

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT, made this 24th day of March, 2016, by and between
 _____ ("**Purchaser**"),
 and _____, individuals residing ("**Seller**").

W I T N E S S E T H :

WHEREAS, Seller is the owner of an approximate Two Hundred Twenty-eight and four-tenths (228.4) acre parcel of land in the Town of _____, County of _____, State of New York, with all improvements included but not limited to farm house ("**Farm House**") thereon, known as Tax Map Nos. _____, together with all easements, rights of way, privileges, appurtenances and other rights pertaining thereto ("**Property**"); and

WHEREAS, Seller wishes to sell the Property and Purchaser wishes to purchase the Property on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Purchase.** Purchaser agrees to purchase from Seller, and Seller agrees to sell and convey to Purchaser, the Property pursuant to the terms, covenants and agreements set forth below.
2. **Purchase Price.** Purchaser agrees to pay and Seller agrees to accept the purchase price for the Property in the amount of Four Hundred Thirty Five Thousand and 00/100 Dollars (\$435,000.00) ("**Purchase Price**") payable by Purchaser as follows:
 - (a) One Thousand Dollars and 00/100 (\$1,000.00) ("**Down Payment**") deposited with _____, attorney for the Seller, located _____ ("**Escrow Agent**"), upon the execution of this Agreement by Purchaser, receipt of which is to be promptly acknowledged by Escrow Agent, which shall be held in a non-interest bearing account and disbursed in accordance with this Agreement; and
 - (b) The balance either by cashier's or certified check, payable to the order of Seller or by wire transfer to an account designated by Seller upon the delivery of the Deed (hereinafter defined) and other instruments in accordance with the terms hereof.
3. **Financing.**
 - (a) **Financing.** This Agreement is subject to and contingent upon Purchaser obtaining, at its sole cost and expense, financing in an amount not to exceed the Purchase Price upon such terms and conditions as are acceptable to Purchaser to acquire the Property.

(b) **Failure of Financing.** It is agreed that if a binding commitment to provide the financing set forth in Section 3(a) above cannot be obtained by Purchaser within forty-five (45) days of the date hereof, Purchaser, in Purchaser's sole discretion, by written notice to Seller, may terminate this Agreement, the Down Payment shall promptly be returned to Purchaser, and thereafter this Agreement shall be null and void, and the parties shall be discharged from any liability to each other.

4. **Closing Date.** The consummation of the transaction contemplated hereby (the "**Closing**") shall take place on or about seventy-five (75) days from the date of this Agreement ("**Closing Date**"), but in no event unless and until the contingencies set forth herein are met or waived.

5. **Representations and Warranties.**

(a) Seller certifies, represents, warrants and agrees that:

- (i) Seller owns legal and beneficial title to the Property, free and clear of all liens and encumbrances except for those liens and encumbrances which will be removed at Closing, and except for utility easements and/or rights of way approved by Purchaser and of benefit to the Property. Seller will provide Purchaser with copies of those liens and encumbrances to be removed at Closing, upon request of Purchaser;
- (ii) There are no leases affecting the Property and no parties with any rights of possession in the Property except for month to month tenancy occupying the Farm House with a monthly rental rate of \$500.00.
- (iii) No notices of violation of any law or municipal ordinances or of federal, state, county or municipal or other governmental agency regulations, orders or requirements relating to the Property have been entered or received by Seller, and Seller has no reason to believe that any such notice may or will be entered;
- (iv) The Property is zoned for vacant farm land, and upon information and belief, Purchaser's planned use in its farming operation does not violate any applicable deed restrictions affecting the Property or any other covenants, restrictions or agreements, site plan approvals, subdivision regulations applicable to the Property. Seller has no knowledge of any proposed change in the zoning classification for the Property or any part thereof.
- (v) There is no action or proceeding (zoning or otherwise) or governmental investigation pending, or, to the knowledge of Seller, threatened against or relating to Seller, the Property or the transaction contemplated by this Agreement, nor, to the knowledge of Seller, is there any basis for such action;

- (vi) Seller has full right, power and authority to sell and convey the Property to Purchaser as provided in this Agreement and to carry out their obligations hereunder and the persons executing this Agreement have full authority to do so;
- (vii) The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and compliance with the terms of this Agreement will not conflict with, or, with or without notice or the passage of time, result in a breach of, any of the terms or provisions of, or constitute a default under, any instrument to which Seller is a party or by which Seller is bound, or any applicable regulation of any governmental agency, or judgment, order or decree of any court having jurisdiction over Seller.
- (viii) None of the activities of Seller, and to the best of Seller's knowledge none of the activities of any past owner or past or present operator or tenant of the Property, have resulted in the generation of any "**Hazardous Substances**" (Hazardous Substances shall mean any and all hazardous or toxic materials, substances, pollutants, contaminants and wastes, including but not limited to all elements and compounds defined as "Hazardous Substances", "Hazardous Waste", "Hazardous Material", "oil" or "petroleum products" under any governmental environmental law or regulation but shall exclude any livestock manure) nor has Seller, or to the best of Seller's knowledge has any past owner, operator or tenant, stored, disposed of or released any Hazardous Substance on the Property, nor used all or any part of the Property as a depository for Hazardous Substances, nor do the improvements on the Property contain asbestos, nor does any equipment contain polychlorinated biphenyls. **There is one (1) underground storage tank on the Property.** Seller further certifies, represents and warrants to Purchaser that neither the Property nor to the best of Seller's knowledge is any adjacent property listed on the National Priority List of Suspected Hazardous Waste Sites, nor are they listed on any state report of inactive hazardous waste sites, and that no event has occurred which, with the passage of time or the giving of notice or both, would constitute non-compliance with any governmental environmental law or regulation. Seller hereby agrees to provide Purchaser, and/or any lending institution of Purchaser, with satisfactory proof of the foregoing certifications, representations, and warranties, acceptable to Buyer's and lending institution's respective legal counsel.
- (ix) there are no contracts affecting the Property; and no services, material or work have been supplied by Seller's contractors, subcontractors or material persons with respect to the Property for which payment has not been made in full.

- (b) All of the certifications, representations, warranties and agreements set forth in this Section 5 and elsewhere in this Agreement shall be true upon the execution of this Agreement, shall be deemed to be repeated at and as of the Closing Date and shall survive the delivery of the Deed and other closing instruments and documents. In the event any of the certifications, representations, warranties and agreements herein set forth shall not be true as of the Closing Date, Purchaser shall not be obligated to perform its obligations under this Agreement. Seller will indemnify and hold Purchaser harmless from and against any damage, liability, fines, penalties, costs or losses, to which Purchaser may be subjected as the result of Seller's breach of any certifications, representations, warranties and agreements herein.

6. Seller's Covenants.

- (a) Between the date hereof and the Closing Date, Seller will not enter into any leases of any portion of the Property, nor enter into any other agreements affecting the Property, in each case without the prior written consent of Purchaser; and
- (b) Seller will provide Purchaser with the following documents within thirty (30) days of the date hereof:
- (i) an up-to-date, Abstract of Title to the Property;
 - (ii) an existing survey of the Property; if any;
 - (iii) an official real property tax search;
 - (iv) copies of the real estate tax bills for the Property for the current tax year(s); and
 - (v) appropriate bankruptcy federal court searches and judgment liens searches.

7. Contingencies. This Agreement is contingent upon the following:

- (a) Purchaser, at Purchaser's Expense, obtaining within twenty (20) days of the date of this Agreement, a water quality test complying with the minimum standards established by the _____ County Health Department for both the drilled well and the spring-fed water sources located on the Property. If the results of such water quality tests are not satisfactory to Purchaser, in Purchaser's sole discretion, then Purchaser, by written notice to Seller given within twenty (20) days of receiving such water quality results, may terminate this Agreement.
- (b) The Purchaser and Seller mutually agreeing upon the boundary lines set forth in the Subdivision before such Subdivision map is submitted to the Town of Mohawk and County of _____ for approval.

- (d) Seller providing Purchaser with rent roll which shall include the amount of security deposit for farmhouse tenant within twenty (20) days of the date of this Agreement.
- (e) In the event any of the contingencies set forth in this Section 7 have not been satisfied and Purchaser so elects to terminate this Agreement by notice given to Seller, then upon receipt of notice, Seller shall instruct Escrow Agent to promptly return to Purchaser the Down Payment and thereafter this Agreement shall be null and void, and the parties shall be discharged from any liability to each other.

8. Apportionments and Closing Expenses.

- (a) The real property taxes, farmhouse rentals and all other assessments, if any, are to be apportioned as of the Closing Date as to the Property:
- (b) The apportionment of taxes shall be made on the basis of the last ascertainable tax bill.
- (c) Seller shall pay any and all state, county and city transfer taxes payable in connection with the transfer of the Property.

9. Closing Documents.

- (a) At the Closing, Seller, at its sole cost and expense, shall deliver to Purchaser the following (each document hereafter mentioned to be in form and substance reasonably satisfactory to Purchaser and its legal counsel):
 - (i) A good and sufficient Warranty with Lien Covenant Deed ("**Deed**"), containing all customary covenants, so as to convey to Purchaser good and marketable fee simple absolute title to the Property, free of all liens and encumbrances, except utility easements and/or rights of way previously approved by Purchaser and of benefit to the Property, which shall be in recordable form, duly executed and acknowledged, along with a New York State Department of Taxation and Finance (Form TP-584), Credit Line Mortgage Certificate, and Real Property Transfer Report (Form RP-5217), executed and acknowledged, as applicable, for delivery to the County Clerk to allow recordation of the Deed. The Deed shall include the conveyance of all subsurface rights.
 - (ii) Any affidavit required by the Title Company in order to delivery title insurance coverage to Purchaser.
 - (iii) Certification that the Representations and Warranties set forth in Section 5 are true and correct as of the date of Closing.

- (b) At the Closing, Purchaser shall deliver to Seller the balance of the Purchase Price pursuant to Section 2 hereof to be paid by either cashier's or certified check or by wire transfer to Seller's designated account.
10. **Title Insurance.** The Property shall be sold to Purchaser, and good and marketable title thereto is to be conveyed to Purchaser. Within thirty (30) days of Seller's delivery to Purchaser of the documents required pursuant to Section 6(b) above, Purchaser may order a title insurance report for issuance of a fee title insurance policy from a title company selected by Purchaser ("**Title Company**"), at Purchaser's sole cost and expense, and within twenty (20) days after receipt of such report, Purchaser shall furnish a copy thereof to Seller's attorneys. Upon receipt of the title report, Seller shall forthwith undertake, with due diligence, to eliminate those exceptions which Purchaser is not required to accept under the terms of this Agreement, and, if necessary, shall have the right to adjourn the Closing for a period or periods not to exceed thirty (30) days in the aggregate. If Seller is unable to eliminate such exceptions and to convey good and marketable title in accordance with the terms of this Agreement on the Closing Date, so extended, Seller shall so notify Purchaser and Purchaser may thereafter terminate this Agreement by notice given to Seller. If Purchaser elects to terminate this Agreement, Seller shall cause the Down Payment to be returned to Purchaser and upon such return neither party shall have any further rights or obligations hereunder.
11. **Purchaser's Waiver.** Purchaser may waive compliance by Seller in respect of any of Seller's representations, warranties and agreements and any contingencies set forth in this Agreement.
12. **Purchaser's Default.** If Seller shall tender the Deed and all other documents, instruments, items and payments required by this Agreement in full compliance with its obligations hereunder, and if Purchaser shall fail or refuse to close title as required by the terms of this Agreement, or if Purchaser otherwise is in default hereunder so that Seller has the right to refuse to close title, then Seller's sole remedy shall be to retain the Down Payment, as liquidated damages, and thereupon no party to this Agreement shall have any further rights or obligations hereunder.
13. **Risk of Loss.** The Property will be conveyed in the same condition as it was when this Agreement was executed, less ordinary wear and tear, all mechanical systems and appliances to be in good working order. Seller bears the risk of loss or damage to the Property, by any cause, until the Deed is delivered to Purchaser at Closing.
14. **Broker.** Seller and Purchaser each represent to the other that they have not hired or dealt with any broker, finder or like agent in connection with the transaction contemplated herein. Each of the parties hereto shall indemnify the other against, and shall hold the other harmless from, any claims for brokerage commissions made by any other broker, finder or like agent with whom such party has dealt.
15. **Specific Performance.** If Seller fails to comply with any of the provisions of this Agreement then, in addition to all other legal remedies available to Purchaser by reason

of Seller's default, Purchaser shall have the right to obtain specific performance of Seller's obligations hereunder.

16. **Notices.** All notices, demands or requests made pursuant to, under or by virtue of this Agreement must be in writing and either personally delivered with receipt thereof or mailed to the party to which the notice, demand or request is being made by certified or registered mail, return receipt requested, as follows:

To Seller:

To Purchaser:

With a copy to:

Notices given as aforesaid shall be deemed given on the day personally delivered, three (3) business days after mailing, or one (1) business day after depositing with a nationally recognized overnight courier, as the case may be.

17. **Seller Compliance with Real Estate Reporting Requirement of 1986 Tax Reform Act.** Seller agrees to comply with the real estate reporting requirement of the Internal Revenue Code of 1986, as amended, and to file with the Internal Revenue Service a Form 1099 or such other form acceptable to the Internal Revenue Service. Seller shall indemnify, defend and hold harmless Purchaser from and against any and all claims, liabilities, costs and expenses resulting from failure to comply with said real estate reporting requirement.
18. **Entire Agreement.** This Agreement contains all of the terms agreed upon between the parties with respect to the subject matter hereof. This Agreement may not be changed, modified or terminated, except by an instrument executed by the parties hereto.
19. **Waiver.** No waiver by either party of any failure or refusal to comply with its obligations shall be deemed a waiver of any other or subsequent failure or refusal to so comply.
20. **Successors and Assigns.** The provisions herein shall inure to the benefit of, and shall bind, the heirs, executors, administrators, successors and assigns of the respective parties.
21. **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstances shall, 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 it is held invalid or enforceable, 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.

- 22. **Further Assurances.** The parties hereto shall do, execute, acknowledge and deliver, at each party's sole cost and expense, all and every such further documents as any party hereto may reasonably require from time to time in order to better assure, convey, assign, transfer and confirm the transfer of title to the Property to Purchaser.
- 23. **Section Headings.** The headings of the various sections of this Agreement have been inserted only for the purposes of convenience, and are not part of this Agreement and shall not be deemed in any manner to modify, explain or restrict any of the provisions of this Agreement.
- 24. **Governing Laws.** This Agreement shall be governed by the laws of the State of New York.
- 25. **Assignment of Agreement.** Purchaser may, at its sole option, assign this Agreement to a limited liability company to be created by Purchaser and/or Purchaser's son and daughter-in-law, without the consent of Seller but upon notice to Seller.
- 26. **Date of Contract.** The date of this Agreement shall be deemed to be the later of the dates of full execution hereof by Seller and Purchaser.
- 27. **Acceptance of Contract.** This Agreement shall be null and void and of no force and/or effect if not fully executed by Seller and Purchaser by 5:00 p.m. on April 8, 2016.
- 28. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be original and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto.

PURCHASER:

Dated: _____, 2016

Dated: _____, 2016

SELLER:

Dated: _____, 2016
