

## RESOLUTION R-2013-30

A RESOLUTION TO PURCHASE THE PROPERTY LOCATED AT 9083 NORTH MAIN STREET IN THE VILLAGE OF WINDHAM FROM MJM INVESTMENTS HOLDING FIRST TRUST.

**WHEREAS**, the Council of the Village of Windham has previously been advised by the Mayor, the current Village Administrator, and the former Village Administrator, the Police Chief, and the former Police Chief, that the current municipal center is a building in poor condition plagued with problems that cannot be economically remedied; and

**WHEREAS**, the information from the officials of the administration of the Village of Windham about the condition of present municipal building are consistent with the personal observations of the Village Council about the condition of the structure of the current municipal center; and

**WHEREAS**, a building suitable for use as a new municipal center is available for purchase by the Village of Windham, which building is located at 9083 North Main Street in the Village of Windham; and

**WHEREAS**, after due negotiation and discussion, an agreement with respect to the purchase of 9083 North Main Street by the Village of Windham has been negotiated; and

**WHEREAS**, financing for the purchase has been discussed with Cortland Bank, and a commitment for the financing has been extended, although all the appropriate loan documents have not yet been completed; and

**WHEREAS**, by this resolution the Council intends to approve the contract to purchase 9083 North Main Street.

**NOW THEREFORE BE IT RESOLVED** by the Council of the Village of Windham, County of Portage, State of Ohio, a majority or more of its members thereto concurring that:

**Section 1:** The actions of the Mayor, Fiscal Officer, Village Administrator, Police Chief, Solicitor and other members of the municipal administration to negotiate the purchase of the building at 9083 North Main Street within the Village of Windham are hereby ratified, confirmed and approved.

**Section 2:** The Mayor and the Fiscal Officer are hereby authorized to execute on behalf of the Village an agreement to purchase the property located at 9083 North Main Street from the owner of the property, MJM Investments Holding First Trust in substantial conformity with the agreement attached hereto as Exhibit A.

**Section 3:** It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this resolution were adopted in an open meeting of this Council, and that all deliberations of this council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Revised Code of the State of Ohio.

Second reading, September 26, 2013

Third reading, October 24, 2013

Passed by Council on third reading, October 24, 2013

Vote of Council: Ayes: Mr. Garrett, Mr. Snyder, Mrs. Prem, Ms. Blewitt

Nays: Mrs. Barrett

ATTEST:

APPROVED:

\_\_\_\_\_  
Fiscal Officer, Lloyd Billman

\_\_\_\_\_  
Mayor, Robert W. Donham, II

Approved as to form:

\_\_\_\_\_  
Thomas Reitz, Solicitor

### EXHIBIT A RESOLUTION R-2013-30

#### REAL PROPERTY PURCHASE AGREEMENT

This REAL PROPERTY PURCHASE AGREEMENT ("Agreement"), is dated as of \_\_\_\_\_ (the "Effective Date"), between MJM Investment Holding First Trust, an Ohio Trust (the "Seller"), and the Village of Windham, Ohio ("Purchaser").

WHEREAS, Seller desires to sell and Purchaser desires to purchase certain property located in the Village of Windham, Portage County, Ohio, of which Seller is the owner;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Agreement.** Seller hereby agrees to sell and convey to Purchaser and Purchaser agrees to purchase from Seller, the following property (collectively, the "Property"):

(a) **Real Property.** The real property located in Portage County, Ohio, consisting of .56 acres more or less located on North Main Street with the following permanent parcel numbers: 41-056-00-00-029, more specifically described on Exhibit A attached hereto and incorporated by reference herein together with all improvements located thereon and all tenements, hereditaments, appurtenances, water rights, mineral rights and rights of surface support, easements and rights-of-way incident thereto (collectively, the "Real Property");

(b) **Personal Property.** The following personal property is included in this sale: Playground equipment, outdoor tables, gas stove, and all equipment located on the premises on the effective date of the purchase agreement.

2. **Purchase Price.** The purchase price for the Property shall be One Hundred Twenty Five Thousand Dollars, (\$125,000.00). The Purchase Price shall be payable as follows:

(a) One Thousand Dollars (\$1,000.00) as an earnest money deposit (the "Deposit") payable to a mutually selected Title Agency (the "Title Company") at the time

provided in Section 6 hereof, to be held by the Title Company in an interest-bearing account and paid to Seller at the Closing (as hereinafter defined). Unless otherwise specifically set forth herein, references to the Deposit shall include any interest earned thereon.

(b) The balance of the Purchase Price in cash, certified or cashier's check or immediately available funds at Closing.

3. **Title.** Within 15 days after the date of this Agreement, Seller shall provide a commitment for an Owner's Policy of Title Insurance (the "Commitment") issued by the Title Company and dated as of a current date, pursuant to which the Title Company shall commit to issue to Purchaser an owner's policy of title insurance in the amount of the Purchase Price, insuring in Purchaser marketable fee simple title to the Property, subject only to the following "Permitted Exceptions":

(a) All legal highways;

(b) Zoning, building and other laws, ordinances, codes and regulations;

(c) Matters disclosed by the Survey pursuant to Section 4;

(d) Easements, rights-of-way, conditions, covenants and restrictions acceptable to Purchaser, in Purchaser's discretion; and

(e) Real estate taxes and assessments that are a lien upon the Property, but not yet due and payable.

Any mortgage or other monetary liens on the Property ("Monetary Liens") are to be discharged and paid by Seller at the time of Closing.

4. **Survey.** Within 30 days after the date of this Agreement, Purchaser, but only if such a survey is required by the county recorder, shall obtain a boundary survey and a legal description of the Property prepared by a registered land surveyor selected by Purchaser (the "Survey"). If required by Portage County Recorder, the legal description of the Property determined by the Survey shall be used in Seller's deed.

If the Survey discloses conditions that might adversely affect Purchaser's proposed use of the Property, or if the Commitment discloses matters other than the Permitted Exceptions and Monetary Liens, Purchaser shall notify Seller of Purchaser's disapproval of any such matters contained in the Commitment or the Survey no later than the last day of the Due Diligence Period ("Objections"). Except for Monetary Liens, Purchaser's failure to notify Seller of disapproval of any matter before the expiration of the Due Diligence Period shall be deemed approval of that matter. If Purchaser notifies Seller of the Objections in the manner set forth above, Seller may, but shall not be obligated to, proceed to cure or remove such Objections at or prior to the Closing (except that Seller shall be obligated to remove any Monetary Liens). If Seller fails to cure the Objections, Purchaser shall either (i) waive the Objections, in which case such Objections shall be deemed Permitted Exceptions, or (ii) terminate this Agreement, in which case the Deposit shall be returned to Purchaser and the parties shall be released from all further obligations under this Agreement.

**5. Title and Closing.**

The closing of this sale and purchase (the "Closing") shall occur within forty-five (45) days from the date that the last condition or contingency set forth in paragraphs 3, 4 and 8 are either satisfied or waived by Purchaser, but in no event later than sixty (60) days after the Effective Date (the "Closing Date").

An escrow shall be opened with the Title Company within five (5) business days of the Effective Date. Purchaser shall pay the Deposit into said escrow within said five (5) day period. On or before the Closing Date, Purchaser shall cause to be deposited with the Title Company the remaining balance of the Purchase Price by certified or cashier's check or immediately available funds. The monies deposited by Purchaser shall be deposited in an interest-bearing account, with interest payable to Purchaser.

On or before the Closing Date, Seller shall deposit or shall cause to be deposited therein (i) a general warranty deed conveying good and marketable fee simple title to the Property to Purchaser subject only to Permitted Exceptions (the "Deed"); (ii) the Title Policy, or a binding undertaking from the Title Company to issue such policy, insuring Purchaser or its nominee as holder of marketable fee simple title to the Property free and clear of all liens and encumbrances except the Permitted Exceptions along with any endorsements requested by Purchaser; (iii) such affidavits and other documentation reasonably requested by the Title Company to enable it to issue the Title Policy and any endorsements requested by Purchaser; and (iv) an affidavit as required by Section 1445 of the Internal Revenue Code of 1986 (the "Code") certifying that Seller is not a "foreign person" as defined in the Code.

The Title Company is hereby instructed that when it has received items (i) and (iii) and (iv) referenced above, is in a position to issue the Policy as described in (ii) above, and is in a position to otherwise close this transaction as contemplated hereby, the Title Company shall (a) deliver and record the Deed, and (b) deliver to Seller the Purchase Price net of any adjustments and proration's required hereby. Any interest accruing while any monies are held in escrow by the Title Company shall accrue to Purchaser unless otherwise specified herein.

At Closing, Seller shall pay the following costs:

- (1) Any fees incurred in connection with the removal of any unpermitted exceptions with respect to the Property;
- (2) Any state, county or local tax or fee payable on or in connection with the sale and/or conveyance of the Property; and
- (3) All legal fees of counsel to Seller.

At Closing, the Purchaser shall pay the following costs:

- (1) The cost of recording the Deed;
- (2) The cost of the Title Policy and the escrow fee;

- (3) The cost of the Survey; and
- (4) All legal fees of counsel to Purchaser.

All real property taxes and any assessments shall be prorated as of the Closing Date. Said proration's shall be effected at the Closing on the basis of the latest available tax bills or other applicable statements.

The Closing shall take place at 10:00 a.m. on the Closing Date, in the offices of the Title Company, or at such other time and place as may be mutually agreed upon by Seller and Purchaser. Neither party shall be required to close unless all conditions to the obligations of such party have been satisfied or waived.

Possession of the Property shall be delivered to Purchaser at Closing.

**6. Seller's Representations and Warranties.** Seller hereby makes the following representations and warranties for the benefit of Purchaser and Purchaser's successors and assigns, which are true as of the date of this Agreement (except as otherwise hereinafter provided), which shall be true as of the Closing Date, which shall survive the Closing Date, and which are not intended to replace or limit in any manner any warranty provided hereunder, by the Deed or by applicable law. All such warranties made on knowledge and information have been so made after a due diligence investigation of the facts. Purchaser shall be entitled to rely upon said representations and warranties notwithstanding Purchaser's inspection, investigation and/or approval of any item, fact or event relating thereto.

6.1 Authority of Seller. Seller has the full and unrestricted right, power and authority to (a) sell the Property to Purchaser in accordance with the terms and conditions hereof, (b) execute and deliver this Agreement and all other documents to be executed and delivered, either simultaneously herewith or at Closing, in connection with the transaction contemplated herein, and (c) perform all obligations that arise under this Agreement or under such documents. This Agreement and all other documents executed and delivered, or to be executed and delivered, by Seller (contemporaneously herewith or at the Closing) in connection with the transaction contemplated herein have been, or at the appropriate time will be, duly executed and delivered and constitute or, upon such execution and delivery will constitute, the legal, valid and binding obligations of Seller enforceable in accordance with their respective terms and provisions, subject, however, to the effect of any bankruptcy, reorganization, moratorium, insolvency, or other laws affecting the rights of creditors generally and general principles of equity. Seller has taken, or will have taken prior to Closing, all action required to authorize the execution of this Agreement and such other documents. All consents or approvals of any person, firm, corporation or governmental authority required to be obtained by Seller in order for Seller to enter into this Agreement or any such other document or to fully perform all of Seller's obligations under this Agreement or any such other document have been or will be obtained prior to Closing.

6.2 Use; Compliance with Laws. Seller has not received any notice or order of any governmental authority having jurisdiction over the Property not fully and duly complied with, nor has Seller taken action affecting the use or operation of any part of the Property or requiring, as of the date hereof or a specified date in the future, any repairs or alterations or additions or improvements thereto.

6.3 No Condemnation Proceedings. Seller has received no notice, oral or written, of the desire of any public authority or other entity to take or use the Property or any part thereof nor has Seller taken any action to take or use the Property.

6.4 Other Governmental Action and Adjacent Use. Seller has received no written notice of action or governmental proceeding, nor has Seller taken any action relating to tax assessments or special assessments which would affect the Property.

6.5 No Defaults. Neither the execution nor delivery of this Agreement nor the consummation of the transaction contemplated hereby will: (i) conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which Seller, or any predecessor of Seller, is a party, or (ii) violate any restriction to which Seller, or any predecessor of Seller, is subject, or (iii) constitute a violation of any applicable code, resolution, law, statute, regulation, ordinance, rule, judgment, decree, or order, or (iv) result in the creation of any lien, charge, or encumbrance upon any of the properties or assets to be sold or assigned to Purchaser pursuant to the provisions of this Agreement.

6.6 Litigation. There is no suit, action, arbitration, legal, administrative, or other proceeding or governmental investigation or requirement, formal or informal (collectively "Litigation"), existing or pending or, to the best of Seller's knowledge, threatened which affects the Real Property or which adversely affects Seller's ability to perform hereunder, or other charge or expense upon or relating to the Property.

6.7 Environmental. To the best of Seller's knowledge, information and belief, no toxic or hazardous substance or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC 960, et seq., is or has been stored and/or disposed of on the Property, and no underground storage tanks are or have been located on the Property.

6.8 Physical Condition. To the best of Seller's knowledge, there is no existing material patent or latent physical defect or deficiency in the condition of the Property or any component or portion thereof.

6.9 Access. There are adequate roadway easements and other easements assuring vehicular and pedestrian access to the Real Property to and from paved and dedicated public rights-of-way by guests, invitees, employees and agents and there is no existing, or, to Seller's knowledge, proposed or contemplated plan, to modify or realign any street or highway.

6.10 Construction Disputes. There are no disputes pending between Seller and any mechanic or materialman with respect to work or materials furnished to the Real Property and Seller is not aware of any work which has been performed or materials which have been supplied which are likely to give rise to such a dispute. There are no unpaid bills with respect to work or materials furnished to the Real Property, which, if unpaid, could result in a mechanics' or materialman's lien being filed on the Real Property.

6.11 Government Regulation; Zoning. The operation of the Real Property and all other current uses of the Real Property comply in all material respects with all applicable zoning laws and ordinances affecting the Real Property. There are no actual or, to the best of Seller's knowledge, threatened or imminent changes in the present zoning of the Real Property

or any part thereof, other than a change in the zoning designation. There are no restrictions, limitations or regulations issued, or, to Seller's knowledge, proposed or under consideration by any governmental authorities.

6.12 No Transfer Agreements. Seller has not entered into any agreement to sell, transfer, mortgage, lease, grant any preferential right to purchase (including but not limited to any option, right of first refusal or right of first negotiation) with respect to, or otherwise dispose of or encumber all or any portion of, the Real Property.

6.13 Tax Matters. There are no tax liens upon the Property except for liens for current taxes not yet due and payable. Seller has no knowledge of any tax increase or proposed or pending assessments or assessment liens with respect to the Property. There are no protests, appeals or other proceedings pending which have been undertaken for the reduction of the real estate taxes or other charges assessed against the Property. There is no Litigation pending or, to Seller's knowledge, threatened relating to any real or personal property taxes for any period prior to the date hereof. Seller is not a party to, and has not received any notice with respect to, any proposed or pending Litigation by any governmental authority for assessment or collection of any taxes, is not a party to any Litigation or threatened Litigation in which an adverse determination would have a material adverse effect on the Property, and no claim for assessment or collection of any such taxes has been made upon Seller.

6.14 Title. Seller is the sole legal and beneficial owner of the fee interest in the Real Property and Improvements.

6.15 Seller's Deliveries. To the best of Seller's knowledge, all items delivered by Seller pursuant to this Agreement are true, accurate, correct and complete in all respects, and fairly present the information set forth in a manner that is not misleading. To the best of Seller's knowledge, the copies of all documents and other agreements delivered or furnished and made available by Seller to Purchaser pursuant to this Agreement constitute all of the documents and other agreements relating to or affecting the ownership of the Property, there being no "side" or other agreements, written or oral, in force or effect, to which Seller is a party or to which the Property is subject.

7. Purchaser's Representations and Warranties. Purchaser hereby makes the following representations and warranties for the benefit of Seller and Seller's successors and assigns, which are true as of the date of this Agreement (except as otherwise hereinafter provided), which shall be true as of the Closing Date, which shall survive the Closing Date, and which are not intended to replace or limit in any manner any warranty provided hereunder or by applicable law.

7.1 Authority of Purchaser. Purchaser has the full and unrestricted right, power and authority to (a) purchase the Property from Seller in accordance with the terms and conditions hereof, (b) execute and deliver this Agreement and all other documents to be executed and delivered, either simultaneously herewith or at Closing, in connection with the transaction contemplated herein, and (c) perform all obligations that arise under this Agreement or under such documents.

**8. Contingencies** Purchaser's obligation to perform under this Agreement or proceed with Closing pursuant to this Agreement is contingent upon the completion or waiver of the following to the sole satisfaction of Purchaser.

8.1 Inspection. This Agreement shall be subject to an inspection of by individuals or entities of the Purchaser's choice within thirty (30) days from the Effective Date (the Due Diligence Period). After the inspection, Purchaser shall have three (3) days to elect one of the following: a) Remove the inspection contingency and accept the property in its "AS IS" present physical condition; or b) Accept the property subject to specific items, that were either previously disclosed in writing by the Seller or identified in a written inspection report, repaired by a qualified contractor in a professional manner at Seller's expense; or c) Terminate this Agreement if the written inspection report(s) identify material latent defects not previously disclosed in writing by the Seller.

**9. Covenants of Seller.** Effective as of the Effective Date of this Agreement, Seller hereby covenants with Purchaser as follows:

9.1 Leases. Seller shall not execute any lease, license, or other agreement affecting the ownership or operation of all or any portion of the Property without Purchaser's prior written approval.

9.2 Contracts. Seller shall not enter into any contract with respect to the ownership and operation of all or any portion of the Property that will survive the Closing, or that would otherwise affect the use, operation or enjoyment of any or all of the Property, without Purchaser's prior written approval.

9.3 Insurance. The Seller shall insure the property and ensure that the property shall remain continuously insured through and including the Closing Date. Risk of loss and of any damage to the Property shall remain with the Seller until the time of title transfer.

9.4 Maintenance of Property. Seller shall maintain the Property in accordance with applicable laws, ordinances, rules and regulations affecting the Property. Seller shall deliver the Property at Closing in substantially the same condition as on the Effective Date, reasonable wear and tear excepted.

9.5 Good Faith. All actions required pursuant to this Agreement that are necessary to effectuate the transaction contemplated herein will be taken promptly and in good faith by Seller, and Seller shall furnish Purchaser with such documents or further assurances as Purchaser may reasonably require.

9.6 No Assignment. After the Effective Date and prior to Closing, Seller shall not assign, alienate, lien, encumber or otherwise transfer all or any part of the property or any interest therein.

**10. Condemnation.**

10.1 Procedure Upon Condemnation. If prior to Closing, Seller is notified that the Property is to be condemned in whole or in part, the Closing shall be delayed until sixty (60) days after Purchaser's receipt of all material information from Seller regarding the condemnation (the "Cut-off Date"), and this Agreement shall automatically terminate on the Cut-off Date



unless Purchaser elects to proceed with Closing. "Material information" includes, without limitation, the estimated costs to restore the Property to a self-sufficient economic unit and the estimated amount of any condemnation award. If Purchaser does not elect to proceed with Closing, this Agreement shall terminate, and thereupon the parties shall be released and discharged from any further obligations to each other, this Agreement shall become null and void, and the Deposit shall be refunded to Purchaser. If Purchaser does elect to proceed with Closing, the Closing shall be held, Purchaser shall be entitled to all of Seller's share of any condemnation award and the Purchase Price shall be reduced by the difference between the amount of any such award and the actual cost to restore the Property to the condition it was in prior to such condemnation. In such event, Seller shall have no responsibility for the restoration and repair of that portion of the Property condemned.

10.2 Notice of Condemnation. Within three (3) days of learning of same, Seller shall notify Purchaser in writing of any threatened or actual condemnation action, or any material information regarding a condemnation.

**11. Notices.** All notices and other communications required or permitted under this Agreement must be in writing and will be deemed to have been duly given (a) when delivered in person, (b) when dispatched by electronic facsimile transfer (if confirmed in writing by mail simultaneously dispatched), (c) one business day after having been dispatched by a nationally recognized overnight courier service, or (d) two (2) business days after being sent by registered or certified mail, return receipt requested, postage prepaid, to the appropriate party at the address or facsimile number specified below:

Seller: MJM Investments Holdng First Trust  
Trustee MJ Mikulski  
9785 Asbury Road  
Mantua, OH 44255

Purchaser: The Village of Windham  
Attention Mayor  
9621 East Center Street  
Windham, OH 44288

Either party may change its address for the purposes of this section by giving ten (10) days prior written notice of such change to the other party in the manner provided in this section.

**12. Miscellaneous.**

12.1 Assignment. Neither party may assign this Agreement without the prior written consent of the other party provided that Purchaser may assign this Agreement to any corporation, partnership or limited liability company controlling, controlled by or under common control with, Purchaser. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

12.2 Entire Agreement. The parties expressly acknowledge that this Agreement contains the entire agreement of the parties hereto with respect to the purchase and

sale of the Property and supersedes any prior arrangements or understandings between the parties with respect thereto. No other agreement, statement or promise made by either party hereto which is not contained herein shall be binding or valid.

12.3 Amendments. This Agreement may only be amended by a written document signed by each of the parties hereto, which document shall make specific reference to this Agreement.

12.4 Further Documents. Each party will, whenever and as often as it shall be requested by the other party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and documents, including escrow instructions, as may be necessary in order to carry out the terms and conditions of this Agreement and to complete the sale, conveyance and transfer herein contemplated and shall do any and all other acts as many be requested in order to carry out the intent and purpose of this Agreement.

12.5 Severability. Should any part, term or provision of this Agreement or any document required herein to be executed or delivered at the Closing be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. Time of Essence. Except as otherwise specifically provided in this Agreement, time is of the essence of this Agreement and each and every provision hereof.

12.6 Applicable Law and Venue. This Agreement shall be construed and interpreted under, and governed and enforced according to, the laws of the State of Ohio. The proper venue for any litigation arising out of this Agreement shall be in the Court of Common Pleas of Portage County, Ohio.

12.7 Counterparts. This document may be executed in any number of counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, Purchaser and Seller have executed this Agreement as of the Effective Date.

**SELLER:**

\_\_\_\_\_  
MJM Investments Holding First Trust

Name: Michael J. Mikulski

Title: Trustee

**PURCHASER:**

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The Village of Windham, Ohio

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Robert Donham, Mayor

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Lloyd Billman, Fiscal Officer