")."

The Conservation Easement hereby granted shall be for the use and benefit of the Town and its agents, employees, guests, invitees and other parties to whom Grantee may give rights to so use the Conservation Easement.

Notwithstanding anything to the contrary herein contained, the Conservation Easement is subject to the following:

1. Grantor and Grantor's successors and assigns shall have the perpetual right to include the entire Conservation Area with respect to all or any part of the remaining land owned by Grantor and shown on said Plan in any computation of lot area, yard area, set-back distance or any other computation ("land use computations") required or permitted under any zoning by-law, subdivision control law, or other governmental rule, regulation, law, ordinances, permit or approval;
2. Grantee (which term shall include for all purposes its successors, assigns, lessees and licensees) shall not at any time, construct, place or permit to remain on the Conservation Area, any building, sign (exceeding two square foot in area), outdoor advertising, display, mobile home, utility pole, or other temporary or permanent structure of any kind, except as may be consistent with or incidental to the purposes of the Conservation Easement;



3. Grantee shall not permit any soil, loam, peat, sand, gravel, sand, rock or other mineral substance, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or unsightly or offensive material to be placed, stored, dumped or remain on the Conservation Area except as may be consistent with or incidental to the purposes of the Conservation Easement;
4. Grantee shall not permit any loam, peat, gravel, sand, rock or other mineral resource or natural deposit to be excavated or removed from the Conservation Area in such a manner as would affect the surface thereof, except as may be consistent with or incidental to the purposes of the Conservation Easement;
5. Grantee may remove or permit removal of plants, shrubs and trees from the Conservation Area, and may plant, re-plant, and selectively cut or prune trees, shrubs and brush and other vegetation on and in the Conservation Area in such manner, and at such times as may be necessary to preserve the presently existing and future scenic quality of the Conservation Area and to implement disease prevention measures;
6. Grantee shall have the right to develop and maintain trails, and to construct and maintain pedestrian bridges and walkways, consistent with a conversation management plan, as may be adopted by and changed from time to time by the Winchester Conservation Commission.
7. Grantee shall not allow in the Conservation Area any active recreational use, including, without limitation, discharging of firearms, or other projectiles, using bows and arrows or using any type of motor vehicle or boat, or camping, except that Grantee may use motor vehicles and boats to patrol, maintain and otherwise manage and enjoy the Conservation Easement; and
8. With reference only to Grantee's use or activity hereunder, Grantee shall not allow in the Conservation Area any use or activity which would derogate from the provisions of M.G.L. Chapter 184, Sections 31 through 33.

It is the express intent of Grantor that, subject only to the provisions hereof, Grantee shall have such full use, custody and control in perpetuity over the Conservation Area as Grantee would otherwise have if this were a grant to Grantee of a fee simple interest in the Conservation Area rather than an easement over the Conservation Area.

WITNESS the execution hereof under seal as of the day of , 2015.

Wright-Locke Land Trust, Inc.

Thomas R. Howley, President duly authorized

Commonwealth of Massachusetts

Then personally appeared the above-named Thomas R. Howley and acknowledged the foregoing instrument to be his free act and deed as President as aforesaid, before me

Notary Public (*print name*)

My commission expires: _____

Approval of Selectmen and Conservation Commission

We, the undersigned Board of Selectmen of the Town of Winchester, Massachusetts, and the Winchester Conservation Commission, pursuant to the Massachusetts General Laws Chapter 40, Section 8C, approve the foregoing conveyance to the said Town.

Conservation Commission

Board of Selectmen