



SUFFOLK ACADEMY OF LAW
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SIGNATURE SERIES:

Conducting Due Diligence in a Commercial Real Estate Purchase

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Suffolk County Bar Association, New York

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CONDUCTING DUE DILIGENCE IN
A COMMERCIAL REAL ESTATE PURCHASE

Presented By :

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- 1) Cost of the Transaction and Ownership.
 - a) Will the income of the leases and the business income support the costs associated with ownership? Review books and records of the property, including income producing capabilities.
 - b) Costs of future maintenance, repairs, and renovations.
 - c) Insurance Costs.
 - i) Property.
 - ii) Liability.
 - iii) Business.
 - iv) Flood.
 - d) Real Estate Taxes.
 - e) Service Contracts.
 - f) Private Mortgage and Promissory Terms.
- 2) Is the Real Property Zoned for the Intended Use?
- 3) Title.
 - a) Survey.
 - b) Easements.
 - c) Liens.
 - d) Certificate of Occupancy for All Uses and Improvements.
 - e) Municipal Searches.
 - f) Violations.
 - g) Right of First Refusal.
 - h) Condo/HOA.
- 4) Leases.
 - a) Security.
 - b) Estoppel.
 - c) Common Area Maintenance.
 - d) Right of First Refusal.
 - e) Real Estate Broker Commissions.

CONDUCTING DUE DILIGENCE IN
A COMMERCIAL REAL ESTATE PURCHASE

- 5) Inspections.
 - a) Structure and Land.
 - i) Electric.
 - ii) HVAC.
 - b) Sanitary.
 - c) Water.
 - d) Environmental.
 - i) Phase I.
 - ii) Phase II.
 - iii) Remediation.
 - iv) No Further Action Letter.
- 6) Waterfront.
 - a) DEC/Trustees Jurisdiction.
 - b) Bulkhead/Docks.
 - i) Permits.
 - ii) Repairs.
 - iii) Maintenance.
 - c) Riparian Rights.
 - d) Easements.
 - e) Associations.
- 7) Covenants, Restrictions, Easements.
- 8) Neighbor Issues.
 - a) Retaining Walls.
 - b) Fences.
 - c) Shared Access.
- 9) Real Estate Brokers.
- 10) Sufficient time to perform Due Diligence.
- 11) 1031 Exchange Considerations.



Laura M. Endres, Esq. – Taylor, Eldridge & Endres, P.C.

Laura M. Endres, Esq. is a 1993 graduate of SUNY at Stony Brook, where she earned her undergraduate degree in cultural anthropology. In 1998 she graduated from Touro Law School with her J.D. degree. Almost immediately she began practicing as a solo attorney focusing in the areas of residential and commercial real estate, landlord/tenant representation and business transactions. In 2000 she was appointed to the position of Sr. Deputy County Clerk for the County of Suffolk where she was responsible for an estimated 130 public employees and prided herself in providing to the public the service they deserve from their governmental agencies. She managed and directed the work flow of all the departments including recording, court actions, business certificates and judgments. During this same time period she continued with her law practice and also conducted parking violation hearings for the Town of Brookhaven.

After leaving the public sector she continued practicing law, expanding her areas of practice to corporate and small business purchases/sales. Currently she is a Partner in the firm Taylor, Eldridge & Endres, P.C. and her practice remains focused on real estate law, Landlord/Tenant Law and specializing in the area of condominium, homeowner association and co-op board representation. This community association representation varies in practice from collection matters to interpretation and amendment of community by-laws. Mrs. Endres is an active Rotarian (Past President of the Board) and member of both the New York State and Suffolk County Bar Associations and the local Long Island CAI chapter (Community Association Institute). Mrs. Endres is also the Co-Chair of the Suffolk County Bar Association's Real Property Committee.



Philip J. Siegel, Esq. - Siegel & Sitler, PLLC

Philip Siegel is a member of Siegel & Sitler, PLLC. He represents a diverse client base throughout Long Island, primarily in the areas of real estate, commercial law, and civil litigation. Mr. Siegel is a 1999 graduate of Touro Law School and an active member of the Suffolk County Bar Association.

CONTRACT OF SALE

THIS CONTRACT ("Contract"), dated as of the ____ day of _____, 2019, between _____, a New York Limited Liability Company having offices at _____, _____, NY _____ ("Seller"), and _____ a New York Limited Liability Company having offices at _____, NY _____ ("Purchaser")

WITNESSETH:

In consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, Seller hereby agrees to sell and convey to Purchaser, and Purchaser hereby agrees to purchase from Seller, the premises described herein for the price and subject to and upon the terms and conditions set forth herein:

Section 1. Sale of Property and Acceptable Title

Section 1.01 Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, at the price and subject to and upon the terms and conditions set forth in this Contract, all right, title and interest of Seller, if any, in and to the following (collectively, the "Premises"): (a) that certain real property known as and by the street address 1 Main Street, Hauppauge, New York, known and designated on the Suffolk County Tax Map as District 1, Section 2, Block 03 and Lot 04 (the "Land") as is more particularly described on Exhibit A together with all buildings and improvements located thereon (the "Building"); (b) the land lying in the bed of any street or highway in front of or adjoining the Premises to the center line thereof and to any unpaid award for any taking by condemnation or any damage to the Premises by reason of a change of grade of any street or highway; (c) any appurtenances (including, without limitation, air rights and development rights), or easements of any kind whatsoever relating to the Premises ; (d) any strips or gores adjacent to the Premises; and (e) to the extent transferable, any and all permits and all other government licenses, consents, approvals and/or pending applications issued to and/or applied for by Seller with respect to the Premises (collectively, the "Licenses and Permits").

Section 1.02 Seller shall convey and Purchaser shall accept fee simple title to the Premises in accordance with the terms of this Contract, subject only to: (a) the matters set forth in Schedule 1.02(a) (the "Permitted Exceptions") and (b) such other matters as any nationally recognized title insurance company licensed to do business in the State of New York (the "Title Company") shall be willing, without special premium, to omit as exceptions

to coverage or, unless Purchaser's lender is unwilling to accept same, to except with insurance against collection out of, or enforcement against, the Property.

Section 1. Purchase Price, Acceptable Funds and Escrow of Downpayment and Conditions to Closing

Section 2.01 The purchase price ("Purchase Price") to be paid by Purchaser to Seller for the Property is THREE HUNDRED THOUSAND AND 00/100 (\$300,000.00) DOLLARS. The Purchase Price shall be payable as follows:

- | | | | |
|-----|--|--------------|-------------------------|
| (a) | by wire transfer of immediately Available funds in accordance with Escrowee's wire transfer instructions attached as Schedule 2.01(a) | \$ 10,000.00 | (the "Downpayment") and |
| (b) | by delivery of wire transfer of immediately available funds in accordance with Seller's wire transfer instructions attached as Schedule 2.01(b) or as may be otherwise directed by Seller, on the Closing Date in accordance with the provisions of Section 2.02 | \$290,000.00 | |

Section 2.02 All monies payable under this Contract, unless otherwise specified herein, shall be paid at the option of Seller (a) by wire transfer in immediately available funds in accordance with Seller's wire instructions attached as Schedule 2.01(b), (b) by certified checks of Purchaser or any entity making a purchase money mortgage to Purchaser drawn on any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York; or (c) by official bank checks drawn upon any such banking institution, payable to the order of Seller, except that uncertified checks of Purchaser payable to the order of Seller up to the amount of \$1,000.00 shall be acceptable for sums payable to Seller at the Closing.

Section 2.03 The Downpayment shall be paid by wire transfer of immediately available funds to _____, as escrow agent ("Escrowee") in accordance with Seller's wire instructions attached as Schedule 2.01(a), upon the execution and delivery of this Contract by Seller to Purchaser. The Downpayment shall be held and paid by Escrowee in accordance with the terms and provisions of the Escrow Agreement in the form attached as Exhibit 2.03, which shall be executed and delivered by Seller and Purchaser simultaneously with the execution and delivery of this Contract. The failure of Purchaser to

wire the Downpayment to Escrowee upon the execution and delivery of this Contract by the parties shall constitute a material breach of this Contract, whereupon Seller may, upon notice to Purchaser, cancel and terminate this Contract, rendering this Contract null and void and of no further force or effect, except for those terms, provisions and/or covenants which are expressly provided herein to survive a termination of this Contract.

Section 2.04 This Contract, and Purchaser's obligations hereunder, shall be contingent upon Purchaser's obtaining mortgage loan or other financing as set forth below.

(a) The Purchaser shall have forty-five (45) days after a fully executed copy of this contract is delivered to Purchaser or Purchaser's attorney (the "Commitment Date") within which to obtain a written commitment from an Institutional Lender (defined below) pursuant to which such Institutional Lender agrees to make a commercial mortgage loan to Purchaser, at Purchaser's sole cost and expense, of \$180,000.00 for a term of at least 30 years (or such lesser sum or shorter term as Purchaser shall be willing to accept at the prevailing fixed or adjustable rate of interest and on other customary commitment terms for a commercial loan of this nature) (the "Commitment").

(b) Purchaser shall (i) make prompt application to one or, at Purchaser's election, more than one Institutional Lender for such mortgage loan (ii) furnish accurate and complete information regarding Purchaser and Purchaser's principals and/or their operating business(es), as required, (iii) pay all fees, points and charges required in connection with such application and loan, (iv) pursue such application with diligence, and (v) cooperate in good faith with such Institutional Lender(s) to obtain a Commitment. Purchaser shall accept a Commitment meeting the terms set forth herein and shall comply with all reasonable requirements of such Commitment (or any commitment accepted by Purchaser). Purchaser shall furnish Seller with a copy of the Commitment promptly after receipt thereof.

(c) If all Institutional Lenders to whom application was made deny such applications in writing prior to the Commitment Date, Purchaser shall give written notice thereof to Seller, with a copy of such denial.

(d) If Purchaser's mortgage loan application has been denied, or Purchaser has not received a copy of a commitment from an Institutional Lender by the Commitment Date, Seller may, at its sole option, either give the Purchaser purchase money financing with which to purchase the Premises, or cancel this contract by giving Notice to Purchaser. Seller shall give Purchaser written notice of its election within ~~thirty ten (3010)~~ days of ~~the Commitment Date, or any extension thereof within thirty (30) days after the Commitment Date, which cancellation shall become effective upon receipt~~ recieving notice from Purchaser that Purchaser has been denied a mortgage commitment. After such cancellation In the event Seller chooses to cancel the contract, neither party shall have any further rights against, or

obligations or liabilities to, the other by reason of this Contract, except that the Downpayment shall be promptly refunded to Purchaser ~~(provided Purchaser has complied with all its obligations hereunder)~~ and except as otherwise expressly set forth herein.

(e) In the event that Seller elects to give the Purchaser purchase money financing, such financing shall be in the sum of \$180,000.00 bearing interest at the rate of five (~~555.00~~) percent per annum, shall have a term of ten (10) years, with a twenty (20) year amortization and a final balloon payment being due on the ten-year anniversary date of Closing. The purchase money financing shall be secured and evidenced by a note and mortgage in substantially the form annexed hereto as Schedule 2.04 (the "Note" and "Mortgage" respectively). The Note shall be personally guaranteed by (Purchasing Entity of Purchaser) and its principal _____, and shall be secured by a first Mortgage lien against the Premises. The Note and Mortgage shall be drafted by Seller's attorney and Purchaser shall pay such attorney a fee of \$1,200.00 for the preparation of same. Purchasers shall pay all fees incurred in connection with the recording of the Mortgage and Lender's title policy. Purchaser shall cooperate with all reasonable requests for information and/or documentation regarding Purchaser and its finances, credit and similar matters related to Seller's extension of credit, preparation of the Mortgage and recording of same.

(f) In the event that Seller elects to terminate this Contract, it shall do so by written notice to the Purchaser.

(g) For purposes of this contract, the term "Institutional Lender" shall mean any bank, savings bank, private bank, trust company, savings and loan association, credit union or similar banking institution whether organized under the laws of this State, the United States or any other state; foreign banking corporation licenses by the Superintendent of Banks of New York or the Comptroller of the Currency to transact business in new York State; mortgage banker licensed pursuant to Article 12-D of the Banking Law; and any instrumentality created by the United States or any state with the power to make mortgage loans.

(h) A mortgage commitment shall not be considered firm and unconditional if it is contingent upon an acceptable appraisal.

Section 2.05 The parties acknowledge that simultaneously herewith purchaser and XYZ Corp. entered into a Contract of Sale whereby XYZ Corp. shall sell, transfer, convey and assign to Purchaser or Purchaser's designee or assignee, all of its right, title and interest in and to substantially all of the assets of XYZ Corp. pursuant to the terms of such contract ("Asset Sale Contract"). This Contract and the obligations of the parties hereunder is expressly contingent upon the satisfaction of all contingencies set forth in the

Asset Sale Contract and simultaneous closing and sale of the assets from XYZ Corp. to Purchaser pursuant to the terms of such Asset Sale Contract.

Section 3. The Closing

Section 3.01 Except as otherwise provided in this Contract, the closing of title pursuant to this Contract (the "Closing") shall take place on or before the Closing Date at the office of _____, or at the offices of purchaser's lender's counsel. The term "Closing Date" means the date which shall be 30 days after the expiration of the Due Diligence Period, defined below.

Section 4. Due Diligence Period and Required Approvals

Section 4.01 Due Diligence Period.

(a) During the period commencing on the date hereof and expiring on the day which is 45 days subsequent thereto, ~~time being of the essence~~, (the "Cut-off Date"), Purchaser shall be entitled to perform such due diligence investigations, inquiry and/or testing (the "Due Diligence") with respect to the Premises as it shall desire (the "Due Diligence Period") at Purchaser's sole cost and expense.

(b) Seller shall endeavor to provide Purchaser and its agents, employees, contractors, advisors, consultants or other professional or service providers engaged to aid with the performance of such due diligence (collectively, "Diligence Professionals") with access to the Premises during the Due Diligence Period during normal business hours, inclusive of Saturday and at mutually acceptable times, and to otherwise cooperate with Purchaser and Diligence Professionals in good faith to enable such Diligence Professionals to perform such investigation including providing Purchaser with any books, records, surveys, certificate of occupancy, or copies of historical documents relating to the Premises if in the possession of Seller and any other reasonably requested items relating to the Premises. Seller shall in no event be obligated or required to expend any sums or expend any costs in endeavoring to provide Purchaser and Diligence Professionals such access. Purchaser and/or its Diligence Professionals must provide insurance acceptable to Seller in its sole discretion prior to any Diligence Professional entering onto the Property and insuring against any acts or omissions of such Diligence Professionals entering onto the property.

(c) Purchaser hereby agrees to indemnify Seller from and against all damages, losses, liabilities, obligations, penalties, claims, litigations, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or nature (including, without limitation, attorneys' fees and disbursements) as sustained, suffered or incurred (collectively, "Losses") relating to or arising out of Purchaser's or its Diligence Professionals' grossly negligent acts or omissions relating to this Section 4.01. Purchaser and each of its successors, subsidiaries, parent companies, affiliates, agents, related entities and assigns (collectively, the "Releasing Parties") hereby release and forever discharge Seller and

its successors, subsidiaries, parent companies, affiliates, agents, related entities and assigns (collectively, the "Released Parties") from any and all Losses whether at law, in equity or otherwise, which any of the Releasing Parties and each of their successors and assigns may have had, may presently have, or in the future may have, whether known or unknown, fixed or contingent, suspected of unsuspected, liquidated or unliquidated, against the Released Parties relating in any way or arising out of, directly attributable to the performance of such Due Diligence unless due to the intentional acts, negligence or omission of the Released Parties.

(d) If the parties cannot come to a mutual agreement and the Due Diligence is not performed or if the results of such Due Diligence are in any way unsatisfactory to Purchaser in its sole discretion, Purchaser shall have the right to terminate this Contract by delivering written notice (the "Due Diligence Termination Notice") to seller in accordance with Section 14.01 not later than five (5) business days following the Cut-off Date, time being of the essence, stating that Purchaser has elected to terminate this Contract pursuant to this Section 4.01. If Purchaser does not timely deliver a Due Diligence Termination Notice, ~~time being of the essence~~, then Purchaser shall irrevocably be deemed to have waived such right and this Contract shall continue in full force and effect and Purchaser shall have no right of termination hereunder, except as may be otherwise set forth herein.

(e) Upon Seller's receipt of the Due Diligence Termination Notice, Seller shall request that Escrowee release to Purchaser the Downpayment within five (5) Business Days of the receipt of the Due Diligence Termination Notice. Upon Purchaser's receipt of the refunded Downpayment, this Contract shall be deemed terminated and of no further force or effect except for those provisions expressly stated herein to survive a termination of this Contract.

(f) As a material inducement to Seller to execute this Contract, Purchaser acknowledges, represents, and warrants that, upon the completion or waiver of the Due Diligence Period, unless Purchaser has delivered a Due Diligence Termination Notice to Seller that (i) Purchaser will have fully examined and inspected the Premises, including the construction, renovation, operation, and leasing of the Premises, together with such other documents and materials with respect to the Premises that Purchaser deems necessary or appropriate in connection with its investigation and examination of the Premises, (ii) Purchaser will have accepted and will be fully satisfied in all respects with the foregoing and with the physical condition, value, use, zoning, certificates of occupancy, leasing, operation, tax status, income, and expenses of the Property, (iii) the Premises will be purchased by Purchaser "as is" and, upon Closing, Purchaser shall assume responsibility for the physical condition of the Premises, and (iv) Purchaser will have decided to purchase the Premises solely on the basis of its own independent investigation. Seller has not made, does not make, and has not authorized anyone else to make any representation as to the present or future

physical condition, value, financing status, leasing, operation, use, zoning, certificate of occupancy, tax status, income and expenses or any other matter or thing pertaining to the Premises except as expressly set forth herein, and Purchaser acknowledges that no such representation has been made and that in entering into this Contract Purchaser agrees to the foregoing. Except with respect to the express provisions of this Contract to the contrary, as of the closing the physical condition of the Premises shall be substantially the same condition as that existing on the date hereof, reasonable wear, tear, and deterioration excepted.

Section 5. Representations and Warranties

Section 5.01 Seller represents and warrants to Purchaser as of the date hereof and as of the Closing date as follows:

(a) Seller is a limited liability company, validly existing and in good standing under the laws of the State of New York.

(b) The execution and delivery of this Contract, the consummation of the transactions contemplated hereby and the performance of Seller's obligations hereunder have been duly authorized by all necessary actions on the part of Seller, and this Contract constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, subject as to enforceability, to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally.

(c) The execution and delivery of this Contract by Seller and the consummation of the transactions contemplated hereby by Seller do not and will not, to Seller's knowledge (i) violate any judgment, order, injunction, decree, regulation or ruling of any court of governmental entity, (ii) conflict with, result in a breach of, or constitute a default under the organizational documents of Seller, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture or any lease or other material agreement or instrument to which Seller is a part or by which Seller may be bound or (iii) violate or conflict with any law or governmental regulation or permit applicable to Seller.

(d) No consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Contract by Seller or the performance by Seller of the transactions contemplated hereby.

(e) Seller is not a "foreign person" or "foreign corporation" as those terms are defined in the Internal Revenue Code of 1986, as amended (the "Code"), and the

regulations promulgated thereunder. Seller shall deliver to Purchaser at the Closing a non-foreign person affidavit ("FIRPTA Affidavit") containing such information as shall be required by §1445 of the Code.

(f) Seller has not received any written notice and has no actual knowledge that any eminent domain, condemnation or similar proceeding or conveyance in lieu thereof of all or any part of the Property is contemplated.

(g) To Seller's knowledge, there are no actions or proceedings pending with respect to the Property, including condemnation proceedings, and no actions or proceedings pending against Seller which would in any way materially and adversely affect the Property, Seller or Seller's ability to perform under this Contract, as the case may be.

(h) Seller hereby represents and warrants to Purchaser that Exhibit B is a complete list, as of the date hereof, of all existing Leases of the Premises. Purchaser has examined the Leases of the Premises listed on Exhibit B annexed hereto, and is familiar with the terms thereof. Purchaser acknowledges that ~~Seller does not represent the truth or accuracy of the terms of said Leases as said terms are set forth on Exhibit B annexed hereto, and~~ Purchaser relies solely on the texts of the Leases for said terms and provisions.

(i) Seller and Purchaser shall at the closing execute and deliver to each other an agreement, in form and substance satisfactory to Seller's counsel, pursuant to which Seller shall assign to Purchaser all right, title, and interest of Seller in and to the Leases in existence at the time of the Closing and any security deposits made thereunder, and Purchaser shall (a) accept title to the Premises subject to the Leases and the rights of the tenants thereunder; (b) assume all post-Closing Date obligations of the landlord under all Leases; and (c) indemnify and hold the Seller harmless from and against all claims, liabilities, judgments, demands, suits, actions, losses, penalties, fines, damages, costs, and expenses, including reasonable attorneys' fees, of any kind or nature whatsoever, due to or arising out of or from (x) any post-Closing Date breach, violation or nonperformance of any covenant, condition, provision, or agreement in the Leases on the part of the landlord therein to be fulfilled, kept, observed, and performed; and (y) claims of every kind or nature arising from and after the Closing Date out of the ownership, use, or occupancy of the Premises. Seller shall indemnify and hold harmless Purchaser from and against all claims, liabilities, judgments, demands, suits, actions, losses, penalties, fines, damages, costs, and expenses, including reasonable attorneys' fees, of any kind or nature whatsoever, due to or arising out of or from (x) any pre-Closing Date breach, violation or nonperformance of any covenant, condition, provision, or agreement in the Leases on the part of the landlord therein to be fulfilled, kept, observed, and performed. This representation shall survive the Closing of the Premises.

(j) Seller hereby represents and warrants to Purchaser that Exhibit C is a complete list, as of the date hereof, of all existing union, management, service, maintenance, and supply agreements affecting the Premises (the "Service Contracts"). Purchaser has examined the Service Contracts and is familiar with the terms thereof. Purchaser acknowledges that Seller does not represent the truth or accuracy of the terms of said Service Contracts as said terms are set forth on Exhibit C annexed hereto, and Purchaser relies solely on the texts of the Service Contracts for said terms and provisions.

(k) There are no labor or other disputes, litigation or proceedings pending or threatened against or related to Seller, the Premises or the operation thereof, nor, to the best of Seller's knowledge, does any basis exist for any of the same;

(l) Seller has received no written notice and has no knowledge that the Premises or any portion thereof, or the use and operation of the Premises or any portion thereof, are not in compliance with all applicable municipal and governmental laws, ordinances, rules, regulations, licenses, permits, certificates of occupancy and authorizations, and to Seller's knowledge, there are presently in effect all licenses, permits, certificates and other authorizations necessary for the use, occupancy and operation of the Premises as it is presently being operated;

(m) There are no proceedings pending for the reduction of the assessed valuation of the Premises, or any portion thereof. After the date hereof, Seller shall not commence or settle any such proceeding except upon the advise of tax counsel and with the prior written consent of Purchaser, which consent shall not be unreasonably withheld or delayed. Any monetary settlement and/or award made in connection with any such proceeding shall be prorated between the parties based on the date of Closing, and such obligation to prorate any such settlement and/or award shall survive Closing; provided that Purchaser shall not be obligated to account to Seller for any reduction in assessed valuation or real estate taxes for any period commencing on the actual date of Closing;

(n) Seller has not transferred, and has no knowledge that any other person or entity has transferred, and will not transfer during the period commencing on the date of this Agreement and ending on the Closing or earlier termination of this Agreement, any development, mineral or similar rights relating to the Premises;

(o) There are no outstanding rights of first refusal, rights of first offer or other options to purchase affecting the Premises held by any party.

(p) Neither Seller nor, to the best of Seller's knowledge, any prior fee owner of the Premises, has granted any light and air easements for the benefit of any adjoining property.

(q) Seller has not made and will not make a general assignment for the benefit of credits, filed or file any voluntary petition in bankruptcy or suffered or suffer the filing of an involuntary petition by Seller's creditors, suffered or suffer the appointment of a receiver to take possession of all, or substantially all, of Seller's assets, suffered or suffer the attachment or other judicial seizure of all, or substantially all, of Seller's assets, admitted in writing its inability to pay its debts as they come due or made an offer of settlement, extension or composition to creditors generally.

(r) The Property abuts and has a right of access to and from a public road.

~~(s) In all cases in this Agreement where Seller represents that it does not have "knowledge" of any thing, occurrence, or events, the "knowledge" as to which such representation is made shall be actual knowledge and not constructive knowledge.~~

Section 5.02 Purchaser represents and warrants to Seller as of the date hereof and as of the Closing Date as follows:

(a) Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York.

(b) The execution and delivery of this Contract, the consummation of the transactions contemplated hereby and the performance of Purchaser's obligations hereunder has been duly authorized by all necessary action on the part of Purchaser, and this Contract constitutes the legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms, subject as to enforceability, to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally.

(c) The execution and delivery of this Contract by Purchaser and the consummation of the transactions contemplated hereby by Purchaser do not and will not (i) violate any judgment, order, injunction, decree, regulation or ruling of any court or governmental entity, (ii) conflict with, result in a breach of, or constitute a default under the organizational documents of Purchaser, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture or any lease or other material agreement or instrument to which Purchaser is a party or by which Purchaser may be bound or (iii) violate or conflict with any law or governmental regulation or permit applicable to Purchaser.

(d) No consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Contract by Purchaser or the performance by Purchaser of the transactions contemplated hereby.

Section 5.03 No representations, warranties and agreements of the parties hereunder or in any of Seller's Documents shall survive the Closing, unless expressly stated to survive.

Section 5.04

(a) PURCHASER REPRESENTS, WARRANTS AND AGREES THAT (I) PURCHASER, SUBJECT TO PURCHASER'S DUE DILIGENCE PERIOD, HAS EXAMINED THE PROPERTY OR WILL EXAMINE THE PROPERTY PURSUANT TO PURCHASERS DUE DILIGENCE RIGHTS HEREIN AND IS FAMILIAR WITH THE PHYSICAL CONDITION THEREOF AND HAS CONDUCTED OR WILL CONDUCT SUCH INVESTIGATION, INCLUDING ENVIRONMENTAL TESTING, OF THE AFFAIRS AND CONDITION OF THE PROPERTY AS PURCHASER HAS CONSIDERED APPROPRIATE, (II) NEITHER SELLER NOR ANY OF ITS REPRESENTATIVES HAVE MADE OR WILL MAKE ANY VERBAL OR WRITTEN REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES WHATSOEVER TO PURCHASER, WHETHER EXPRESS OR IMPLIED, AND IN PARTICULAR, THAT NO SUCH REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES HAVE BEEN MADE OR WILL BE MADE WITH RESPECT TO THE PHYSICAL CONDITION, ENVIRONMENTAL CONDITION, OR OPERATION OF THE PROPERTY, THE ACTUAL OR PROJECTED REVENUE AND EXPENSES OF THE PROPERTY, THE ZONING AND OTHER LAWS, REGULATIONS AND RULES APPLICABLE TO THE PROPERTY OR THE COMPLIANCE OF THE PROPERTY THEREWITH, THE QUANTITY, QUALITY OR CONDITION OF THE ARTICLES OF OPERATING EQUIPMENT AND FIXTURES INCLUDED IN THE TRANSACTIONS CONTEMPLATED HEREBY, 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, EXCEPT AS, AND SOLELY TO THE EXTENT, HEREIN SPECIFICALLY SET FORTH, NEITHER SELLER NOR ANY OF ITS REPRESENTATIVES HAVE MADE OR WILL MAKE ANY VERBAL OR WRITTEN REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES WHATSOEVER TO PURCHASER, WHETHER EXPRESS OR IMPLIED, AND, IN PARTICULAR, THAT NO SUCH REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES HAVE BEEN MADE OR WILL BE MADE WITH RESPECT TO THE TRUTH, ACCURACY OR COMPLETENESS OF ANY MATERIALS, DATA OR OTHER INFORMATION, INCLUDING, WITHOUT LIMITATION, THE CONTENTS OF SELLER'S BOOKS AND RECORDS, CONTRACTS, ENVIRONMENTAL REPORTS, ENGINEERING REPORTS, PHYSICAL CONDITION SURVEYS, INFORMATIONAL BROCHURES WITH RESPECT TO THE PROPERTY, RENT ROLLS OR INCOME AND EXPENSE STATEMENTS, WHICH SELLER OR ITS REPRESENTATIVES MAY HAVE DELIVERED, MADE AVAILABLE OR FURNISHED TO PURCHASER IN CONNECTION WITH THE PROPERTY AND PURCHASER REPRESENTS, WARRANTS AND AGREES THAT ANY

SUCH MATERIALS, DATA AND OTHER INFORMATION DELIVERED, MADE AVAILABLE OR FURNISHED TO PURCHASER ARE DELIVERED, MADE AVAILABLE OR FURNISHED TO PURCHASER AS A CONVENIENCE AND ACCOMMODATION ONLY AND EXPRESSLY DISCLAIMS ANY INTENT TO RELY ON ANY SUCH MATERIALS, DATA AND OTHER INFORMATION AND HAS ENTERED INTO THIS CONTRACT, AFTER HAVING MADE AND RELIED SOLELY ON ITS OWN INDEPENDENT INVESTIGATION, INSPECTION, ANALYSIS, APPRAISAL, EXAMINATION AND EVALUATION OF THE FACTS AND CIRCUMSTANCES AND (IV) EXCEPT AS EXPRESSLY PROVIDED HEREIN BY SELLER, PURCHASER HAS NOT RELIED UPON ANY SUCH REPRESENTATIONS, WARRANTIES, PROMISES OR GUARANTIES OR UPON ANY STATEMENTS MADE IN ANY INFORMATIONAL BROCHURE WITH RESPECT TO THE PROPERTY AND HAS ENTERED INTO THIS CONTRACT AFTER HAVING MADE AND RELIED SOLELY ON ITS OWN INDEPENDENT INVESTIGATION, INSPECTION, ANALYSIS, APPRAISAL, EXAMINATION AND EVALUATION OF THE FACTS AND CIRCUMSTANCES.

(b) SUBJECT TO SECTION S 7 AND 4, PURCHASER AGREES TO ACCEPT THE PROPERTY "AS IS", "WHERE IS" AND "WITH ALL FAULTS" IN ITS PRESENT CONDITION, SUBJECT TO REASONABLE USE, WEAR, TEAR AND NATURAL DETERIORATION OF THE PROPERTY BETWEEN THE DATE HEREOF AND THE CLOSING DATE WITHOUT ANY REDUCTION IN THE PURCHASE PRICE FOR ANY CHANGE IN SUCH CONDITION BY REASON THEREOF SUBSEQUENT TO THE DATE OF THIS CONTRACT AND FURTHER AGREES THAT SELLER SHALL NOT BE LIABLE FOR ANY LATENT OR PATENT DEFECTS IN THE PROPERTY.

(c) Subject to Section 4, Purchaser further acknowledges that it has inspected all of the documents referred to in this Contract as having been delivered, made available or furnished to Purchaser for inspection and that to Purchaser's current knowledge from such inspection Purchaser has not discovered any material matter which would form the basis for a claim by Purchaser that Seller has breached any representation or warranty of Seller made in this Contract and has no actual knowledge of any such matter. Notwithstanding anything to the contrary set forth in this Contract, if prior to the Closing Purchaser has or obtains actual knowledge that any of Seller's representations or warranties contained herein are untrue in any respect, and Purchaser nevertheless proceeds with the Closing, then the breach by Seller of the representations and warranties as to which Purchaser shall have such actual knowledge shall be deemed waived by Purchaser, such representations and warranties shall be deemed modified to conform them to the information that Purchaser shall have actual knowledge of, and Seller shall have no liability to Purchaser or its successors or assigns in respect thereof.

(d) Notwithstanding the termination rights described in Section 4, Purchaser acknowledges and agrees that it has “signed-off” on market conditions which influence the Property and the value thereof, such as the Property’s competitive position relative to its existing and potential future competitors, market rental rates achievable at the Property, vacancy assumptions, sales prices, credit loss and downtime reserves, projected growth rates (if any) in rents, expenses and/or retail sales, lease cancellation income, HVAC overtime income, profit from tenant electric charges, impact of sale on assessed value, tenant work and leasing fee levels necessary to generate estimated market rents, tenant retention ratios, the need for and amount of any capital reserves, floor area ratio (“FAR”), buildable square footage, zoning, building or development rights, and any other thing or matter whatsoever. Furthermore, Purchaser has satisfied itself as to the Property’s condition, and level of compliance, with respect to the Americans with Disabilities Act (“ADA”) and asbestos and asbestos containing materials (“ACM”), and the Purchase Price reflects Purchaser’s views on these issues. FINALLY, PURCHASER ACKNOWLEDGES THAT THE PURCHASE PRICE DOES NOT BEAR ANY RELATIONSHIP TO AND IS NOT BASED UPON ANY FAR OR SQUARE FOOTAGE STIPULATION OR CALCULATION OF THE PREMISES OR ANY ZONING, BUILDING OR DEVELOPMENT RIGHTS. THE PURCHASER HAVING MADE ITS OWN INDEPENDENT INQUIRY WITH RESPECT THERETO.

(e) Subject to the termination rights described in Section 4, before entering into this Contract, Purchaser has made or shall have made such examination of the Property, the operation, income and expenses thereof and all other matters affecting or relating to this transaction as Purchaser deemed necessary.

Section 6. Responsibility for Violations

Section 6.01 All notes or notices of violations of law or governmental ordinances, orders or requirements which were noted or issued prior to the Closing Date by any governmental department, agency or bureau having jurisdiction as to conditions affecting the Property and all liens which have attached to the Property prior to the Closing pursuant to any applicable law, statute, rule regulation or ordinance shall be the responsibility of Seller; provided, however, that Seller shall have ~~six-thirty (30) days (6) months~~ following receipt of written notice thereof to cure such violations and/or pay any amounts, including interest and penalties, due with respect thereto.

Section 7. Fire Damage or Condemnation

Section 7.01 In the event of any damage to or destruction of the Property by fire or other casualty (a “Casualty Loss”) or any taking thereof by right of eminent domain (a “Condemnation Loss”) between the date of this Contract and Closing, the parties agree that

the provisions of any statute, law or ordinance (including, without limitation Section 5-1311 of the General Obligations Law of the State of New York) to the contrary notwithstanding, Purchaser's obligation to consummate the transaction covered by this Contract shall be governed by the provisions of Sections 7.02 and 7.03.

Section 7.02 If such Casualty Loss affects all or any portion of the Property, neither Purchaser nor Seller shall have the option to cancel this Contract unless Seller has failed to properly and fully insure the Premises, in which case Purchaser shall have the option to cancel this contract and the down payment shall be immediately returned. Purchaser shall not be excused from performing its obligations under this Contract (without any abatement of the Purchase Price hereunder), and Seller shall assign to Purchaser at Closing, all of Seller's right, title and interest, if any, in or to any proceeds payable under Seller's insurance policy as to the physical Casualty Loss (but not any rental interruption or business interruption insurance which shall be retained by Seller, as and to the extent it relates to the period prior to Closing). ~~If Seller shall assign such insurance proceeds to Purchaser, Seller shall not be required to pay or credit to Purchaser at Closing any deductible pursuant to such insurance policy.~~

Section 7.03 If such Condemnation Loss affects all or any portion of the Property, Purchaser shall have the option to cancel this Contract by giving the Seller written notice of cancellation not later than ten (10) days after Purchaser receives notice of such Condemnation Loss (time being of the essence), in which event Escrowee shall refund the Downpayment, together with interest earned thereon, if any, to Purchaser and, thereafter, Purchaser and Seller will have no further obligation or liability hereunder except for any obligation expressly provided herein to survive a termination of this Contract. In the event that Purchaser does not elect to cancel this Contract pursuant to the terms of this Section 7.03, Purchaser shall not be excused from performing its obligations under this Contract (without any abatement of the Purchase Price hereunder), the Purchase Price shall be unaffected and Seller shall assign to Purchaser at the Closing, all of Seller's right, title and interest in or to any award or awards which Seller shall be entitled to receive as a result of such taking.

Section 7.04 Seller shall notify Purchaser of any casualty to the Property and of any notice of any condemnation or threatened condemnation (temporary or permanent) of any portion of the Property, the taking of which may affect the Property, within five (5) Business Days of Seller's knowledge thereof.

Section 7.05 Seller shall maintain in full force and effect until the Closing, the insurance policies, if any, it is now maintaining with respect to the Property.

Section 7.06 During the term of this Contract of Sale, Seller shall neither market the Property for sale, lease or occupancy nor enter into negotiations for same ~~other~~

~~than with respect to obtaining or attempting to obtain a so-called "back-up offer" with respect to a sale of the Property should the Closing not occur.~~

Section 8. Covenants of Seller

Seller covenants that between the date of this Contract and the Closing:

Section 8.01 Real estate tax refunds and credits received after the Closing Date by Seller or Purchaser which are attributable to the ~~fiscal~~lien tax year during which the Closing Date occurs shall be apportioned between Seller and Purchaser, after deducting the legal and other expenses of collection thereof, which obligation shall survive the Closing. Seller shall have the exclusive right to prosecute to completion any and all tax certiorari proceedings with respect to the Property for all periods prior to the Closing Date and Seller shall be entitled to receive all refunds and credits payable with respect thereto. Purchaser shall promptly pay to Seller any and all such refunds and credits it shall receive with respect to such periods prior to the Closing Date. The provisions of this Section 8.01 shall survive Closing.

Section 8.02 Seller shall not create any additional encumbrances or grant any additional easements or other covenants and restrictions, other than the Permitted Exceptions on the Property without the prior written consent of Purchaser.

Section 8.03 Seller shall not convey any zoning, building or development rights to any third party.

Section 8.04 No lease or occupancy agreement affecting the Premises, other than those set forth as Exhibit B, or contract or agreement that provides for the provision of labor, materials, goods or services to or with respect to the Premises or the operation thereof, will be in effect as of the date of Closing;

Section 8.05 Seller shall not apply for or otherwise seek any approval, authorization, certificate, consent, permit or license in connection with any use, operation or development of the Premises or any portion thereof, and Seller shall immediately withdraw any such pending application immediately upon the execution of this Contract.

Section 8.06 Seller shall not undertake or perform or allow to be undertaken or performed any construction, demolition, site work, alteration of topography or landscape or similar activities on the Premises or do or allow anything to be done which would ~~adversely~~ affect the Premises without the prior written consent of Purchaser.

Section 9. Seller's Closing Obligations

At the Closing, Seller shall deliver to Purchaser and/or the Title Company, as applicable, the following documents duly executed and, where appropriate, acknowledged by Seller, and the following other items (the documents and other items described in this Section 9 which are to be delivered at Closing are collectively referred to as "Seller's Closing Documents"):

Section 9.01 A Bargain and Sale Deed with Covenants Against Grantor's Acts for the Premises properly executed and in proper form for recording.

Section 9.02 If Seller is not an entity formed and existing under the laws of the State of New York, sufficient evidence, in form satisfactory to Purchaser, that Seller is authorized to do business in such State and has paid any applicable Franchise taxes and/or use, occupancy, rental or sales taxes pertaining to the Premises.

Section 9.03 Seller shall cause XYZ Corp. to simultaneously with the closing of the within transaction to close on its asset sale transaction with Purchaser, or its designee or assignee, pursuant to the terms of the Asset Sale Contract.

Section 9.04 To the extent they are then in Seller's possession and not posted at the Property, the Licenses, Permits, Approvals, and Pending Applications together with an Assignment and Assumption thereof, to the extent permissible.

Section 9.05 An affidavit in such form as Purchaser's title company shall reasonably require in order to omit from its title insurance policy all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to Seller's name, or any standard exceptions to an owner's or lender's policy of title insurance.

Section 9.06 Checks to the order of the appropriate officers in payment of all applicable real property transfer taxes, and copies of any required tax returns therefor executed by Seller, which checks shall be certified or official bank checks if required by the taxing authority, unless Seller elects to have Purchaser pay any of such taxes and credit Purchaser with the amount thereof, and such other forms as may be required by the County of Suffolk and State of New York to have the deed recorded.

Section 9.07 A FIRPTA Affidavit.

Section 9.08 A certificate of Seller with respect to (a) the authorization of the transactions contemplated hereby and (b) the authority of the person(s) executing the Seller Closing Documents on behalf of Seller.

Section 9.09 A certification that all of Seller's representations and warranties made in this Contract are true and correct in all material respects on the Closing Date.

Section 9.10 Estoppel Certificates from the tenants in occupancy of the Premises pursuant to the Lease Agreements annexed as Exhibit B.

Section 9.11 Any other documents required by this Contract to be delivered by Seller.

Section 10. Purchaser's Closing Obligations

At the Closing, Purchaser shall deliver to Seller the following documents duly executed and, where applicable, acknowledged by Purchaser (the documents described in this Section 10 which are to be delivered at Closing are collectively referred to as "Purchaser's Closing Documents"), and take the following actions:

Section 10.01 Wire transfer or certified/bank check to Seller pursuant to Section 2.01 payment of the portion of the Purchase Price payable at the Closing, as adjusted for apportionments pursuant to Section 11.

Section 10.02 Executed counterparts of the documents described in Sections 9.04 and 9.06.

Section 10.03 A copy of the organizational documents of Purchaser certified to be true and correct by an authorized officer of Purchaser.

Section 10.04 A certificate of Purchaser with respect to (a) the approval and authorization of the transactions contemplated hereby and (b) the authority of the person(s) executing the Purchaser Closing Documents on behalf of Purchaser.

Section 10.05 Purchaser shall or shall cause its designee or assignee to simultaneously with the Closing of the within transaction to close on its asset purchase transaction with XYZ Corp. pursuant to the terms of the Asset Sale Contract.

Section 10.06 As applicable, deliver any other documents required by this Contract to be delivered by Purchaser.

Section 11. Apportionments at Closing

Section 11.01 The following apportionments shall be made between the parties at the Closing as of the close of business on the day prior to the Closing Date:

11.01.1 Rents, security deposits and other occupancy charges, collected as of Closing, including those rents paid pursuant to the leases and tenancies set forth on Exhibit B annexed hereto, and those new or modified leases entered into by Seller in accordance with Article 14 hereof (all such leases and tenancies collectively referred to herein as the "Leases"). At the closing, Seller shall deliver to Purchaser a list of all periods to which each such delinquency relates. If the tenant under any Lease is in arrears in the payment of rent at Closing, rents received from such tenant after the closing shall be applied in the following order of priority: (a) first, to the month in which such rents are received, (b) second, to any rent arrearages for the month in which the closing occurs, and (c) third, to the period(s) for which the tenant in question was in arrears prior to the month in which the closing occurs. If all or part of any rents received by Seller or Purchaser after the closing are payable to the other party by reason of this allocation, the appropriate sum, less a proportionate share of any reasonable attorneys' fees and other costs and expenses of collection thereof, shall be promptly paid to the other party. Purchaser agrees to use good faith efforts to collect delinquent rents relating to the period before the closing. The provisions of this paragraph shall survive Closing and delivery of the Deed.

11.01.2 Real estate taxes and vault taxes, if any, on the basis of the fiscal/lien year for which assessed.

11.01.3 Water and sewer rents and/or charges, on the basis of the fiscal/lien year for which assessed.

11.01.4 Water meter and sewer rent meter charges, in accordance with the amounts fixed with respect thereto in a meter reading made as of a date not more than thirty (30) days prior to Closing, except that if such reading cannot with reasonable efforts be obtained by such date, then the unfixed water meter and sewer charges, if any, for any intervening period shall be apportioned on the basis of the last reading therefor. Unpaid water meter and sewer rent meter charges required to be paid by tenants in accordance with their Leases shall not be adjusted, and Purchaser shall accept title subject to the same.

11.01.5 Charges and revenues arising out of service, maintenance, and/or vending machine agreements, as set forth in Exhibit C annexed hereto.

11.01.6 Fees for transferable licenses and permits, if any.

11.01.7 Fuel, if any, on the basis of an estimate of the amount of fuel by the Seller's supplier and the Seller's cost thereof as evidenced by the most recent receipts/bills of such supplier.

11.01.8 Any transfer taxes in connection with the sale of the Premises shall be paid by Seller. Any recording fees that are imposed in connection with the sale of the Premises shall be paid by Purchaser. Any other expenses, charges and fees of closing not specifically allocated herein shall be borne by the parties according to the general custom in the county where the Premises is located.

Section 11.02 If the closing of title shall occur before a tax rate is fixed, the apportionment of taxes shall be upon the basis of the tax rate for the next preceding year applied to the latest assessed valuation.

Section 11.03 If, on the Closing Date, the Premises or any part thereof shall be or shall have been affected by an assessment or assessments that are or may become payable in annual installments, of which the first installment is then a charge or lien, or has been paid, then for the purpose of this Agreement all the unpaid installments of any such assessment, including those that are to become due and payable after Closing, shall not be deemed to be liens upon the Premises and shall be assumed by Purchaser without abatement of the Purchase Price.

Section 11.04 The balance of any tenant security deposits made pursuant to the Leases and held by Seller, or Seller's agent, on Closing shall be transferred at closing ~~at Seller's option either (i) by direct assignment of the bank accounts in which the same are deposited and delivery of all necessary and appropriate documentation relating to such accounts, or (ii)~~ by Seller retaining all rights in the bank accounts, and crediting to Purchaser against the cash balance of the Purchase Price payable at closing (a) the security deposits to be delivered pursuant to this Agreement, and (b) such portion of the interest accrued thereon to which each respective tenant would be entitled pursuant to its lease. No allocation shall be made of security deposits to be delivered pursuant to this Agreement, and such portion of the interest accrued thereon to which each respective tenant would be entitled pursuant to its lease. No allocation shall be made of security deposits applied prior to the Closing Date or with respect to tenants not in possession on Closing. At the closing, Purchaser shall execute and deliver to Seller an agreement, in form and substance satisfactory to Seller's counsel, pursuant to which Purchaser shall indemnify Seller against any claim that may be made by tenants in connection with the securities transferred to Purchaser, and Seller shall execute and deliver to Purchaser an agreement in similar form indemnifying Purchaser against such claims that may be made on account of the disposition of the securities for the period prior to the closing. Seller and Purchaser shall, at the time of the closing, execute letters addressed to tenants under all of the Leases, in form approved by ~~Seller~~Purchaser,

advising them of the consummation of this transaction and the transfer of their security deposit, and such letters shall be mailed by ~~Seller~~Purchaser, promptly following the closing, to all such tenants, at Purchaser's cost and expense, by certified mail, return receipt requested, and upon receipt of said return receipts ~~Seller~~Purchaser shall forward copies of the same to ~~Purchaser~~Seller.

Section 11.05 In the event the apportionments as provided in this Article, when computed, result in a ~~credit to payment due~~ Seller, the cash portion of the Purchase Price due at closing shall be increased by the amount of such credit~~then such payment shall be made at the closing by Acceptable Check~~. If such apportionment results in a credit to Purchaser, the cash portion of the Purchase Price due at closing shall be reduced by the amount of such credit.

Section 11.06 The provisions of this Section 11 shall survive the Closing.

Section 12. Objections to Title, Failure of Seller or Purchaser to Perform and Vendees' Lien

Section 12.01 Purchaser shall promptly order an examination of title from the Title Company and shall cause a copy of the title report to be forwarded to Seller's attorney upon receipt.

Section 12.02 If Seller shall be unable or unwilling to cure any title objections such that Seller is unable to convey title to the Property at the Closing in accordance with the provisions of this Contract, Purchaser, nevertheless, may elect to accept such title as Seller may be able to convey ~~without any credit against the monies payable at the Closing and without any liability on the part of Seller.~~ The foregoing shall not permit Seller to refuse to pay off at the Closing, and Seller shall pay off at closing, mortgages, money judgments, tax liens, mechanics liens and any other liens against Seller filed against the Property which are dischargeable by payment of a liquidated sum of money, not to exceed ~~Twenty Thousand (\$20,000.00) Dollars~~ the purchase price. If Purchaser shall not so elect to accept such title, Purchaser may terminate this Contract by written notice to Seller, and the sole liability of Seller to Purchaser hereunder shall be to direct the Escrowee to refund the Downpayment to Purchaser and to pay to Purchaser its survey, title and attorney fees. Upon such refund, this Contract shall be null and void and of no further force or effect and Seller and Purchaser shall have no further obligations and liabilities to each other except for any obligation or liability which is expressly specified herein to survive a termination of this Contract. Seller shall not be required to bring any action or proceeding or to incur any expense to cure any title defect or to enable Seller otherwise to comply with the provisions of this Contract if such expense or cure is in excess of \$20,000.00; provided however, that Seller shall, on or prior to the Closing Date, discharge or remove of record or cause to be paid, discharged or removed of record at Seller's sole cost and expense, liens and other encumbrances which Seller has knowingly and intentionally consented to be placed on the Property after the date hereof (the "Voluntary Liens").

Section 12.03 Any liens and encumbrances which Seller is obligated to pay and discharge or which are against corporations, estates or other persons in the chain of title, if any, together with the cost of recording or filing any instruments necessary to discharge such liens and encumbrances of record, may be paid out of the proceeds of the monies payable at the Closing if Seller delivers to Purchaser at Closing official bills for such taxes, assessments, water charges, sewer rents, interest and penalties and instruments in recordable form sufficient to discharge any other liens and encumbrances of record. Upon request made a reasonable time before the Closing, Purchaser shall provide at the Closing separate checks for the foregoing payable to the order of the holder of any such lien, charge or encumbrance and otherwise complying with Section 2.02. If Purchaser's title insurance company is willing to insure Purchaser and Purchaser's mortgage lender, if any, that such

charges, liens and encumbrances will not be collected out of or enforced against the Property, Seller shall have the right in lieu of payment and discharge to deposit with the title insurance company such funds or assurances or to pay such special or additional premiums as the title insurance company may require in order to so insure. In such case the charges, liens and encumbrances with respect to which the title insurance company has agreed so to insure shall not be considered objections to title.

Section 12.04 If Purchaser shall willfully default in the performance of its obligations hereunder, or under the Asset Sale Contract the parties hereto agree that the damages that Seller shall sustain as a result thereof shall be substantial but shall be difficult to ascertain. Consequently, upon such default by Purchaser hereunder, or thereunder, the sole remedy of Seller shall be to retain the Downpayment as liquidated damages for all loss, damage and expense suffered by Seller, including without limitation the loss of its bargain. From and after such default by Purchaser hereunder and the retention by Seller of the Downpayment, neither Seller nor Purchaser shall thereafter have any further liability or obligation to the other, or any other rights hereunder, except for such liabilities or obligations which are expressly stated herein to survive a termination of this Contract.

Section 12.05 Purchaser shall have a vendee's lien against ~~the~~the Property for the amount of the Downpayment, but such lien shall not continue after default by Purchaser under this Contract.

Section 12.06 Whenever the term "time of the essence" or similar term is used herein, it shall mean that a party to this Contract is obligated to fulfill its obligations with respect to the matter discussed by the date indicated and no adjournment of such date shall be permitted, reasonable or otherwise, without the consent of the other party.

Section 12.07 In the event that Seller defaults in its material obligations hereunder and Seller is unable or unwilling to cure such default, Purchaser's sole and exclusive remedy shall be either (a) to seek specific performance by Seller of its obligations hereunder; provided, however, that Seller shall not be required to take any actions or incur any expenses to cure such defaults beyond the requirements in Section 12 .02 or (b) to terminate this Contract and obtain the return of the Downpayment, Purchaser's title, survey costs and reasonable attorney fees (and the parties shall jointly instruct Escrowee to promptly deliver said funds to Purchaser) and upon such return, this Contract shall be deemed terminated and neither Seller nor Purchaser shall have any further liability or obligation to the other or any other rights hereunder, except for such liabilities or obligations as are expressly stated to survive a termination of this Contract. Purchaser shall make its election between clauses (a) and (b) of this Section 12.07 by written notice to Seller given not later than thirty (30) days after Purchaser's discovery of such default. If Purchaser shall fail to give such written notice as aforesaid, it shall be deemed to have elected clause (b) above.

Section 12.08 The occurrence of an uncured event of default pursuant to the Asset Sale Agreement shall constitute an uncured default by such defaulting party hereunder.

Section 12.09 A termination of the Asset Sale Agreement by either party thereto, or by their successor or assign, shall constitute a termination of the within Contract and shall be effective upon the same date specified in the notice of termination given pursuant to the Asset Sale Agreement.

Section 13. Broker

Section 13.01 Seller and Purchaser represent and warrant to one another that they have not hired, retained or dealt with any advisor, broker, finder, consultant or intermediary in connection with the negotiation, execution and delivery of this Contract or the transactions contemplated hereby with the exception of _____. Seller and Purchaser shall indemnify, defend and hold one another harmless from and against any liability arising out of any claim that the foregoing representation and warranty is untrue. Notwithstanding anything in the foregoing to the contrary, Seller shall have the right to retain or engage any other consultants or advisors, so long as Seller shall pay any amounts due to such consultants and/or advisors and indemnify, defend and hold Purchaser harmless from and against any liability arising out of any claim made by such consultants and/or advisors.

Section 13.02 The provisions of this Section shall survive the Closing and any termination of this Contract.

Section 14. Notices

Section 14.01 If either of the parties hereto desires or is required to give notice to the other, such notice shall be in writing, and shall be deemed given when personally delivered to an officer of the party to be notified or three (3) business days after delivery to a United States Post Office against a post office receipt for delivery as first class mail addressed to the party for whom it is intended or when delivered to the party for whom it is intended by a messenger service as evidenced by a receipt or one (1) day after it is sent by nationally recognized overnight courier service, charges for next day delivery prepaid, or on the date delivered by telephone facsimile copy (with a confirming copy posted by regular mail) at the telephone facsimile copy number for each party set forth below, which parties are as follows:

If to Seller:

Att: _____

With a copy to:

If to Purchaser:

~~Att:~~ _____

With a copy to:

Section 15. Limitations on Survival

Section 15.01 Except as otherwise provided in this Contract, no representations, warranties, covenants or other obligations of Seller set forth in this Contract shall survive the Closing, and no action based thereon shall be commenced after the Closing.

Section 15.02 The delivery of the deed by Seller, and the acceptance thereof by Purchaser, shall be deemed to be the full performance and discharge of every obligation on the part of Seller to be performed hereunder, except those obligations specifically set forth herein to survive the Closing.

Section 16. Governing Law

Section 16.01 This Contract shall be governed by, and construed in accordance with, the internal laws of the State of New York (without giving regard to principles of conflict of laws) pursuant to Section 5-1401 of the New York General Obligation Law.

Section 17. Captions

Section 17.01 The captions in this Contract are inserted for convenience of reference only and in no way define, describe or limit the scope of intent of this Contract or any of the provisions thereof.

Section 18. Successors and Assigns

Section 18.01 This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 18.02 Purchaser may assign its interest in this Contract without Seller's consent (but upon prior notice to Seller) only to (a) an entity with financial wherewithal substantially equivalent to or better than purchaser which (i) controls and has a direct or indirect equity interest of not less than 50% in Purchaser, (ii) is controlled by Purchaser and Purchaser has a direct or indirect equity interest of not less than 50% in such assignee, or (iii) which is under common control with Purchaser and such entity maintaining common control has a direct or indirect equity interest of not less than 50% in both Purchaser and such assignee, or (b) any entity with financial wherewithal substantially equivalent to or better than Purchaser in which the Purchaser is a principal and has a direct or indirect equity interest of not less than 50% and day-to-day control over such entity. Otherwise, neither party herein may assign its respective rights and obligations hereunder, in whole or in part, without the prior written consent of the other party hereto. Any assignment without such prior written consent shall be deemed null and void ab initio.

Section 19. Taxpayer Identification Numbers

Section 19.01 Seller's Federal Tax Identification Number is _____.

Section 19.02 Purchaser's Federal Tax Identification Number is _____.

Section 20. Possession

Section 20.01 Possession of the Property shall be delivered vacant of tenancies and occupancies and in "as is" condition on the Closing Date with the exception of the tenants in occupancy pursuant to the Leases annexed as Exhibit B.

Section 21. Tax Deferred Exchange

(a) Upon the request of a party, the other party shall cooperate with reasonable requirements and requests to have the transaction contemplated by this Agreement treated as a “like kind exchange” pursuant to IRC Section 1031 and the regulations promulgated thereunder (“Exchange Requirements”); provided, however, that: (a) such cooperation shall be at no liability, cost or expense to the Party cooperating in such exchange (“Cooperating Party”); (b) the Outside Closing Date shall not be extended by reason thereof; (c) the Cooperating Party shall have no obligation to take title to any real property in connection with such exchange; and (d) the Cooperating Party shall make no representation or warranty in connection with, and shall have no responsibility for, compliance by such exchange with the Exchange Requirements, and the Cooperating Party shall have no obligation to indemnify, defend, or hold harmless the Exchangor. The party conducting the exchange shall have the right to assign its rights (but not its obligations) under this Agreement to a “qualified intermediary” as defined by the Exchange Requirements (“Exchangor”). If such party assigns its rights (but not its obligations) under this Agreement to an Exchangor, such party will give notice to the Cooperating Party of: (i) the assignment to the Exchangor; and (ii) that Exchangor is, and is only acting as, such party’s qualified intermediary within the meaning of the Exchange Requirements. Despite any assignment to an Exchangor, Seller shall convey the Property by direct deeding from Seller to Purchaser.

(b) In the case of an exchange by the Purchaser, no duty, obligation, representation or warranty of any Exchangor under this Agreement or any instrument delivered in connection with this Agreement or the transactions contemplated by this Agreement, shall survive the Closing, except for representations and warranties as to authority and as to dealings with brokers. Nothing in this Subsection shall relieve the party conducting the exchange from any liability or obligation under this Agreement.

Section 22. Miscellaneous Provisions

Section 22.01 This Contract and the Asset Sale Agreement and all schedules and exhibits annexed hereto embody and constitute the entire understanding between the parties with respect to the transactions contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this Contract.

Section 22.02 Neither this Contract or any provision hereof may be waived, modified, amended, discharged or terminated except by any instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

Section 22.03 This Contract shall not be binding or effective until properly executed and delivered by Seller and Purchaser.

Section 22.04 As used in this Contract, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context may require. The term “Business Day” shall mean any day other than a Saturday, a Sunday or a legal holiday on which national banks are not open for general business in the State of New York.

Section 22.05 If the provisions of any schedule or rider of this Contract are inconsistent with the provisions of this Contract, the provisions of such schedule or rider shall prevail.

Section 22.06 This Contract may be executed in two or more counterparts, which together shall constitute one integrated document. Delivery of a signature to this Contract by pdf, jpeg, TIFF or other form of electronic mail attachment shall be effective as delivery of a manually executed counterpart thereof prior to and in the absence of manual delivery.

Section 22.07 Each of Seller and Purchaser agrees that prior to Closing it will not issue any press release, advertisement or other public communication with respect to this Contract or the transactions contemplated hereby without the prior written consent of the other party hereto, except to the extent required by law. If Seller or Purchaser is required by law to issue such a press release or other public communication, then if permitted, at least one (1) Business Day prior to the issuance of the same such party shall deliver a copy of the proposed press release or other public communication to the other party hereto for its review.

Section 22.08 If any term or provision of this Contract or the application thereof to any persons, entities or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Contract or the application of such term or provision to persons, entities or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

Section 22.09 All premiums and fees for title examination and title insurance obtained by Purchaser, if any, and all related charges and survey costs in connection therewith shall be paid at the Closing by Purchaser. No portion of the Purchase Price hereunder shall be allocated to personal property. The title company for all purposes hereunder, including any insurance which Purchaser shall purchase and any searches performed or escrows held shall be First Title Insurance Company. The provisions of this Section shall survive the Closing.

Section 22.10 In the event either party hereto fails to perform any of its obligations under this Contract or in the event a dispute arises concerning the meaning or interpretation of an provision of this Contract, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses reasonably incurred by the other party in enforcing or establishing its rights hereunder, including, without being limited to, court costs and reasonable attorneys' fees.

Section 22.11 All recitals to and all Schedules and Exhibits referred to in or attached to this Contract are hereby incorporated herein and made a part hereof as fully as if set forth herein. All references in this Contract to Articles, Sections, Schedules and Exhibits are to the Articles and Sections hereof and the Schedules and Exhibits annexed hereto.

Section 22.12 The representations, warranties and agreements of the parties contained herein are intended solely for the benefit of the parties to whom such representations, warranties or agreements are made, and shall confer no rights hereunder, whether legal or equitable, in any other party, and no other party shall be entitled to rely thereon.

Section 22.13 SELLER AND PURCHASER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER AGAINST THE OTHER OR ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS CONTRACT.

Section 22.14 All judicial proceedings brought against Seller or Purchaser with respect to this Contract shall be brought in any state or federal court of competent jurisdiction in the State of New York, County of Suffolk, and by execution and delivery of this Contract, each of Seller and Purchaser accepts, for itself and in connection with its properties, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts, and irrevocably agrees to be bound by any final judgment rendered thereby in connection with this Contract from which no appeal has been taken or is available. Each of Seller and Purchaser irrevocably waives any objection, including any objection of the laying of venue or based on the grounds of *forum non conveniens*, that it may not or hereafter have to the bringing of any such action or proceeding in any such jurisdiction. Neither Seller nor Purchaser shall be entitled to any immunity whatsoever, whether characterized as sovereign immunity or otherwise, from any legal proceedings, whether in the United States or elsewhere, to enforce the obligations or liabilities hereunder. Seller and Purchaser each acknowledge that to the extent any of its property should at any time acquire any immunity, it hereby irrevocably waives such right to immunity in respect of any actions or proceedings, wherever brought, in respect of the obligations or liabilities hereunder. Seller and Purchaser each agrees that service of process upon such party at the address for such party set forth

herein and written notice of said service mailed or delivered to such party in the manner provided herein shall be deemed in every respect effective service of process upon such party in any such suit, action or proceeding in the State of New York. Each of Seller and Purchaser shall give prompt notice to the other party of any change in the address for such party set forth herein.

Section 22.15 Neither Seller nor Purchaser may record this Contract. ALL RECORDING OFFICERS ARE HEREBY DIRECTED THAT THE RECORDATION OF THIS CONTRACT IS EXPRESSLY PROHIBITED BY ITS TERMS. To the extent that any such filing or recordation is made in violation of this Contract, Purchaser shall indemnify Seller against any damages incurred by Seller in connection therewith. The provisions of this Section shall survive the termination of this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date first above written.

SELLER:

By:_____

PURCHASER:

By:_____

Receipt by Escrowee:

The undersigned Escrowee hereby Acknowledges receipt of the \$_____Downpayment to be held in escrow Pursuant to the Escrow Agreement.

By:_____

EXHIBIT A
LAND

EXHIBIT B

LEASES

TENANT	PREMISES	TERM	RENT	SECURITY	UTILITIES
Mary Smith	Apt. 2A	Jan. 1, 2019 Dec. 31, 2019	\$1,000/mo.	\$1,500	Electric- not included Heat & Water are included
John Doe	Apt. 2B	Jan. 1, 2019 Dec. 31, 2019	\$1,000/mo.	\$1,500	Electric- not included Heat & Water are included
Pub Corp.	Unit 1	Jan. 1, 2018 Dec. 31, 2025	\$3,000/mo.	\$2,000	No Utilities included

SCHEDULE 1.02(a)

PERMITTED EXCEPTIONS

1. Any state of facts that a current accurate survey of the Property would show as of the Closing.
2. Any state of facts that a personal inspection of the Property might disclose.
3. Taxes, water charges, sewer rents and assessments, not yet due and payable, subject to adjustment as provided in this Contract.
4. Any lien or encumbrance encumbering the Property as to which Seller shall deliver to Purchaser, or Purchaser's title company, if any, at or prior to the Closing, proper instruments, in recordable form, canceling such lien or encumbrance, together with any other instruments necessary thereto and the cost of recording and canceling the same and the Title Company shall remove, satisfy or affirmatively insure (at no additional premium unless Seller agrees to pay for same) any such lien or encumbrance.
5. All rights or easements, if any, of any governmental unit or any public or private utility company, to lay, maintain, install and repair telephone, cable and/or internet wires, pipes, lines, poles, conduits, cable boxes, equipment or other facilities which enter on, over, under or cross the Property.
6. Revocable nature of or lack of the right, if any, to maintain street and sidewalk vaults and other vault spaces, coal chutes, excavations, canopies, marquees, signs and sub-surface equipment.
7. Minor variations not to exceed ~~onetwo~~ (21) ~~feet~~ foot between tax lot lines and the record lines.
8. Any lien or encumbrance as to which a nationally recognized, reputable title company licensed to do business in the State of New York will insure, or commit to insure, Purchaser against loss or forfeiture of title to, or collection from, the Property without additional cost to Purchaser, whether by payment, bonding, indemnity or otherwise, unless Purchaser's lender is unwilling to accept same.
9. ~~Uniform Commercial Code financing statements, chattel mortgages and liens on personalty which are (a) more than five (5) years old on the day prior to the Closing Date or (b) filed against property or equipment no longer located on the Property (as to which~~

~~Seller shall deliver to the Title Company a reasonable affidavit required by the Title Company and reasonably acceptable to Seller to confirm the same).~~

10. Any laws, rules, regulations, statutes or ordinances affecting the Property, including, without limitation, those relating to zoning, land use, environmental matters and the ADA.

11. Encroachments of stoops, areas, cellar steps, trim cornices, lintels, window sills, awnings, canopies, ledges, fences, hedges, coping and retaining walls projecting from the Property over any street or highway or over any adjoining property and encroachments not to exceed ~~two one~~ (21) ~~feet-foot~~ of similar elements projecting from adjoining property over the Property.

12. Unpaid installments of assessments not due and payable on or before the Closing Date.

~~13. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.~~

14. Electric Easement in Liber Page . Copy attached.

15. Easement in Liber Page . Copy attached.

EXHIBIT 2.03
ESCROW AGREEMENT

ESCROW AGREEMENT (the "Agreement") made as of the _____ day of _____ 2019, by and among _____ a New York Limited Liability Company ("Seller"), _____, a New York Limited Liability Company ("Purchaser"), and _____, as escrow agent ("Escrowee").

WITNESSETH:

WHEREAS, Seller and Purchaser simultaneously with the execution and delivery of this Agreement have entered into a contract of sale dated of even date herewith (the "Contract") capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Contract) for the sale by Seller to Purchaser of the premises known as Section 1, Block 2, Lot 03, _____, NY all as more particularly described in the Contract (the "Property");

WHEREAS, Seller and Purchaser have agreed with each other to place the \$_____ downpayment (the "Downpayment") toward the purchase price of the Property, required pursuant to Section 2.01 of the Contract, in escrow with Escrowee pending the closing of the sale of the Property to Purchaser, all subject to and in accordance with the terms and provisions of the contract; and

WHEREAS, Escrowee is willing to hold the Downpayment in escrow on the terms and conditions herein set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Escrow of Downpayment.

(a) Purchaser has wired to Escrowee simultaneously with the mutual execution and delivery of this Agreement, the Downpayment. Escrowee shall deposit the funds into a non-interest-bearing escrow account at

(b) The Downpayment shall be delivered by Escrowee to Seller, to Purchaser or, if pursuant to paragraph 4 hereof, to a substitute impartial party or a court having appropriate jurisdiction, in accordance with the terms of this Agreement. Delivery of the Downpayment in accordance with the terms of this Agreement shall be made by wire transfer of immediately available funds to an account of the party entitled to such payment, pursuant to written wire instructions of such party.

2. Release of Downpayment.

(a) Upon the closing of sale of the Property as contemplated in the Contract, Escrowee shall deliver to Seller the Downpayment against a signed receipt therefor, and Purchaser shall receive a credit against the Purchase Price pursuant to the Contract.

(b) Notwithstanding the provisions of paragraph 2(a) above, if Escrowee shall receive written instructions signed by both Purchaser and Seller, specifying the party to whom the Downpayment is to be delivered (the "Designated Party") and the time and place where the same is to be delivered, Escrowee shall deliver the same in accordance with such written instructions, such delivery to be made against a signed receipt therefor from the Designated Party.

(c) Upon the delivery of the Downpayment in accordance with this paragraph 2, Escrowee shall thereupon be relieved of and discharged and released from any and all liability hereunder and with respect to the Downpayment.

(d) Escrowee acknowledges that Purchaser is permitted, subject to certain conditions, to terminate the Contract. Upon receipt of notice from Purchaser stating that Purchaser has elected to terminate the Contract, Seller shall instruct Escrowee to release the Downpayment to Purchaser, together with accrued interest, by written notice to Escrowee (a "Termination Downpayment Release Notice"). Upon receipt of a Termination Downpayment Release Notice complying with this paragraph (d), Escrowee is hereby directed and irrevocably authorized to so release the Downpayment at the direction of Seller.

3. Notice of Termination of Contract. If at any time Escrowee shall receive a certificate of either Seller or Purchaser (the "Certifying Party") to the effect that: (i) the other party (the "Other Party") has defaulted under the Contract or that the Contract has otherwise been terminated or cancelled, and in each case stating that the Certifying Party is entitled to the Downpayment pursuant to the Contract; and (ii) a copy of the certificate and a statement in reasonable detail of the basis for the claimed default, termination or cancellation was mailed as provided herein to the Other Party prior to or contemporaneous with the giving of such certificate to Escrowee; then, Escrowee shall promptly send a copy of such certificate to the Other Party within five (5) days of Escrowee's receipt of said certificate (time being of the essence with respect to this five (5) day period), and if Escrowee shall not receive contrary instructions from the Other Party within ten (10) days after Escrowee gives a copy of such certificate to the Other Party, Escrowee shall deliver the Downpayment to the Certifying Party and thereupon be relieved of, discharged and released from any and all liability hereunder and with respect to the Downpayment. If Escrowee shall receive contrary instructions from the Other Party within ten (10) days of Escrowee's sending of said certificate

(time being of the essence with respect to this ten (10) day period), Escrowee shall not so deliver the Downpayment but shall either deposit the same in accordance with the terms of paragraph 4 hereof, or shall continue to hold the Downpayment until it receives a joint written instruction from Seller and Purchaser or a final non-appealable order of a court of competent jurisdiction, in which case Escrowee shall promptly comply with such instructions or order, as the case may be.

4. Release of Escrowee. In the event that: (i) Escrowee shall not have received instructions pursuant to this Agreement on or prior to the latest of the originally scheduled Closing Date and all adjourned Closing Dates, if any (the "Latest Closing Date"); or (ii) the closing under the Contract shall not have occurred on or prior to the Latest Closing Date; or (iii) Escrowee shall receive contrary instructions from the parties hereto or (iv) any dispute shall arise as to any matter arising under this Agreement, Escrowee's duties, rights or responsibilities hereunder or any written instructions received by Escrowee pursuant hereto, Escrowee may, at its option at any time thereafter, deposit the funds and/or instruments then being held by it in escrow into any court having appropriate jurisdiction in Nassau County, New York or take such affirmative steps as it may elect in order to substitute an impartial party in Nassau County, New York to hold any and all escrowed funds and/or instruments, and upon making such deposit, shall thereupon be relieved of and discharged and released from any and all liability hereunder and with respect to the Downpayment or any portion thereof so deposited.

5. Genuineness and Authenticity. Escrowee shall be entitled to rely upon the authenticity of any signature and the genuineness and/or validity of any writing received by Escrowee pursuant to or otherwise relating to this Agreement; provided however that if Escrowee receives replacement or conflicting wire instructions, Escrowee shall verify the correct instructions orally with the applicable party hereto.

6. Limitation on Liability of Escrowee. Seller and Purchaser recognize and acknowledge that Escrowee is serving without compensation and solely as an accommodation to the parties hereto and they each agree that Escrowee shall not be liable to either of the parties for any error of judgment, mistake or act or omission hereunder or any matter or thing arising out of its conduct hereunder, except for Escrowee's willful misconduct or gross negligence.

7. Indemnification. Seller and Purchaser severally agree to indemnify and hold harmless Escrowee from and against any and all costs, claims, damages or expenses (including, without limitation, reasonable attorneys' fees and disbursements) howsoever occasioned that may be incurred by Escrowee acting under this Agreement (including, without limitation, any costs incurred by Escrowee pursuant to Paragraph 4 hereof) or which

Escrowee may incur in connection with Escrowee acting under this Agreement, except for costs, claims or damages arising out of Escrowee's willful misconduct or gross negligence.

8. Notices. If either of the parties hereto desires or is required to give notice to the other, such notice shall be in writing, and shall be deemed given when personally delivered to an officer of the party to be notified or three (3) business days after delivery to a United States Post Office against a post office receipt for delivery as first class mail addressed to the party for whom it is intended or when delivered to the party for whom it is intended by a messenger service as evidenced by a receipt or one (1) day after it is sent by nationally recognized overnight courier service, charges for next day delivery prepaid, or on the date delivered by telephone facsimile copy (with a confirming copy posted by regular mail) at the telephone facsimile copy number for each party set forth below, which parties are as follows:

If to Purchaser:

Att:

With a copy to:

Tel

Email

If to Seller:

Att:

With a copy to:

If to Escrowee:

9. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of all parties hereto and their respective successors and permitted assigns and may not be modified or amended orally, but only in writing signed by all parties hereto. Neither Seller nor Purchaser may assign its rights or obligations under this Agreement to any party other than a party to whom Seller or Purchaser, as applicable, assigns its right, title and interest in, to and under the Contract to the extent permitted thereunder and no permitted assignment by Purchaser or Seller shall be effective unless and until such party shall have delivered to Escrowee (i) written notice of such assignment and (ii) an assumption agreement with respect to all of the obligations of the assigning party hereunder.

10. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York (without giving regard to principles of conflict of laws).

11. Submission to Jurisdiction. The undersigned hereby submit to personal jurisdiction in the State of New York, County of Suffolk for all matters, if any, which shall arise with respect to this Agreement, and waive any and all rights under the law of any other state or country to object to jurisdiction within the State of New York or to institute a claim of *forum non conveniens* with respect to any court in Suffolk County or for the purposes of litigation with respect to this Agreement. The foregoing shall not prohibit the enforcement of a judgment in any other jurisdiction. Each party hereto agrees that service of process upon such party at the address for such party set forth herein and written notice of said service mailed or delivered to such party in the manner provided herein shall be deemed in every respect effective service of process upon such party in any such suit, action or proceeding in the State of New York. Each party hereto shall give prompt notice to the other parties hereto of any change in the address for such party set forth herein.

12. Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY HERETO AGAINST ANOTHER PARTY HERETO OR ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

13. Merger. If any term, condition or provision of this Agreement, or the application thereof to any circumstance or party hereto, shall ever be held to be invalid or unenforceable, then in each such event, the remainder of this Agreement or the application of such term, condition or provision to any other circumstance or party hereto (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

14. Counterparts. This Agreement may be executed in any number of counterparts, each counterpart for all purposes being deemed an original, and all such counterparts shall together constitute only one and the same agreement. Delivery of a signature of this Agreement by .pdf, .jpeg, .TIFF or other form of electronic mail attachment shall be effective as delivery of a manually executed counterpart hereof prior to and in the absence of manual delivery.

15. Headings. The headings in this Agreement are inserted for convenience or reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

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

SELLER:

By: _____
Name:
Title:

Federal Taxpayer Identification Number

PURCHASER:

By: _____
Name:
Title:

Federal Taxpayer Identification Number

ESCROWEE:

By: _____

SCHEDULE 2.01(a)

ESCROWEE'S WIRE TRANSFER INSTRUCTIONS

Wire to: Bank United
445 Broad Hollow Road
Melville, NY 11747

ABA No.:

Credit to:

Account No.:

Reference:

SCHEDULE 2.01(b)

SELLER'S WIRE TRANSFER INSTRUCTIONS

Wire to:

ABA No.:

Credit to:

Account No.:

Reference:

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1.0 EXECUTIVE SUMMARY

At the request of _____, _____ has performed a Phase I Environmental Site Assessment (ESA) of the property located at _____ New York, herein referred to as the Subject Property. The main objective of this ESA was to identify **Recognized Environmental Conditions (RECs), Controlled Recognized Environmental Conditions (CRECs), or Historical Recognized Environmental Conditions (HRECs)** in connection with the Subject Property, defined in ASTM Practice E 1527-13 as the presence or likely presence of any hazardous substances or petroleum products that indicate an existing release, a past release, or a material threat of a release. This ESA also includes a preliminary evaluation of certain potential environmental conditions that are outside the scope of ASTM Practice E 1527-13. This assessment has identified no evidence of CRECs or HRECs in connection with the Subject Property. RECs pertaining to the presence of an on-site sanitary system and several on-site storm water drywells with no sampling history was identified pertaining to the Subject Property.

The Subject Property includes an irregular-shaped parcel totaling approximately 1.81 acres. The Subject Property is currently improved with one (1) commercial building with associated parking lot and a vacant lot directly west of the parking lot. The building has one (1) floor and a basement. At the time of the site inspection, the building was occupied by one (1) commercial tenant _____. A review of the _____, Department of Assessment files did not indicate the date of building construction, however, a review of historic aerial photographs indicate the building was constructed sometime between 1947 and 1962. The building and associated asphalt parking lot occupy the eastern portion of the parcel which is bordered by municipal walkways and right-of-ways.

Below is the Assessment Summary Table presenting our recommended actions for the Subject Property. Findings and Opinions and Recommendations for further action or investigation (if any), are presented in Section 10.0.

ASSESSMENT SUMMARY TABLE			
Assessment Component	Section(s)	Recommended Actions	Estimated Cost
Historical Review	5.3, 5.4 & 5.5	No Further Action	
Current Occupants / Operations	3.3	No Further Action	
Hazardous Substances / Petroleum Products	7.2	No Further Action	
Drains, Sumps & Storm Water Drywells	7.2	Sample on-site sanitary system and on-site storm water drywells	\$ 8,000 - \$ 10,000
Storage Tanks	7.2	No Further Action	
PCBs	7.2	No Further Action	
Regulatory Agency / Database Review	5.1	No Further Action	
Asbestos Containing Materials	9.1	No Further Action	
Lead Based Paint	9.2	No Further Action	
Lead in Drinking Water	9.3	No Further Action	
Radon	9.4	No Further Action	
Mold	9.5	No Further Action	
Wetlands	9.6	No Further Action	



SCBA Lawyers Helping Lawyers Committee

The SCBA Lawyers Helping Lawyers Committee provides free and confidential assistance to those in the legal community who are concerned about their alcohol or drug use and/or mental health or wellbeing or that of a colleague or family member.

Assistance is available to the legal community including attorneys, members of the judiciary, law students, and family members dealing with alcohol or substance abuse disorder, other addictive disorders, anxiety, depression, vicarious trauma, age related cognitive decline and other mental health concerns that affect one's well-being and professional conduct.

**Please call the
Lawyers Helping Lawyers Helpline at (631) 697-2499
to speak with an attorney who will provide support and recommend
resources. All calls are private and confidentiality is protected under
Judiciary Law Section 499. (Lawyer Assistance Committee)**

Feel Free to Join Us at Our Weekly Recovery Meeting