

AGREEMENT FOR REHABILITATION AND SALE OF REAL ESTATE

THIS AGREEMENT made and entered into this ____ day of _____, 2014, by and between the **TOWN OF BERWICK**, or its nominee, with a mailing address at Town of Berwick, Attn. Town Manager, 11 Sullivan Street, Berwick, Maine 03901 (referred to herein as the "Town"); and **The Fund of Jupiter, LLC, a Florida limited liability company** or its nominee, with a mailing address of _____ (hereinafter sometimes referred to as "FOJ").

W I T N E S S E T H:

WHEREAS, THE TOWN has outstanding, matured tax liens on property of the Prime Tanning Co., Inc., a corporation organized under the laws of the State of Maine, the current fee owner ("Owner") of the property known as the former Prime Tanning property located at 20, 29, 34, and 35 Sullivan Street and 27 School Street, Berwick, Maine and further described on Exhibit A attached hereto and incorporated herein (hereinafter the "Property"), and

WHEREAS, FOJ is also a secured creditor of the Owner and is the holder of a Mortgage, Security Agreement, Lease Assignment, and Financing Statement dated January 22, 2012 and recorded in the York County Registry of Deeds in Book 15824, Page 230, as amended, granted by the Owner as collateral for the Owner's indebtedness to FOJ.

WHEREAS, the Town intends to submit an application for a grant or grants (the "Grant Applications") from the Environmental Protection Agency (the "EPA") or other bodies, such the Southern Maine Planning and Development Commission ("SMPDC"), to provide funds to perform certain environmental assessment or remediation activities or both on the Property (the "Environmental Activities") to be carried out by qualified third parties. The Environmental Activities may consist of some or all of the following:

(a) Conducting a Phase I Environmental Site Assessment in accordance with ASTM International Standard Practice E 1527-13, including accessing the property to conduct a walking survey of the exterior and interior spaces of the premises.

(b) Conducting a supplemental Phase II Environmental Site Assessment in accordance with ASTM 1927-11. This assessment will include the following work tasks:

- i. Accessing the Property to conduct a walking survey of the exterior and interior spaces of the Property.
- ii. Accessing the Property with a truck mounted drill environmental drill rig and drilling borings into the subsurface of the Property for the purpose of collecting environmental samples (soil, sediment, air) for laboratory analyses. Monitoring well may be left inside each boring at the discretion of the environmental consultant.
- iii. Destructively collecting samples of building materials, including but not limited to, roof membrane, paint, caulk, window glazing, concrete, insulation, and floor tiles for laboratory analyses.
- iv. Selectively removing or demolishing buildings, sidewalks, pavement, and storage tanks (underground and aboveground) and other structures or improvements for the purpose collecting soil, sediment, and air samples for laboratory analyses from under these structures.
- v. Accessing the Property to collect groundwater samples from any monitoring wells on the Property for laboratory analyses.

WHEREAS, if the EPA and/or other bodies approve the Grant Applications and awards the grant(s) to the Town (singly and collectively, the "Grants"), then the Town intends for its selected environmental consultant (selected by the Town subject to approval by FOJ, which will not be unreasonably withheld) and its employees and subcontractors (singly and collectively "Environmental Consultant") to enter upon and have access to the Property in order to perform the Environmental Activities; and

WHEREAS, as a condition to obtaining the Grants, the Town needs to have title to the Property; and

WHEREAS, FOJ desires the Environmental Activities to occur if the Grants are awarded to the Town and has an interest in acquiring the Property for future redevelopment and improvement; and

WHEREAS, the parties determined that it would be advantageous for the Property to be subdivided before the Town acquires title through the foreclosure of its tax liens and

before the application for the Grants and subdivision approval was granted by the Berwick Planning Board on October 16, 2014; and

WHEREAS, the board of selectmen of the Town has determined that it would be in the public interest in order to assess and abate any adverse condition of the Property for the Town to acquire the Property by foreclosing its matured tax liens for the purpose of obtaining the Grants, assessing the condition of the Property as necessary, carrying out remediation measures, and transferring title to FOJ; and

WHEREAS, FOJ is a firm with the fiscal capacity and experience and capabilities to perform this agreement, and

WHEREAS, FOJ is ready, willing and able to assist the Town in carrying out the grant application process and remediation and further is, subject to the terms of this Agreement, ready, willing and able to purchase the Property from the Town,

NOW, THEREFORE, the parties, in consideration of their mutual covenants and agreements herein and for other good and valuable considerations, the sufficiency whereof is hereby acknowledged, and intending to be bound, agree as follows:

1. The Town will seek approval of this Agreement and the appropriations thereunder at a Town Meeting.
2. Upon approval of this Agreement at Town Meeting as provided in paragraph 1 above, the Town will seek approval of the bankruptcy court (with the cooperation of the FOJ) to foreclose the outstanding tax liens against Prime Tanning as Owner, vesting title in the Town.
3. As the owner of the subdivided Property, the Town will submit the Grant Applications to the EPA, and, as appropriate, other bodies (such as SMPDC). Neither party shall agree to any restriction or condition precedent to acceptance of the grant(s) that is inconsistent with the terms or purposes of this Agreement, and/or is not approved by the other in writing. Without limiting the foregoing, the Town shall not agree to any restriction that would impair its ability to convey the Property pursuant to the option (as described below).

4. When the Grants are received the Town will provide its required matching funds, if any (not to exceed 20%) as authorized by the Town Meeting and subject to the terms of this Agreement. FOJ agrees upon the request of the Town to advance to the Town monies sufficient to enable the Town to provide the match required to obtain and receive the Grants, any amount so advanced to be credited to the amount to be paid to the Town for the conveyance of the Property under either paragraph 5 or paragraph 6 below.

5. Subject only to any restrictions in the Grants that are agreed upon in writing by the Town and FOJ pursuant to section 3 of this Agreement, FOJ will have the right and option to acquire the property from the Town at any time upon payment of (a) the amount of unpaid taxes and interest (or such larger amount as may be necessary to enable the Town to recover all unpaid taxes and interest and any amounts expended by the Town following written approval by FOJ that are in excess of the funds provided by the Grants) and (b) the amounts payable under paragraph 7. For purposes of this Agreement, the term "unpaid taxes and interest" shall mean all taxes and interest owed through the date of the tax lien foreclosure.

6. Likewise, subject to any applicable grant restrictions as aforesaid, the Town will have the right to "put" the Property back to FOJ for payment of (a) the unpaid taxes and interest (or such larger amount as calculated pursuant to paragraph 6 above) and (b) the amounts payable under paragraph 7 at any time after receipt of the Grants and performance of all Environmental Activities funded by the Grant, assuring the Town the ability to recover its matching payment with respect to the Grants. To the extent that grants are not awarded during the 2014-2015 grant cycle, the Town may apply during the 2015-2016 grant cycle or thereafter for additional EPA grants for all assessment and remediation necessary or useful in the redevelopment of the Property, and in that case will refrain from exercising its "put" rights until after such additional grants have been applied for and, if additional grants are awarded, until after all Environmental Activities funded by such grants have been completed. In the event that the Town does not receive grant approval in the 2014-2015 grant cycle and elects not to submit any further grant application(s) after the 2014-2015 grant cycle, the Town may exercise its put right hereunder at any time.

7. FOJ agrees to reimburse the Town (a) for its reasonable attorney's fees incurred and paid with respect to this Agreement, not to exceed \$15,000.00 in the aggregate, within thirty (30) days following the presentation to FOJ of a request for reimbursement accompanied by copies of and itemized bill or bills for the services provided, and (b) for its

premiums paid to insure the Property against premises liability within thirty (30) days following the presentation to FOJ of a request for reimbursement accompanied by copies of and itemized bill or bills for the premiums, provided, however that such reimbursement shall not exceed \$4,000.00. FOJ agrees further to pay to the Town with respect to the period when the Town holds title to the Property the amount of taxes that would have been assessed against the Property had the Town not foreclosed its liens or a payment in lieu of taxes (PILOT) in an amount mutually agreed upon by the FOJ and board of selectmen of the Town.

8. The parties will agree to cooperate in good faith to carry out this plan. The parties understand and agree that this Agreement and the Town's obligation to provide matching funds as described in paragraph 4, is subject to and contingent upon authorization and approval by the legislative body of the Town. The grant in paragraph 5 of the option to FOJ to repurchase the Property is not subject to further approvals and is binding on the Town without further condition.

9. If the parties are not able to secure any grant(s) in an amount sufficient to enable the remediation of the Property, then either party shall be free to terminate the Agreement without liability to the other, subject to the buyback provisions stated in paragraphs 5 and 6 above.

10. The Town will have no duty to remediate or redevelop the Property or to expend any sum other than its matching contribution for the grant.

11. The Town shall convey the Property in fee simple to FOJ or its designee at the closing by municipal quitclaim deed with covenant, free and clear of all liens and encumbrances, but subject to any easements, covenants, and restrictions of record that existed as of the date of the Town's foreclosure and were not eliminated by the foreclosure. The Town does not otherwise warrant or represent to FOJ the marketability or insurability of the title to the Property. The Property will be conveyed to FOJ "as is" and the Town makes not representation or warranty with respect to the condition of the Property.

12. Pending the Closing on the sale to FOJ, the Town shall maintain such policies of insurance as the Town deems will protect the Town from claims for liability relating to the Property. Such policies shall have at a minimum coverage of \$1 million per occurrence and \$2 million in aggregate coverage per policy period, and shall name FOJ as an additional insured. The Town shall provide FOJ with a copy of such policies upon request. Pending

closing the Town shall grant to FOJ and its agents a license to enter upon the Property at mutually convenient times for the purpose of salvaging materials from the buildings, making improvements on the Property, or for other purposes reasonably related to the marketing and redevelopment of the Property, provided that FOJ in doing so shall indemnify, defend, and hold the Town harmless from and against any and all claims arising with respect to or as a result of the foregoing activities of FOJ or its agents on the Property. FOJ's duty to indemnify, defend, and hold harmless shall extend to all acts and omissions of the Town's officers, employees or agents, other than gross negligence or willful misconduct, shall include without limitation all costs of defense and reasonable attorneys' fees, and shall be limited to claims and losses not covered by the insurance policy to be maintained by the Town as described above, or some other policy of insurance.

13. In the event that the Town fails to close hereunder for a reason other than the default of FOJ or failure of any condition set forth herein, FOJ shall have the right of specific performance along with the right to recover reasonable attorneys' fees as its sole remedy. In the event that FOJ fails to close hereunder for a reason other than the default of the Town or failure of any condition precedent, the Town shall have the right retain title to the Property and in addition to take legal action to recover its damages and reasonable attorneys' fees.

14. Upon the execution and delivery of this Agreement FOJ agrees to deposit with an escrow agent acceptable to the Parties the sum of \$250,000 to be held in escrow and be governed by a commercially reasonable escrow agreement to ensure the full and punctual performance of this Agreement. The escrow agent shall, upon request made by FOJ, disburse the escrowed funds to satisfy the purchase price under FOJ's purchase option described in paragraph 5 of this Agreement, and, upon request made by the Town to satisfy FOJ's obligations under the Town's "put" option described in paragraph 6 of this Agreement and under FOJ's obligation to provide matching funds as described in paragraph 4 of this Agreement. When FOJ has fully performed under this Agreement any unused portion of the escrowed funds and will be refunded to FOJ without interest.

15. MISCELLANEOUS.

- (a) Time is of the essence of this Agreement.
- (b) All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of

service if served personally on the party to whom notice is to be given, or upon receipt or refusal after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed as to such party as above first written, and, in the case of FOJ, if an electronic copy is sent to its attorney, Roger Clement, at rclement@verrilldana.com.

- (c) Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.
- (d) All representations and warranties made by either party shall survive the closing of this transaction.
- (e) This Agreement will inure to the benefit of and bind the respective successors and assigns of the Town and FOJ. Each party may assign this Agreement only to an affiliated or related entity prior to the date of Closing.
- (f) This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (g) As used in this Agreement, the singular number shall include the plural, the plural the singular, and the use of the masculine shall include where appropriate the feminine and neuter. Capitalized terms shall have the meaning given them in this Agreement.
- (h) This Agreement shall be governed by and construed in accordance with the laws of Maine and the parties submit to personal jurisdiction in the York county superior court as the exclusive forum for any litigation concerning this Agreement.
- (i) The parties agree to take such further actions and execute such further documents as are appropriate and reasonably necessary to effectuate the purposes of this Agreement, provided the Town shall

not be obligated to incur any unreimbursed expense as a result of this paragraph.

- (j) This Agreement constitutes the entire Agreement between the parties, supersedes all prior negotiations and understandings among them, and may not be modified, waived, amended or terminated except in writing signed by the parties hereto. No waiver of any breach of any term hereof shall be effective unless made in writing signed by the party or parties having the right to enforce such breach, and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise be prejudicial thereto.

IN WITNESS WHEREOF, the Town and FOJ have executed this Agreement through their duly authorized representatives as of the date first written above.

TOWN OF BERWICK

By: _____

Name:

Its Selectmen:

Bryan O'Connor, Chair

Thomas Wright

Mark

Robert Chrichton, Vice Chair

Pendergast

Edward Ganiere

THE FUND OF JUPITER, LLC

By: _____

Name:

Title:

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