

PURCHASE AND SALE AGREEMENT

[Osterhoudt Property]

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is made as of the __ day of _____, 2023 (“Effective Date”), between OPEN SPACE INSTITUTE LAND TRUST, INC., a New York not-for-profit corporation, with an address at 1350 Broadway, Room 201, New York, New York 10018 (“Seller”) and TOWN OF MARBLETOWN, a New York municipal corporation having its office at 1925 Lucas Avenue, Cottekill, New York 12419 (“Buyer”).

W I T N E S S E T H:

WHEREAS, Seller is a tax-exempt organization dedicated to the preservation of natural, scenic and historic lands in New York State, including lands in and around the Rondout Valley and Ulster County more generally and is the owner in fee simple of approximately 97 acres of real property situate in the Town of Marbletown, Ulster County, New York (the “Premises”), which land is more fully described on the tax map of the Town of Marbletown as tax parcel 61.20-3-9.400 and as depicted on Exhibit A attached hereto and made a part hereof; and

WHEREAS, Buyer is a municipal corporation in Ulster County, State of New York; and

WHEREAS, the Premises possesses significant scenic, natural, recreational, wildlife, and other open space features; and

WHEREAS, Buyer, through its Town Board, adopted the Marbletown Community Preservation Plan (“Plan”) in accordance with subdivision 6 of Section 6-s of the General Municipal Law, which Plan identifies the Premises as a priority for open space acquisition consistent with Town of Marbletown Local Law No. 5 of 2022; and

WHEREAS, Seller wishes to sell the Premises to Buyer and Buyer wishes to purchase the Premises from Seller in accordance with the terms and conditions hereof.

NOW, THEREFORE, subject to the provisions set forth herein, the parties agree as follows:

1. Sale of Premises.

Upon and subject to the terms and conditions herein contained, Seller agrees to sell and convey to Buyer the Premises, and Buyer agrees to purchase from Seller the Premises.

2. Purchase Price and Deposit.

2.1 The purchase price for the Premises shall be ONE MILLION ONE HUNDRED THOUSAND DOLLARS (\$1,100,000.00).

2.2 In addition to the Purchase Price payable to Seller at the Closing, taxes shall be adjusted pursuant to Paragraph 7.

3. Acceptable Funds.

All money payable under this Agreement, unless otherwise specified, shall be either:

(a) Good certified check of Buyer, or official check of any bank, savings bank, trust company, or savings and loan association having a banking office in the State of New York, payable to the order of Seller;

(b) Money, other than the Purchase Price, payable to Seller at the Closing may be by check of Buyer up to the amount of Five Thousand (\$5,000.00) dollars; or

(c) By wire transfer of funds to seller's attorney's escrow account;

(d) As otherwise agreed to in writing by Seller or Seller's attorney.

4. Conditions of Title.

Seller shall convey the Premises to Buyer by a bargain and sale deed with covenant against grantor's acts, conveying marketable fee simple title to the Premises, subject only to (1) a lien for non-delinquent real property taxes; (2) utility company rights, licenses and/or easements to maintain poles, lines, wires and other installations presently servicing the Premises; (3) certain easements, covenants and restrictions of record, provided

same does not render title to the Premises unmarketable; (4) any matters that would be disclosed by an accurate survey and inspection of the Premises; (5) all applicable zoning laws, regulations and ordinances; and (6) any other matter approved by Buyer in writing.

5. Title Company Approval.

At its sole cost and expense, Buyer shall procure a title examination for the Premises. Seller shall give and Buyer shall accept such title as any title company which is a member of The New York Board of Title Underwriters will be willing to approve and insure in accordance with their standard form of title insurance policy, subject only to the matters provided in Paragraph 4 of this Agreement and provided that the same does not render title to the Premises unmarketable.

6. Closing Defined and Form of Deed.

6.1 "Closing" means the settlement of the obligations of Seller and Buyer to each other under this Paragraph 6 and other provisions of the Agreement. The Closing shall occur on or about that date (the "Closing Date") which is three years after the Effective Date unless Buyer and Seller mutually agree to an earlier Closing Date pursuant to this Paragraph 6. In no event shall the Closing Date be earlier than thirty (30) days after the end of the Due Diligence Period specified in Paragraph 10.3.

6.2 Seller shall deliver the following, at or prior to Closing, which deliveries shall be conditions precedent to Buyer's obligation to perform hereunder:

(a) Seller shall execute, acknowledge and deliver to Buyer a bargain and sale deed with covenant against grantor's acts respecting the Premises (the "Deed"), in proper statutory form so as to be recordable in the Ulster County Clerk's Office and free of all liens and encumbrances except as permitted in Paragraph 4 of this Agreement. The Deed shall contain the covenants by Seller required by Section 13 of the Lien Law.

(b) Seller shall execute, acknowledge and deliver to Buyer Forms TP-584 and RP-5217 and deliver a check in payment of real property transfer taxes and for filing form TP 584.

6.3 Buyer shall deliver the checks and instruments representing the payment of the Purchase Price in accordance with Paragraph 2 hereof.

7. Apportionments.

7.1 Town, county, and school taxes are to be apportioned as of 11:59 p.m. the day before the day of the Closing. If the Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the most recent tax bill for the immediately preceding fiscal year.

7.2 Any errors or omissions in computing apportionments at the Closing shall be corrected. This provision shall survive the Closing.

8. Use of Purchase Price to Discharge Encumbrances.

If there are other charges affecting the Premises that Seller is obligated to pay and discharge at the Closing, Seller may use any portion of the balance of the Purchase Price to discharge it. As an alternative, Seller may deposit the money with the title insurance company employed by Buyer required by it to assure its discharge, but only if the title insurance company will insure Buyer's title clear of the matter. Upon request, made within a reasonable time before Closing, Buyer agrees to provide separate certified checks as requested to discharge such matters.

9. Transfer Taxes/Recording Fees.

At the Closing, Seller shall pay the New York State Real Property Transfer tax due in accordance with Article 31 of the New York Tax Law and any other transfer tax payable by reason of the delivery of the Deed and other closing documents. Buyer and Seller shall complete and sign form TP-584 and such other tax returns and forms required to enable the Deed and other closing documents to be recorded. Buyer shall cause such checks and tax returns to be delivered to the appropriate recording officers promptly after the Closing. Buyer shall also pay the fees to record the Deed and other documents, if any, to be recorded in connection with the transaction other than for recording/filing fees for discharge of a mortgage, filing form TP 584 or other matters for which the Seller is responsible. The provisions of this paragraph shall survive the Closing.

10. Right to Inspect Premises.

10.1 Prior to the Closing, Buyer, through its employees and agents, may enter upon the Premises for the purpose of making inspections, surveys and investigations

as Buyer deems appropriate, including, without limitation, making an environmental assessment of the soils, waters and improvements, if any, on the Premises. Upon execution of this Agreement, Seller shall immediately provide Purchaser with: a) copies of all environmental audits /assessments/studies of every kind whatsoever of the Premises that were conducted by or on behalf of the Seller; b) copies of all title abstracts, title reports and title policies for the Premises in Seller's possession; and c) copies of any surveys of the Premises in Seller's possession.

10.2 Buyer does hereby indemnify and hold Seller, its officers, directors, principals, employees and guests, as the case may be, harmless from and against any and all liability, loss, cost, claim, action, suit and/or expense (including, but not limited to, reasonable attorney's fees and litigation expenses) which Seller may suffer or incur by reason of Buyer's presence on the Premises for the purpose of making any such inspections, investigations and survey. Seller shall provide Buyer with documentation related to any known current or former underground storage tanks. Seller shall also provide Buyer with any existing surveys and shall permit prior surveyors to share work with Buyer. Buyer shall remediate any disturbance to the Premises as a result of any investigation conducted by Buyer and return the Premises to the same condition it was in at the time of the execution of this Agreement in the event Seller terminates this Agreement.

10.3 Should Buyer determine, in its sole discretion based on its investigation of the Premises that the conditions on the Premises are unacceptable to Buyer, Buyer shall have the right at its option to terminate this Agreement by written notice to Seller, and thereafter the parties shall have no further liability to each other. If such notice is not delivered to Seller within one hundred and twenty days (120) days after the execution of this Agreement by both parties (the "Due Diligence Period") or within an extension of the Due Diligence Period as agreed to by both parties in writing, Buyer shall have waived its rights to terminate this Agreement due to the conditions on the Premises that are unacceptable to Buyer.

11. Seller's Failure to Convey Title.

In the event of Seller's failure to convey title to Buyer as provided in this Agreement because of its willful default, Buyer shall have available to it all remedies available under law or equity including, without limitation, the right of specific performance.

12. Buyer's Failure to Accept Title.

If Seller is ready, willing and able to convey the Premises under this Agreement at the Closing and Buyer shall be in default hereunder through no fault of Seller, then, in such event, Seller shall have available to it all remedies available under law and equity.

13. Real Estate Brokers.

13.1 Seller agrees to indemnify, defend and save Buyer harmless from and against any expense (including legal fees), claim, loss or liability in connection with any brokers, agents, or finder's fees that may be asserted against Buyer arising out of Seller's retention of, or dealings with, any brokers, agents or finders.

13.2 Buyer agrees to indemnify, defend and save Seller harmless from and against any expense (including legal fees), claim, loss or liability in connection with any brokers, agents, or finder's fees that may be asserted against Seller arising out of Buyer's retention of, or dealings with, any brokers, agents or finders.

The provisions of this paragraph shall survive the Closing.

14. Seller's Covenants.

14.1 Seller covenants that, from and after the date hereof until the Closing, Seller will not:

(a) Make or suffer to be made any new leases, contracts, options or agreements whatsoever affecting the Premises, other than a one-year agricultural lease to a farmer, which lease is subject to review and prior approval by Buyer, nor shall Seller cause or permit any lien, encumbrance, mortgage, right, restriction or easement to be placed upon the Premises, except pursuant to this Agreement;

(b) Cause or permit any dumping or depositing of any materials on the Property, including, without limitation, garbage, appliances, vehicles, construction debris or solid or liquid wastes of any kind; or

(c) Undertake or allow any cutting or removal of trees or other vegetation on the Premises other than a continuation of current farming practices on the Premises, and shall not remove or allow others to remove any soil, rocks, minerals, nor engage in or allow others to engage in the extraction of subsurface water, oil or gas nor allow any structures of any kind including but not limited to buildings, towers, wind turbines and/or solar arrays on the Premises.

14.2 Buyer shall have the right to inspect the Premises at any time prior to the Closing to ensure that the provisions of this Agreement have been reasonably complied with.

14.3 Seller shall promptly cure, at Seller's sole cost and expense, each and every breach or default of any covenant set forth in this paragraph upon learning of such breach or default or receipt of notice thereof by Buyer. After giving Seller written notice of any such breach or default and a reasonable opportunity to cure, Buyer shall have the right, but not the obligation, to cure or cause to be cured any such breach or default, if, in Buyer's reasonable judgment, Seller has failed to promptly or completely cure the same. The reasonable costs of such cure attempted or affected by Buyer may, at Buyer's election, be credited against the balance of the Purchase Price.

15. Seller's Representations and Warranties.

Seller makes the following representations and warranties to Buyer and understands that Buyer shall rely on such representations and warranties. The accuracy of each of the representations and warranties as of the date of this Agreement and on and as of the date of Closing shall be a condition precedent to Buyer's obligations hereunder.

15.1 Seller owns the Premises and has the full power and authority to sell, transfer and convey the Premises in accordance with the terms of this Agreement.

15.2 Seller has the full power and authority to execute and deliver this Agreement and all documents now or hereafter to be executed and delivered by Seller pursuant to this Agreement (the "Seller's documents") and to perform all obligations arising under this Agreement and under Seller's documents.

15.3 Seller has no knowledge of any lease, license, option, right of first refusal or other agreement, whether written or oral, which affects the Premises.

15.4 Seller does not know of any suit, action, arbitration, or legal, administrative or other proceeding pending or threatened against Seller which could affect Seller's title to the Premises or any portion thereof or Seller's ability to sell, transfer and convey the Premises in accordance with the terms of this Agreement.

15.5 Seller has no knowledge of notes or notices of violation of law, regulations or municipal ordinances that have been issued by or recorded in any Federal, State, County or Municipal department having jurisdiction over the Premises, against or affecting the Premises as of the date of this Purchase and Sale Agreement.

15.6 Seller has no knowledge of any actual or impending mechanics' or materialmen's liens against the Premises or any portion thereof.

15.7 Neither the making of this Agreement nor the sale of the Premises contemplated hereby will constitute a breach or default under any agreement by which Seller or any of Seller's assets are bound and/or to which the Premises or any portion thereof is subject.

15.8 To Seller's knowledge, Seller is in compliance with all Environmental Laws, as hereinafter defined, applicable to the Premises and no event has occurred which, in itself or with notice or passage of time or both, would constitute a violation of any Environmental Law. For purposes of this Agreement the term "Environmental Law(s)" means each and every federal, state and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal, state and local governmental agency or other governmental authority pertaining to the protection of human health and safety or the environment which now or at any time hereafter may be applicable to Seller, Seller's predecessors in title, or the Premises.

15.9 There are no actions, suits, or proceedings pending or threatened, or any basis therefor, against or affecting Seller or the Premises at law, in equity or before or by any governmental department, commission, board, bureau, agency or other instrumentality, arising out of or related to the violation of any Environmental Law.

15.10 Seller has no knowledge of any condition at, on, under or related to the Premises presently or potentially posing a significant hazard to human health or the environment (whether or not such condition constitutes a violation of law). To the best of

Seller's actual knowledge, there has been no production, use, treatment, storage, transportation, or disposal of any Hazardous Substance (as hereinafter defined) on the Premises, nor has there been any release or threatened release of any Hazardous Substance, pollutant or contaminant into, upon or over the Premises or into or upon ground or surface water at the Premises. To the best of Seller's actual knowledge, no Hazardous Substance is now or ever has been stored on the Premises in underground tanks, pits or surface impoundments. As used herein, "Hazardous Substance" means any substance which is (i) defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law (defined below), (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof, (iii) hazardous, toxic, corrosive, flammable, explosive, infectious, radioactive, carcinogenic, or reproductive toxicant, (iv) regulated pursuant to an Environmental Law, or (v) any pesticide regulated under state or federal law.

15.11 Seller represents that it is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act.

16. Notices.

16.1 Any written notice required or permitted to be given under this Agreement shall be in writing and shall be made by hand delivery, express delivery service, freight prepaid, or by certified mail, return receipt requested. Notices may also be given by facsimile or electronic mail, provided the Notices are concurrently given by one of the above methods. Any written notice shall be sent as follows:

- (a) If to Seller, at the address first set forth above in this Agreement;
- (b) If to Buyer, to the address set forth above in this Agreement.

16.2 The attorneys for the parties hereto are hereby authorized, on behalf of their respective clients, to serve any written notice, or receive written notice, whenever such notice is provided to be given under the terms of this Agreement, and to extend any of the time limitations as provided in this Agreement. Any such notice and/or extension shall be in writing and duly signed by such attorneys.

16.3 Notices given as provided above shall be deemed given on the day following the date so mailed.

17. Miscellaneous Provisions.

17.1 Merger. All understandings and agreements previously had between the parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement. The parties acknowledge that this Agreement is entered into after full investigation, neither party relying upon any statement or representation not embodied in this Agreement made by the other.

17.2 Amendment. This Agreement may not be changed or amended except in writing and signed by both parties.

17.3 Severability. If any term or provision of this Purchase and Sale Agreement, or the application thereof, to any person circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Purchase and Sale Agreement shall be valid and enforceable to the fullest extent provided by law.

17.4 Successors and Assigns. This Agreement shall apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

17.5 No Third-Party Benefit. This Agreement is intended for the exclusive benefit of the parties hereto and, except as otherwise expressly provided herein, shall not be for the benefit of, and shall not create any rights in, or be enforceable by, any other person or entity.

17.6 Full Performance/Survival. The acceptance of the Deed by Buyer shall be deemed to be full performance by, and discharge of Seller of, all terms, conditions, and agreements made or required to be performed hereunder and no liability therefore on the part of Seller shall survive the delivery of the deed unless otherwise agreed to between the parties in writing or specifically set forth herein as surviving the Closing.

17.7 Additional Documents. Seller and Buyer agree to execute such additional documents as may be reasonable and necessary to carry out the provisions of this Agreement.

17.8 Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, all of which when taken together will constitute one and the same

agreement. The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature, electronically scanned and transmitted versions of an original signature (e.g., via pdf), and electronic signatures produced via DocuSign or other similar software.

18. Governing Law.

This Purchase and Sale Agreement shall be interpreted and construed under New York law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

SELLER

**OPEN SPACE INSTITUTE LAND
TRUST, INC.**

By: _____

Name:

Title:

BUYER

TOWN OF MARBLETOWN

By: _____

Name:

Title:

Exhibits:

Exhibit A (Premises Map)