

1 **CONDITIONAL PURCHASE AND SALE AGREEMENT**

2 THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is made and entered into
3 this ____ day of _____, 2022, by and between THE TOWN OF HAVERSTRAW, a New
4 York municipal corporation, having an address of One Rosman Road, Garnerville, New York
5 10923 (“Seller” or “Town”), and BNE ACQUISITIONS, LLC, a New Jersey limited liability
6 company, having an address of 16 Microlab Road, Suite A, Livingston, New Jersey 07039, its
7 nominees, successors and assigns (“Purchaser”).

8 WHEREAS, Seller is the owner of a certain property located on Letchworth Village
9 Road, Haverstraw New York, as approximately depicted on Exhibit A and which shall be
10 specifically identified by a Schedule A metes and bounds description as set forth below,
11 consisting of 22.67 acres of land (the “Real Property”), also known on the Tax Map of the
12 Town of Haverstraw, being a portion of Tax Lot 19.16-2-14, as more fully described on
13 Exhibit A attached hereto; and

14 WHEREAS, Seller is also the owner of other parcels of property on the former
15 Letchworth Village site (the “Letchworth Village Property”), of which the Real Property is a
16 part; and

17 WHEREAS, the Letchworth Village Property has been designated by the Town of
18 Haverstraw Town Board (“Town Board”) as the Letchworth Village Urban Renewal Area;
19 and

20 WHEREAS, the Town Board has adopted an Urban Renewal Plan for the Letchworth
21 Village Property; and

22 WHEREAS, Seller desires to sell and Purchaser desires to purchase the Property (as
23 hereinafter defined), pursuant to the terms, provisions and conditions herein; and

24 NOW, THEREFORE, in consideration of Ten Dollars (\$10.00), cash in hand paid, the
25 receipt and sufficiency of which are hereby acknowledged, the premises, the mutual covenants
26 and conditions set forth herein and other good and valuable consideration, and intending to be
27 legally bound hereby, the parties hereby agree as follows:

28 1. **PURCHASE AND SALE OF PROPERTY.**

29 1.1 Subject to the terms and conditions contained herein, Seller agrees to sell
30 and Purchaser agrees to purchase the Real Property and all rights appurtenant thereto as more
31 fully and particularly described in Schedule A attached hereto and made a part hereof; all
32 improvements on and to the Real Property owned by Seller; all mineral, oil, and gas rights and
33 profits, water rights and subterranean rights of Seller appurtenant to the Real Property; any air
34 rights of Seller above the Real Property; all sewer and utility rights of Seller allocated to the Real
35 Property and the improvements; all right, title, and interest of Seller in and to any roads, streets
36 and ways, public or private, serving the Real Property; easements and all appurtenances of Seller
37 to the Real Property; all right, title and interest of Seller in and to any land lying in the bed of any

1 street, road, avenue, lane or right-of-way in front of, adjoining or adjacent to the Real Property;
2 and all rights and entitlements of Seller to development of the Real Property granted by
3 governmental or quasi-governmental bodies or entities having jurisdiction or authority over the
4 Real Property, to the extent permitted by law (all of the foregoing, together with the Real
5 Property, being referred to herein as the “Property”).

6 1.2 Seller and Purchaser agree that Purchaser is purchasing the Property for the
7 purpose of developing the Property as depicted on the Preliminary Site Plan prepared by JMC
8 Site Development Consultants dated November 5, 2021 consisting of PSP 1 and PSP 2
9 (“Preliminary Site Plan” attached hereto as Exhibit B) with multi-family residence housing
10 comprising approximately 300 units, but not less than 250 units, under the Town’s LD-17 zone
11 (or such other zoning existing or to be created which would allow for development of
12 approximately 300 units), together with associated common facilities and ancillary resident
13 services, together with interior roadways and park and recreation areas (the “Project”). The exact
14 size, number of units, mix of unit types, square footage, parking count and design of the Project
15 are subject to change by Purchaser and based upon the environmental review conducted pursuant
16 to SEQRA and land use reviews by those applicable governmental or quasi-governmental bodies
17 or entities having jurisdiction or authority over the Real Property and the Project, with no
18 assurances of approval.

19 1.3 No personal property is included in this transaction.
20

21 2. PURCHASE PRICE AND DEPOSIT.

22 2.1 The purchase price for the Property shall be an amount equal to (i)
23 \$48,000 multiplied by (ii) the number of market rate residential apartment units that can be
24 developed in accordance with the development approvals, which shall not be fewer than 250
25 units, and in no event less than \$12,000,000.00, unless a lesser number of units is expressly
26 agreed to by Purchaser in writing, (the “Purchase Price”), which shall be payable, as provided
27 below, by wire transfer or certified or bank check.

28 2.2 Within two (2) days of this agreement being fully-executed (the “Effective
29 Date”), which will only occur after the Town has (i) amended the Urban Renewal Plan, (ii)
30 designated Purchaser as an eligible and qualified developer for the Urban Renewal Plan and (iii)
31 authorized the Supervisor to enter into this Agreement, Purchaser shall deposit into escrow with
32 William Stein, Esq. (“Escrow Agent”), a refundable deposit in the amount of Five Hundred
33 Thousand Dollars (\$500,000.00) the (“Deposit”). The Deposit shall not be applied to the Town’s
34 escrow fees required for the processing of any and all application, which shall be paid and
35 replenished separately by Purchaser as would be the case for any other developer making an
36 application to the Town.

37 2.3 Simultaneously with the Deposit, Purchaser and Seller shall execute and
38 deliver the Escrow Agreement attached hereto as Exhibit B. Upon receipt of a fully signed
39 Escrow Agreement, Escrow Agent will deposit said funds in a segregated interest-bearing
40 account at a federally-insured commercial bank approved in writing by Purchaser. The Deposit
41 shall be fully refundable to Purchaser in the event that Purchaser terminates this Agreement

1 during the Due Diligence Period, as defined below, for any reason or no reason. Following the
2 expiration of the Due Diligence Period, the Deposit shall be non-refundable to Purchaser, unless:
3 (i) Seller defaults under this Agreement beyond any applicable notice and cure period, (ii) any of
4 the conditions precedent to Purchaser's closing obligations hereunder are not satisfied, or (iii) the
5 Purchaser is otherwise expressly permitted hereunder, including under Section 6, to terminate this
6 Agreement and receive the return of the Deposit.

7 2.3 Unless refunded pursuant to the provisions herein, the Deposit and any
8 additional deposits made with the Escrow Agent by Purchaser (together with any interest earned
9 thereon), shall be applied to the Purchase Price at Closing. In the event the Closing does not
10 occur through no fault of the Seller and the Deposit is not refunded pursuant to the provisions
11 herein, Seller shall be entitled to receive and retain the Deposit.

12 3. TITLE.

13 3.1 Seller shall convey good title to the Property to Purchaser at Closing, by
14 New York statutory bargain and sale deed with covenants against grantor's acts (the "Deed") in
15 fee simple, free and clear of any and all liens, claims, encumbrances, mortgages, deeds of trust,
16 security interests, and Must Cure Objections, as defined below, but subject to any Permitted
17 Exceptions, as defined below.

18 3.2 Promptly after the Effective Date, Purchaser shall obtain a commitment
19 for Title Insurance (the "Title Commitment") from a title insurance company licensed to do
20 business in the State of New York (the "Title Company"), committing to insure upon the
21 payment of a requisite premium at standard rates that Purchaser shall own good, fee simple title
22 to the Property, insurable at standard rates subject only to the Permitted Exceptions, as defined
23 herein. Promptly after the Effective Date, Purchaser shall also obtain a survey of the Real
24 Property from a surveyor licensed in the state in which the Real Property is located (the
25 "Survey").

26 3.3 Purchaser, upon receipt of the Title Commitment and/or the Survey, shall
27 promptly forward a complete copy of the Title Commitment or the Survey, or both as the case
28 may be, to Seller. Purchaser shall have until the expiration of the Due Diligence Period within
29 which to object, by written notice to Seller, to any exceptions to title or Survey defects set forth
30 in the Title Commitment and/or the Survey based upon the applicable provisions of this
31 Agreement with respect to the conditions of title ("Title Defects"). Purchaser may deliver to
32 Seller in writing one or more additional title/survey notices raising objections that Purchaser has
33 with respect to any Title Defects identified based upon subsequent revisions to the Title
34 Commitment or Survey that relate to matters that are first disclosed to Purchaser after the date of
35 issuance of the initial Title Commitment, or the initial draft Survey, as applicable. Any Title
36 Defect to which Purchaser fails to object by written notice to Seller (i) on or before the expiration
37 of the Due Diligence Period with respect to the Title Commitment and Survey and (ii) from and
38 after five (5) business days prior to the expiration of the Due Diligence Period, within ten (10)
39 business days after Purchaser's receipt of any updated Title Commitment or Survey with
40 respect to matters first disclosed in such updated Title Commitment or Survey, shall be deemed
41 approved (collectively, the "Deemed Approved Exceptions"). If Purchaser objects to any such

1 item by timely delivering written notice to Seller, Seller shall, within twenty (20) business days
2 after receiving such notice either (x) cause the Title Company to deliver a revised Title
3 Commitment to Purchaser on which the objected to exceptions are removed or waived by the
4 Title Company without any additional requirements from Purchaser and/or (y) commit in
5 writing to remedying on or prior to Closing in a manner acceptable to Purchaser such objected
6 to title exceptions or Survey defects. In the event Seller is unable to have the Title Company
7 remove or waive the title exceptions to which Purchaser has objected or elects not to commit in
8 writing to remedying such title exceptions and Survey defects, Seller shall so notify Purchaser
9 in writing and Purchaser shall have ten (10) business days thereafter to terminate this
10 Agreement and receive a full refund of the Deposit, and each of the parties shall be relieved
11 from further liability to the other, except as otherwise expressly provided herein. If Purchaser
12 does not terminate this Agreement within ten (10) business days after receiving such notice
13 from Seller, Purchaser shall be deemed to have waived its right to terminate this Agreement
14 due to such objections. In the event Seller does not respond to any Purchaser's title/survey
15 objection letter within the twenty (20) business-day period, Seller shall be deemed to have
16 elected to not cure such objected to title exceptions and Survey defects, and Purchaser shall
17 have the right to terminate this Agreement within ten (10) business days thereafter in
18 accordance with this Section 3.3.

19 3.4 Notwithstanding the foregoing, Seller agrees to satisfy and cause to be
20 released of record the following ("Must-Cure Objections"): (a) any mortgage, deed of trust or
21 other security interest encumbering the Property that secures a loan or other monetary obligation,
22 (b) any mechanic's, materialmen's, tax, judgment or other lien entered against Seller and
23 encumbering the Property, (c) any non-monetary lien or encumbrance that Seller has suffered or
24 allowed to be placed on the Property without Purchaser's consent from and after the Effective
25 Date and prior to the Closing Date, and (d) any other lien or encumbrance that is removable
26 solely by payment of money. In the event that Seller fails to satisfy and discharge all Must-Cure
27 Objections before or at Closing, Purchaser, at its sole election, may (i) do so for Seller's benefit
28 and receive a credit in the amount reasonably necessary to so satisfy and discharge all Must-Cure
29 Objections against the Purchase Price, or (ii) if the cost of satisfying and discharging all Must-
30 Cure Objections exceeds the Purchase Price, terminate this Agreement by written notice to Seller
31 and receive a full refund of the Deposit and each of the parties shall be relieved from further
32 liability to the other, except as otherwise expressly provided herein. Purchaser's rights set forth
33 herein are in addition to the rights and remedies of Purchaser otherwise provided in this
34 Agreement.

35 3.5 The term "Permitted Exceptions," as used herein, shall mean (i) the lien of
36 real estate taxes not yet due and payable, (ii) any state of facts an accurate survey would disclose,
37 provided that such facts do not render title uninsurable or prevent or materially interfere with
38 construction or intended use of the Project; (iii) zoning regulations, except as otherwise provided
39 herein; (iv) stoops, trims, cornices, lintels, awnings, canopies, ledges, fences, retaining walls
40 projecting from adjoining properties; (v) easements, covenants and restrictions of record,
41 provided they do not render title uninsurable or prevent or materially interfere with the
42 construction or intended use of the Project; (vi) such other matters as the Title Company is willing
43 to insure that will not materially interfere with construction or the intended use of the Project
44 without special premium; and (vii) all matters revealed in the Title Commitment

1 obtained by Purchaser and expressly approved by Purchaser and all Deemed Approved
2 Exceptions.
3

4 4. DOCUMENTS.

5 4.1 Within ten (10) business days after the Effective Date (the “Document
6 Delivery Date”), and thereafter within five (5) business days after receipt until Closing, Seller
7 shall deliver to Purchaser or otherwise provide, as appropriate, a true, complete, and fully legible
8 copy of the following documents and information relating to the Property, if such documents
9 and information are now in or subsequently become in the possession or control of Seller: Any
10 and all engineering studies, soil boring test results, environmental site assessments, wetland
11 surveys, site plans, title insurance policies and underlying documents related thereto, available
12 tax bills and assessments; boundary or topographic surveys; any and all existing, proposed or
13 proffered conditions and agreements accepted and agreed to by Seller (or any predecessor in title
14 to Seller if such documents are in the possession of Seller) as a condition to development of the
15 Property; any and all applications or submissions made to, approvals granted by and
16 correspondence with the Town, the New York State Department of Transportation, the New
17 York State Department of Environmental Conservation (“NYSDEC”), and all other federal,
18 state, and local agencies with regard to the Property; any and all development plans, easement
19 agreements, restrictive covenants, bills or correspondence relating to real estate taxes or
20 assessments; and all other material information pertaining to the Property (the “Seller’s
21 Documents”). Additionally, Seller shall deliver to Purchaser any additional documents relating
22 to the Property in Seller’s possession or control, as Purchaser may reasonably request, within ten
23 (10) business days following such request. Until Closing, all materials delivered to Purchaser
24 shall remain the property of Seller, and if Closing does not take place for any reason, Purchaser
25 shall promptly return all such materials to Seller. In addition, Seller represents and warrants to
26 Purchaser that Seller does not know of any statements or facts set forth in the Seller’s
27 Documents that are materially in error, false or misleading and Seller is not aware of any of the
28 Seller’s Documents being incomplete or having been rescinded or revised, except as indicated in
29 the Seller’s Documents themselves.

30 4.2 In the event Seller fails to deliver all of the required Seller’s Documents
31 on or before the Document Delivery Date, the Due Diligence Period shall be automatically
32 extended on a day-to-day basis for each day after the Document Delivery Date until Seller
33 delivers to Purchaser all of the Seller’s Documents as required under Section 4.1 above, to the
34 extent in Seller’s possession. The failure of Seller to timely deliver any or all of the Seller’s
35 Documents shall not be considered a breach of this Agreement.

36 5. DUE DILIGENCE PERIOD.

37 5.1 Purchaser shall have thirty (30) days from the Effective Date to conduct a
38 due diligence investigation of the Property (the “Due Diligence Period”), which shall be
39 conducted simultaneously with securing a Title Commitment and Survey as set forth in Section 3
40 above. Purchaser, its agents, contractors, engineers, surveyors, attorneys, employees and
41 invitees shall have the right, at any time, to enter the Property to, at its sole cost and expense,

1 make studies, tests, analyses, or other determinations desired by Purchaser, including soil
2 borings, drainage studies, surveying, soil testing, environmental studies (including invasive
3 testing and restoration), hazardous materials inspections and the like, all of which shall be done in
4 accordance with the Town Code and any and any and all other applicable or controlling rules,
5 laws, codes and governmental regulations. For any activity or testing performed by Purchaser or
6 its agents, employees and independent contractors, Purchaser shall render the Property safe from
7 any hazard created by such parties at the end of each work day and/or prior to leaving the Real
8 Property unattended. Purchaser shall not perform any invasive testing without first obtaining the
9 appropriate permit(s) to the extent required by the applicable governmental regulatory authority
10 or authorities and providing a copy thereof to Seller. Upon completion of any invasive testing,
11 Purchaser shall restore the Property to its previous condition. In the event of boring or other
12 excavation Purchaser, its agents, employees and/or independent contractors shall secure the
13 location at all times there is any opening or excavation that may be a hazard or attractive
14 nuisance.

15 5.2 Purchaser agrees to indemnify and hold Seller, its officers, employees,
16 attorneys and consultants (“Seller Indemnities”) harmless from and against any and all liabilities,
17 obligations, claims, damages, judgments, awards, penalties, costs and expenses, including but not
18 limited to reasonable attorneys’ fees and court costs, for claims of
19 damage to personal or real property or personal injury or death which occurs on the Real Property
20 resulting from the exercise of the access rights granted to Purchaser or the work to be performed
21 as provided in Section 5.1, or as a result of any liens for labor or services performed and/or
22 materials furnished by or for the account of Purchase with respect to Purchaser’s access to the
23 Real Property; provided, however, that Purchaser shall not have any liability with respect to any
24 claims that may arise from Seller’s negligence or willful misconduct or with respect to any
25 damage to real property resulting from a condition that existed on the Real Property prior to
26 Purchaser’s entry. Purchaser shall, prior to entry onto the Real Property, provide to Seller a
27 certificate of insurance from a reputable insurance company covering such indemnification
28 obligations of Purchaser with coverage amounts of at least \$1,000,000 per claim, naming Seller
29 Indemnities as an additional insured for the Due Diligence Period. Purchaser shall reasonably
30 restore the Property to its previous condition if it is changed as a result of the exercise of any of
31 the rights granted herein. Purchaser’s right of access provided above shall extend to and include
32 the entire time that this Agreement is in effect. This Section 5.2 shall survive any termination of
33 this Agreement.

34 5.3 Purchaser shall have the right to investigate and confirm that zoning,
35 including any current special exception, land use, and other applicable ordinances, regulations,
36 proffers and other official actions, site conditions, water, sewer and other utility availability and
37 capacity shall, in Purchaser’s opinion, permit the construction of the improvements for the
38 Project planned by Purchaser.

39 5.4 Purchaser may elect, at its sole discretion, to terminate this Agreement for
40 any reason (or for no reason whatsoever) by giving notice of such termination (“Purchaser’s
41 Termination Notice”) to Seller before 5:00 p.m. (prevailing Eastern time) at the conclusion of
42 the Due Diligence Period. In the absence of such notice, this Agreement shall remain in full
43 force and effect.

1 5.5 Upon delivery of Purchaser’s Termination Notice, this Agreement shall be
2 terminated. The Escrow Agent shall return the Deposit to Purchaser upon notice to the Escrow
3 Agent without the need for the concurrence of Seller, and each of the parties shall be relieved
4 from further liability to the other, except as otherwise expressly provided herein.

5 6. GOVERNMENTAL APPROVALS.
6

7 6.1 (a) Seller and Purchaser hereby agree that Purchaser’s obligation to
8 purchase the Property is expressly contingent upon Purchaser procuring Approvals for the Project
9 (as herein defined) on or before the date that is twenty-four (24) months after the end of the Due
10 Diligence Period (such period of time being called the “Approval Period”), however, so long as
11 Purchaser is diligently pursuing the approvals in good faith (subject to factors beyond its
12 reasonable control) Purchaser shall be entitled to two (2), six (6) month extensions of the
13 Approval Period (the “Extension Period”). Approvals shall include, in final and non-appealable
14 form, all permits and entitlements required for the development of the Project, including, without
15 limitation and to the extent required for the Project, site plan approvals, subdivision approvals,
16 zoning amendments, zoning variances or conditional use or special permits; permits under
17 environmental laws protecting water, air or other media; favorable determinations with respect to
18 the Project’s impacts on the environment or historical or archaeological resources, including but
19 not limited to SEQRA; and the first building permit applied for (collectively, the “Approvals”).
20 The Approvals may include, by way of description but not by way of limitation, if, as and to the
21 extent applicable, any master plan amendment(s) for the Property; amendment of the Town’s
22 Urban Renewal Plan, if required; approvals of local, county and state authorities to increase the
23 parking space count; approvals of local, county and state authorities with respect to the availability
24 of potable water and sewage capacity; approvals from all applicable governmental authorities
25 concerning storm drainage; approvals from local, county and state permitting agencies respecting
26 highway access and curb cuts; approvals from the Federal Environmental Protection Agency, U.S.
27 Army Corps of Engineers, NYSDEC and any other applicable agency having jurisdiction to
28 regulate activities that affect or alter wetland or aquatic resources; sewer connection or extension
29 permits; and approvals from applicable public utilities for requisite utility service. The Approvals
30 shall include an 15-year Payment in Lieu of Taxes agreement (the “PILOT Agreement) with the
31 applicable local, county and state authorities to commence upon the Closing which shall provide
32 that: (i) except for assessment years 1-3, payments in lieu of taxes shall be computed on a base of
33 \$3,840.00 per unit per year, which amount shall represent 100% of the annual payment in lieu of
34 taxes (the “Base Rate”); and (ii) annual payments shall be made as follows: (A) for assessment
35 years 1, 2, and 3, an amount equal to the taxes that would be paid based upon an assessment of the
36 Property as vacant land, which payment amount is agreed to be \$75,000.00; (B) for assessment
37 years 4 and 5, an amount equal to one-third (1/3) of the Base Rate multiplied by the number of
38 approved units; (C) for assessment years 6 and 7, an amount equal to two-thirds (2/3) of the Base
39 Rate multiplied by the number of approved units; and (D) for assessment years 8 through 15,
40 inclusive, an amount equal to 100% of the Base Rate multiplied by the number of approved units.
41 Purchasers shall be required to make the payments set forth in years 4 through 15 regardless of
42 whether construction on the Project has been completed, but Purchaser shall use best reasonable
43 efforts to substantially complete construction within three years of the Closing. At the expiration
44 of the 15-year PILOT period, Purchaser shall pay the assessed real property taxes to all taxing
45 jurisdictions.

1
2 (b) The Approvals contingency contemplated in this Section 6.1 shall not be
3 deemed satisfied if Purchaser is required as a condition of the grant or issuance of any Approval to
4 construct off-tract or off-site improvements (other than improvements directly related to the use
5 and operation of the Project such as streets, roads, curb cuts or utility connections), or if any
6 Approval imposes any other conditions or costs which, in Purchaser's objective assessment, would
7 materially interfere with the development, use or operation of the Project or materially increase the
8 cost and expenses of the Project. For purposes of this Agreement, the requisite Approvals shall be
9 deemed to have been procured only upon (i) the final, irrevocable action of each agency or entity
10 which is empowered to issue or participate in the issuance of the Approvals and (ii) the expiration
11 of the period within which judicial appeals from the agencies' actions can be filed without the
12 filing of any such appeal or, if a judicial appeal is taken, the final and non-appealable resolution of
13 such appeal in a manner that permits the Project to proceed.

14 6.2 Purchaser's right to an Extension Period shall be exercised by providing
15 written notice to Seller at least five (5) business days prior to the end of the Approval Period (or
16 the current Extension Period, as applicable).

17 6.3 Purchaser, at its sole cost and expense, shall promptly submit (not more
18 than 45 days after the end of the Due Diligence Period) and diligently
19 prosecute an application or applications to the appropriate authorities for, and obtain, all
20 Approvals required for the Project. Purchaser diligently pursuing the Approvals shall include,
21 but not be limited to, the filing of the necessary initial applications, paying all required
22 application, processing and escrow fees and using its best commercially reasonable efforts in
23 the context of the size, scope and complexity of the proposed Project to obtain, together with
24 the Town's cooperation but at Purchaser's sole cost and expense, all Approvals and timely
25 provide any subsequent submissions necessary to obtain such Approvals and to respond to
26 governmental requests for additional or supplementary information in order to process the
27 applications for the Approvals. Nothing in this Agreement shall be construed to prevent
28 Purchaser from simultaneously seeking zoning amendments or other legislative action intended
29 to modify or eliminate the requirement for any Approval, with the understanding that Purchaser
30 has no entitlement to any such legislation action.

31 6.4 As and when required in connection with the Approvals, Purchaser shall
32 post a suretybond or irrevocable letter of credit with the Town securing performance of all of the
33 public infrastructure work, in accordance with the Approvals as required by the Town Code, as well
34 as any other security and/or fees required by the Town Code, in the amounts required by the
35 Town Code. Such bond(s) or letter(s) of credit shall, in a manner consistent with the Town Code,
36 be released on a quarterly basis based upon the work completed and the work remaining to be
37 completed. The provisions of this paragraph shall survive delivery of the deed.

38 6.5

39 (a) In the event Purchaser is denied any Approvals necessary for the
40 Project to go forward on or before the end of the Approval Period (as extended by any Extension
41 Period(s), if applicable), Purchaser may elect to submit a modified application or terminate this

1 Agreement effective as of the date of written notice thereof to Seller. If the Purchaser selects the
2 latter, upon receipt of notice of termination, the Escrow Agent shall return to Purchaser the
3 Deposit, less any outstanding application escrow fees which shall be provided to the Town, and
4 each of the parties shall thereafter be relieved from further liability to the other, except as
5 otherwise expressly provided herein. In the absence of such notice prior to the end of the
6 Approval Period (as extended by any Extension Period(s), if applicable), this Agreement shall
7 remain in full force and effect and Purchaser shall have waived its right to terminate this
8 Agreement pursuant to this Section 6.5(a).

9 (b) In the event Purchaser does not receive any Approval before the end of
10 the Approval Period (as extended by any Extension Period(s), if applicable), despite diligently
11 pursuing such Approvals, Purchaser may elect to terminate this Agreement effective as of the
12 date of written notice thereof to Seller. Upon receipt of notice of termination, the Escrow Agent
13 shall return to Purchaser the Deposit, less any outstanding application escrow fees which shall be
14 provided to the Town, and each of the parties shall thereafter be relieved from further liability to
15 the other, except as otherwise expressly provided herein. In the absence of such notice prior to
16 the end of the Approval Period (as extended by any Extension Period(s), if applicable), this
17 Agreement shall remain in full force and effect and Purchaser shall have waived its right to
18 terminate this Agreement pursuant to this Section 6.5(b).

19 (c) In the event Purchaser obtains all such Approvals on or before the end
20 of the Approval Period (as extended by any Extension Period(s), if applicable), at any time prior
21 to the end of the Approval Period (as extended by any Extension Period(s), if applicable), and
22 nonetheless Purchaser elects to terminate this Agreement effective as of the date of written notice
23 thereof to Seller. Such notice of termination shall be accompanied by all materials, drawings,
24 reports and maps prepared by or on behalf of Purchaser in seeking such Approvals to the extent
25 in Purchaser's possession and control ("Approval Materials"), together with an assignment
26 (without representation or warranty) thereof to Seller, to the extent such Approval Materials may
27 be assigned and at no cost or expense to Purchaser. Notwithstanding the foregoing, Purchaser
28 shall remain liable for all costs and expenses it has incurred in producing or creating the
29 Approval Materials and shall prevent the placing of a lien on the Property for non-payment
30 relating to the Approval Materials or, if such a lien is placed, then Purchaser shall immediately
31 discharge such lien without cost to Seller. This provision shall survive termination of this
32 Contract. Upon receipt of notice of termination, the Escrow Agent shall distribute the Deposit to
33 Seller and each of the parties shall thereafter be relieved from further liability to the other, except
34 as otherwise expressly provided herein. In the absence of such notice prior to the end of the
35 Approval Period (as extended by any Extension Period(s), if applicable), this Agreement shall
36 remain in full force and effect and Purchaser shall have waived its right to terminate this
37 Agreement pursuant to this Section 6.5(c).

38 7. ADDITIONAL COVENANTS OF SELLER.

39 In addition to all other covenants of Seller, Seller hereby covenants and agrees
40 with Purchaser as follows:

1 (a) Seller shall not, without the prior written approval of Purchaser, (a) make
2 or permit to be made any material changes or alterations to any part of the Real Property unless
3 required by applicable Law or permitted pursuant to clause (e) below; (b) enter into any
4 agreement affecting any part of the Real Property; (c) permit any liens, mortgages, deeds of
5 trust, or other encumbrances not currently of record to be placed against, or to affect any part of
6 the Real Property or title to the Real Property, or (d) waive any rights or make an election to
7 exercise any rights with respect to the Real Property.

8 (b) Seller shall keep and maintain the improvements located on the Real
9 Property in substantially the same condition as exists on the Effective Date, normal wear and tear
10 excepted. In addition, Seller shall keep and maintain all improvements on the Real Property in a
11 safe and secure manner so as to avoid any claims of nuisance or classification of the Real
12 Property as a derelict property by any governmental authority, and if prior to the Closing Date, as
13 defined below, Seller shall have received from any governmental authority any notice requiring
14 any repair work to be done on the Real Property, Seller will do the same expeditiously and
15 diligently at Seller's own cost and expense prior to the Closing Date. Seller shall maintain in full
16 force and effect the existing insurance coverage it has for all Town properties, including
17 Letchworth Village and the Real Property, until the Closing.

18 (c) Seller shall promptly notify Purchaser of any material changes that occur
19 with respect to any of the matters set forth in Seller's representations and warranties contained in
20 this Agreement, including, without limitation, any developments regarding any
21 environmental issues occurring or surfacing at the Property, any casualty, any ongoing or pending
22 litigation, arbitration proceeding or administrative hearing (including condemnation) related to
23 the Property, before any governmental authority or arbitrator. Seller will deliver to Purchaser
24 promptly after receipt thereof copies of any notices of violations or other notices regarding the
25 Property received by Seller, any tenant, or its property manager, including, but not limited to any
26 notices, correspondence, violations, survey results or written communication from any
27 governmental authority.

28 (d) Seller will not solicit, nor will it entertain, any offers for the purchase of
29 the Real Property, whether binding or non-binding.

30 (e) Except with respect to Purchaser's pursuit of the Approvals or as
31 otherwise requested or approved by Purchaser, Seller shall not initiate or consent to any zoning
32 reclassification of the Real Property or any change to any approved site plan, special use permit,
33 planned unit development approval or other land use entitlement affecting the Real Property.
34 Seller shall cooperate with Purchaser to cause any active utility services to the Real Property to
35 be transferred to Purchaser or Purchaser's other permitted assignee(s) or designee(s) upon the
36 Closing.

37 (f) Seller will not take any action that would hinder or delay Purchaser's
38 pursuit of the Approvals.

39 (g) Seller shall give prompt notice to Purchaser of the occurrence, or failure
40 to occur, of any event that causes or would be likely to cause any of its representations or

1 warranties contained in this Agreement to be untrue or inaccurate in any material respect at any
2 time from the Effective Date to the Closing Date. Promptly, after receipt, delivery, discovery, or
3 filing, as the case may be, Seller shall deliver to Purchaser true and correct and materially
4 complete copies of (a) any document, information, material, notice or comparable report or item
5 that constitutes a Seller's Document but either did not exist, was not discovered or was not in
6 any Seller's possession or reasonable control as of the Effective Date (or the applicable delivery
7 deadline), and (b) any written notices of default given or received by Seller with respect to the
8 Real Property.

9 (i) Seller shall cause any leases or management agreements with respect to
10 the Real Property to be terminated on or prior to the Closing Date. Seller shall, at Seller's cost,
11 terminate any and all contracts, other than contracts Purchaser expressly agrees to assume, on or
12 prior to the Closing Date.

13 8. REPRESENTATIONS AND WARRANTIES.

14 8.1 Representations and Warranties of Seller. Seller hereby represents and
15 warrants as of the date of execution of this Agreement the following to Purchaser:

16 (a) Seller is a municipal corporation duly organized, validly existing, and in
17 good standing under the laws of the State of New York, possesses all requisite power and
18 authority under the laws of such state and its charter documents to enter into and perform its
19 obligations under this Agreement and to carry out the transactions contemplated herein. Seller
20 has taken all necessary action to authorize the execution, delivery, and performance of this
21 Agreement and each document to be delivered. The performance by Seller of its obligations
22 hereunder will not result in a breach of any of the terms or provisions of, or constitute a default
23 under, or conflict with, any agreement, indenture, or other instrument to which Seller is a party
24 or by which it or the Property is bound, any judgment, decree, order, or award of any court,
25 governmental body or arbiter, or any law, rule or regulation applicable to Seller.

26 (b) Seller has not admitted in writing its inability to pay its debts as they come
27 due or made an offer of settlement, extension or composition to its creditors generally.

28 (c) To the best of Seller's knowledge, there currently exist no adverse
29 subsurface conditions affecting the Property such as underground mines, sinkholes, caves, or
30 unusual rock formations.

31 (d) To the best of the Seller's knowledge, there are no outstanding violations
32 with respect to the Real Property, nor have any notices of any uncorrected violations of any
33 laws, statutes, ordinances, rules or regulations been received, and any such notices hereafter
34 issued prior to Closing shall be satisfied prior to Closing by Seller at Seller's sole cost and
35 expense.

36 (e) Seller is the fee owner of the Real Property, and no other party has
37 any interest, including by way of example only, a life estate, in the Real Property. There
38 are no existing or pending contracts of sale, leases, options to purchase or rights of first

1 refusal (or the like) with respect to the Real Property other than those set forth in this
2 Agreement. The Real Property is now and at Closing shall be free and clear of all
3 tenancies or rights of possession.

4 (f) There are no pending or, to the best of Seller's knowledge,
5 contemplated eminent domain or condemnation proceedings (or proceeding in lieu
6 thereof) affecting or which may affect any portion of the Real Property.

7 (g) Neither Seller nor any of its public officers is, nor will they become, a
8 person or entity with whom United States persons or entities are restricted from doing business
9 under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the
10 Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or
11 under any statute, executive order (including, without limitation, the September 23, 2001
12 Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit,
13 Threaten to Commit, or Support Terrorism and the Uniting and Strengthening America by
14 Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub L.
15 No 107-56, 115 Stat. 272), or other governmental action, and is not and will not engage in any
16 dealings or transactions or be otherwise associated with such persons or entities.

17 (h) Except as otherwise provided in this Agreement, including but not limited
18 to with respect to the Urban Renewal Plan, the Real Property is not enrolled in, benefitted by or
19 subject to any preferential assessment program, including without limitation, any farmland, open-
20 space, "clean and green" or similar programs, nor has Seller agreed to any restrictions on the use
21 or development of the Property.

22 (i) To the best of the Seller's knowledge, Seller has not received any written
23 notice of any pending or threatened demands, complaints, actions, suits, arbitrations,
24 condemnations or similar legal or administrative proceedings, governmental investigations,
25 formal or informal, or other proceedings, and to its actual knowledge, none of the foregoing are
26 pending or threatened against Seller or affecting the Real Property.

27 (j) There are no employees employed by Seller or any agent of Seller at the
28 Real Property, other than to perform ordinary maintenance and repairs as needed.

29 (k) There are no service contracts applicable to the Property.

30 (l) Seller is exempt from the payment of New York State real property
31 transfer taxes in connection with the sale of the Real Property, but if the Seller is not exempt, the
32 Seller will pay any applicable transfer taxes.

33 (m) The Property is covered by the insurance described in the insurance
34 certificates attached hereto as Exhibit D and all insurance policies described on such Exhibit are
35 in full force and effect, all premiums with respect thereto are currently paid, and Seller is in
36 substantial compliance with the terms thereof.

37 (n) To Seller's knowledge, all due diligence information and other items and
38 documents to be delivered by or on behalf of Seller to Purchaser pursuant to this Agreement
39 that were prepared by Seller are true, accurate, and complete in all material respects.

1 (o) Any representations and warranties made “to the knowledge of
2 Seller” or “to the actual knowledge of Seller” shall mean the knowledge of the
3 representatives of Seller having responsibility for ongoing management of the Real
4 Property and most likely to have knowledge of the matters qualified by knowledge,
5 after having made due inquiry of any necessary third party with respect to such
6 representations and warranties.

7 (p) All representations, warranties, covenants and agreements in this
8 Agreement shall survive the Closing and the recording of the Deed.

9 8.2 Representations, Warranties, and Covenants of Purchaser.

10 (a) Purchaser hereby represents and warrants to Seller as of the date of
11 execution of this Agreement that Purchaser is a limited liability company duly organized, validly
12 existing, and in good standing under the laws of the State of New Jersey, possesses all requisite
13 power and authority under the laws of such state and its charter documents to enter into and
14 perform its obligations under this Agreement and to carry out the transactions contemplated
15 herein. Purchaser has taken all necessary action to authorize the execution, delivery, and
16 performance of this Agreement and each document to be delivered.

17 (b) Purchaser hereby covenants and agrees with Seller that Purchaser shall be
18 responsible for the payment of any “tap-in” fees and normal and customary county assessments,
19 in each case, only to the extent such fees and assessments result solely from Purchaser’s
20 proposed Project.

21 (c) Purchaser hereby covenants and warrants to Seller that Purchaser shall not
22 undertake any physical activities on, under, or affecting the Real Property other than those
23 expressly permitted under Section 5.1 hereof, or, upon the express prior written consent of
24 Seller, in furtherance of seeking the Approvals as defined in Section 6.1 hereof, which consent
25 shall not be unreasonably withheld. Purchaser further hereby covenants and warrants to Seller
26 that Purchaser shall not commence construction activities in furtherance of the Project prior to
27 Closing.

28 (d) Purchaser shall give prompt notice to Seller of the occurrence, or failure
29 to occur, of any event that causes or would be likely to cause any of its representations or
30 warranties contained in this Agreement to be untrue or inaccurate in any material respect at any
31 time from the Effective Date to the Closing Date.

32 (e) Purchaser represents that it has inspected the Real Property and agrees,
33 subject to the Approvals, Seller Covenants and Representation set forth in this Agreement, to
34 purchase the same in its present “as is” condition, subject to reasonable use, wear, tear and
35 natural deterioration of the property between the date hereof and the Closing Date and further
36 agrees that Seller shall not be liable for any latent or patent defects in the Property. Except as
37 set forth in this Agreement, Seller has not made any representations as to the physical condition
38 or any other matter or thing affecting or related to the Property.

1 (f) Purchaser represents, warrants and agrees that, except as and solely to the
2 extent specifically set forth herein, (i) neither Seller, nor any of the agents or attorneys of the
3 Seller, have made any verbal or written representations, warranties, promises or guaranties
4 whatsoever to Purchaser, whether express or implied, and, in particular, that no such
5 representations, warranties, promises or guaranties have been made with respect to the physical
6 condition or operation of the Property, the zoning and other laws, regulations and rules
7 applicable to the Property or the compliance of the Property therewith, the quantity, quality or
8 condition of any personal property and fixtures included in the transaction contemplated hereby,
9 the use or occupancy of the Property or any part thereof or any other mater or thing affecting or
10 related to the Property or the transactions contemplated hereby; and (ii) Purchaser has not relied
11 upon any such representations, warranties, promises or guaranties or upon any statements made
12 in any informational documentation with respect to the Property and is entering into this
13 Agreement with the understanding that Purchaser will make and rely solely upon its own
14 independent investigation, inspection, analysis, appraisal, examination and evaluation of the
15 facts and circumstances.

16 (g) All representations, warranties, covenants and agreements in this
17 Agreement shall survive the Closing and the recording of the Deed.

18
19 9. ENVIRONMENTAL REPRESENTATIONS AND INDEMNITY.

20 9.1 Seller hereby represents and warrants the following to Purchaser that to the
21 best of Seller's knowledge and except as may otherwise be stated in Seller's Documents:

22 (a) Seller does not know of and has not received notice from any
23 governmental authority that there has occurred a release of hazardous substances (as defined
24 below) at, on under or near the Real Property resulting in contamination with hazardous
25 substances at levels exceeding that which is permitted under Environmental Laws (as defined
26 below), or in a manner that could create liability under any Environmental Laws, nor are
27 hazardous substances present at the Property in excess of levels permitted by any Environmental
28 Laws or at levels requiring notification to any governmental authority or requiring investigation or
29 remediation pursuant to applicable Environmental Laws. There are no ongoing or planned
30 investigation or remediation activities on the Real Property or any portion thereof in connection
31 with any discharges, releases or threatened discharges or releases of hazardous substances.
32 Neither Seller nor, to Seller's actual knowledge, any previous owner or previous or current
33 occupant of the Real Property, has manufactured, introduced, stored, released or discharged
34 (either intentionally or accidentally), or permitted the same, from or onto the Real Property, any
35 hazardous substance in excess of levels permitted by Environmental Laws, and neither Seller
36 nor, to Seller's actual knowledge, any previous owner or current or previous occupant of the
37 Real Property, has used the Real Property or any part thereof for the generation, treatment,
38 storage, handling or disposal of any hazardous substance, in violation of any Environmental
39 Laws. As used in this Section 9, the term "hazardous substance" means any product, material,
40 chemical, compound or substance (whether liquid, gaseous or solid) defined or regulated as a
41 "hazardous substance," "hazardous waste," "pollutant" or similar term under any Environmental

1 Law, and includes, without limitation, pesticides, petroleum products and asbestos containing
2 materials. As used in this Section 9, "Environmental Laws" means collectively the
3 Comprehensive Environmental Response, Compensation and Liability Act of 1980, as
4 amended, the federal Resource Conservation and Recovery Act, or any other federal, state or
5 local law, order, regulation guidelines or cleanup agreement governing the use, management,
6 emission or discharge of hazardous substances or pollutants, including the application or storage
7 of pesticides, or otherwise pertaining to the protection of human health or the environment;

8 (b) There are no underground storage tanks on the Real Property,
9 and any underground storage tanks previously located on the Real Property have been fully and
10 properly removed and closed in accordance with all applicable Environmental Laws, including
11 any requirements for the evaluation and remediation of any soil, groundwater, soil vapor or
12 other contamination related to the tank;

13 (c) Seller has not caused or, to Seller's knowledge, permitted to occur,
14 and shall not permit to exist, any conditions on the Real Property which may cause a release,
15 spill, discharge or contamination of any hazardous substance at, upon, under or within the Real
16 Property or on any contiguous real estate;

17 (d) Neither Seller nor, to the best of Seller's knowledge, any other
18 party is or has been or will be involved in operations at or adjacent to the Real Property, which
19 operations could lead to (i) the imposition of liability on Seller, Purchaser or any other
20 subsequent or former owner of the Real Property under the Environmental Laws or any other
21 similar laws or regulations, or (ii) the creation of a lien or land use restriction on the Real
22 Property under the Environmental Laws or under any similar laws or regulations; and

23 (e) Seller will not knowingly permit any person or entity to engage in
24 any activity on the Real Property that could lead to the imposition of liability under the
25 Environmental Laws on any such person or entity, or on Seller or Purchaser.

26 9.2 In the event that after the Effective Date and prior to the Closing Date (as
27 defined below) there is a spill, discharge, release, deposit or emplacement of a hazardous
28 substance on the Real Property not caused directly or indirectly by Purchaser or its employees,
29 agents or independent contractors, which results in contamination of the Real Property to a degree
30 that requires response actions (including investigation or remediation) pursuant to applicable
31 Environmental Laws or that renders the Real Property unsafe or unsuitable for the Project, Seller
32 shall perform all response actions, including installation of monitoring equipment, necessary to
33 comply with applicable Environmental Laws or to render the Real Property safe for the Project
34 and, if necessary, the Closing shall be adjourned for a reasonable period, to be determined by the
35 parties, to permit Seller to complete such activities and obtain a No Further Action letter or legal
36 equivalent from NYSDEC. If, as a result of any spill, discharge, release, deposit or emplacement
37 of any hazardous substance on the Real Property after the Effective Date and prior to the Closing
38 Date not caused directly or indirectly by Purchaser or its employees, agents or independent
39 contractors,, (i) Purchaser is unable to obtain the financing or financing commitments previously
40 issued are withdrawn or amended to include conditions unsatisfactory to Purchaser, in its
41 reasonable business judgment, or (ii) Purchaser determines that such spill, discharge, release,

1 deposit or emplacement has a material adverse effect on the Real Property or Project, then
2 Purchaser shall have the right to terminate this Agreement. In the event this Agreement is
3 terminated by Purchaser pursuant to this Section 9.2, the Deposit shall be returned or reimbursed
4 to Purchaser, whereupon, except as expressly provided herein, this Agreement and all rights and
5 obligations of the parties hereunder shall be null and void. Copies of all final environmental
6 reports and audits conducted by either party shall promptly be furnished to the other without any
7 representation or warranty of the contents thereof.

8 9.3 Seller shall indemnify, defend, and hold harmless Purchaser and its
9 successors and assigns and the members, officers, directors, employees, agents and
10 representatives of Purchaser and Purchaser's affiliates from and against, and pay or reimburse
11 Purchaser for and with respect to, sales, use and bulk sale taxes, if any, assessed with respect to
12 any period prior to Closing ("Purchaser Indemnified Losses"). The period for making a claim for
13 or raising any Purchaser Indemnified Losses shall expire at 11:59 p.m. on the date which falls
14 one (1) year after the Closing Date, provided, however, that the period for making a claim for
15 reimbursement for and with respect to (a) sales, use and bulk sale taxes assessed with respect to
16 any period prior to Closing shall expire at 11:59 p.m. on the date which falls three (3) years after
17 the Closing Date, and (b) fraud or intentional misconduct of Seller, its members, officers,
18 directors, employees, agents, representatives and affiliates shall expire at 11:59 p.m. on the
19 expiration date of the applicable statute of limitations.

20 10. CONDITIONS PRECEDENT TO PURCHASER'S OBLIGATIONS.

21 10.1 The obligations of Purchaser to close the transaction contemplated
22 hereunder shall be subject to the satisfaction or written notice of its waiver (delivered to Seller
23 and Escrow Agent at least two (2) business days prior to Closing), in whole or in part, by
24 Purchaser of each of the following conditions precedent (each a "Condition Precedent"):

25 (a) Except by reason of a default by Purchaser, Escrow Agent is in a
26 position to and will deliver to Purchaser the instruments, including, without limitation, the
27 documents set forth in Section 11.2, and funds, if any, accruing to Purchaser pursuant to the
28 provisions of this Agreement;

29 (b) There is no existing uncured material breach of any of the
30 covenants, representations, warranties or obligations of Seller set forth in this Agreement that
31 has not been waived by Purchaser, and all of Seller's representations and warranties contained
32 in or made pursuant to this Agreement shall be true and correct in all material respects as if
33 made again on the Closing Date;

34 (c) Title Company shall be committed to issue the title insurance
35 policy in accordance with Section 3 above insuring that Purchaser will have good, fee simple title
36 to the Property, insurable at standard rates and subject only to the Permitted Exceptions;

37 (d) Unless due to the acts or omissions of Purchaser, its employees,
38 officers, agents or independent contractors: (i) no suit, action, proceeding, or investigation shall
39 have been instituted or threatened by any governmental authority, (ii) no injunction shall have
40 been issued and then outstanding, to restrain, prohibit or otherwise challenge the legality or

1 validity of the transactions contemplated by this Agreement, and (iii) no litigation has been
2 instituted or threatened which would reasonably be expected to have a material, adverse effect
3 on the Project;

4 (e) Any moratorium or other action by any appropriate governmental
5 entity preventing applications for or issuance of approvals, building permits, utility hook-ups or
6 the like, provided Purchaser has not yet obtained such Approvals and the Project is covered by
7 the moratorium, until such moratorium shall have expired or otherwise been lifted, repealed or
8 terminated; and

9 (f) All Approvals shall have been obtained and the PILOT Agreement
10 shall have been executed by all required parties, or the Approval Period and any applicable
11 Extension Periods have lapsed and Purchaser did not exercised its rights under Section 6.5 to
12 terminate the Agreement.

13 (g) The foregoing conditions contained in this Section 10.1 are intended
14 solely for the benefit of Purchaser. Purchaser shall at all times have the right to waive any
15 Condition Precedent at least two (2) business days prior to Closing, provided that such waiver is
16 in writing and delivered to Seller and Escrow Agent.

17 10.2 The obligation of Seller to close the transaction contemplated hereunder
18 shall be subject to the satisfaction or notice of Seller's waiver (delivered to Purchaser and
19 Escrow Agent at least two (2) business days prior to Closing), in whole or in part, by Seller of
20 each of the following Conditions Precedent:

21 (a) Except by reason of a default by Seller, Escrow Agent is in a position to
22 and will deliver to Seller the instruments and funds accruing to Seller pursuant to the provisions
23 of this Agreement and the Escrow Agreement;

24 (b) There is no existing uncured material breach of any of the covenants,
25 representations, warranties or obligations of Purchaser set forth in this Agreement that has not
26 been waived by Seller, and all of Purchaser's representations and warranties contained in or
27 made pursuant to this Agreement shall be true and correct in all material respects as if made
28 again on the Closing Date.

29 (c) All payments due to Seller prior to Closing, including any outstanding
30 application escrow fees, have been paid to and received by Seller.

31 (d) The foregoing conditions contained in this Section 10.2 are intended
32 solely for the benefit of Seller. Seller shall at all times have the right to waive any Condition
33 Precedent, provided that such waiver is in writing and delivered to Purchaser and Escrow
34 Agent.

35 10.3 If, between the expiration of the Due Diligence Period and the Closing
36 Date, there is evidence of the existence of a hazardous waste or hazardous substance on or
37 affecting the Real Property or its value which was not present on the Real Property prior to the

1 end of the Due Diligence Period or discoverable via a standard Phase I or Phase II
2 environmental study, Purchaser may terminate this Agreement and receive a refund or
3 reimbursement of the Deposit and each of the parties shall be relieved from further liability to
4 the other, except as otherwise expressly provided herein.

5 10.4 Purchaser and Seller hereby agree to deliver their notices to Escrow Agent,
6 on or before the Closing Date, of the satisfaction or waiver of all conditions to Closing
7 hereunder, and, if Purchaser and Seller specifically notify and instruct Escrow Agent, in
8 writing, to proceed to Closing hereunder, all such conditions to Closing hereunder that are not
9 otherwise satisfied shall be deemed to have been waived by Purchaser and Seller. Escrow
10 Agent shall not proceed to Closing hereunder unless Purchaser and Seller specifically notify
11 and instruct Escrow Agent to do so. Seller and Purchaser will not take any action that is
12 inconsistent with its obligations under this Agreement in any material respect or that could
13 reasonably be expected to hinder or delay the consummation of the transactions contemplated
14 by this Agreement. Each party shall at any time and from time to time after the Closing execute,
15 acknowledge where required, and deliver such further instruments and documents, and take
16 such other action as may be reasonably requested by the other party in order to carry out the
17 purposes of this Agreement. If any of the conditions to Closing set forth in this Agreement are
18 not satisfied or waived by the applicable party by the Closing Date (other than as a result of a
19 Purchaser default or failure to satisfy its obligations under this Agreement), then Purchaser
20 shall have the right at its option to declare this Agreement terminated and null and void, in
21 which case the Deposit shall be immediately returned to Purchaser, and each of the parties shall
22 be relieved from further liability to the other, except as otherwise expressly provided herein.

23 11. CLOSING.

24 11.1 The consummation of the contemplated transactions (the “Closing”) shall be
25 held sixty (60) days following the earlier of (i) the expiration of the Approval Period, including
26 any applicable Extension Period, or (ii) Purchaser’s procurement of all Approvals in accordance
27 with Section 6.1 of this Agreement, or such earlier date as may be selected by Purchaser in its
28 sole discretion. The exact date and time of the Closing shall be designated by Purchaser upon
29 notice to Seller of not less than ten (10) days (the “Scheduled Closing Date”). The actual date of
30 Closing is sometimes herein referred to as the “Closing Date.” The Title Company shall be
31 responsible at the Closing for preparing the settlement statement, causing all documents to be
32 recorded, disbursing all Closing proceeds, and otherwise conducting settlement. Closing shall
33 occur through an escrow with the Title Company. All documents and instruments required for the
34 Closing shall be delivered to the Title Company, at such location(s) as the Title Company shall
35 direct, on or before the Closing Date. Funds required for Closing shall be delivered and/or wired
36 to the Title Company, at such location(s) as the Title Company shall direct on the Closing Date.
37 Each party agrees to execute and deliver to the Title Company closing escrow instructions to
38 implement and coordinate the Closing as set forth in this Agreement.

39
40 11.2 At the Closing, Seller shall deliver to Purchaser, in form and substance
41 reasonably satisfactory to the parties’ respective counsel, the following, all duly executed,
42 witnessed and acknowledged, as applicable:

- 1 (a) The Deed in recordable form, conveying the Property in fee simple to
2 Purchaser, or its assigns to the extent provided herein;
- 3 (b) A certificate as to resolutions of Seller authorizing the sale of the Property
4 to Purchaser pursuant to this Agreement and the consummation of the
5 transactions contemplated hereby, certified by Seller's authorized
6 representative;
- 7 (c) All required real estate transfer declarations and a closing settlement
8 statement;
- 9 (d) Affidavit of Title in customary form, provided same does not obligate
10 Seller to any covenant, warranty and/or representation not already made
11 by and provided it does not obligate the Seller to provide any covenant,
12 representation or warranty as to the condition of title or ownership of the
13 Property
- 14 (e) An assignment conveying all intangible property to Purchaser in the form
15 attached hereto as Exhibit E;
- 16 (f) Any and all other documents, instruments, and agreements necessary or
17 appropriate in the reasonable opinion of Purchaser's attorney to transfer
18 and convey the Property and all interest therein to Purchaser in accordance
19 with this Agreement or as may be required by the Title Company. Such
20 other documents, instruments and agreements shall be furnished to Seller's
21 attorney five (5) days prior to Closing.

22 11.3 At the Closing, Purchaser shall deliver to Seller the following:

- 23 (a) the balance of the Purchase Price in readily available funds (by wire
24 transfer or bank or certified check) after application of the Deposit.
- 25 (b) Purchaser's resolution of authority properly certified.
- 26 (c) Such other documents as are reasonably required by Seller's attorney
27 to effectuate the transactions contemplated by this Agreement or as may be required by
28 the Title Company. Such other documents, instruments and agreements shall be furnished
29 to Purchaser's attorney five (5) days prior to Closing.

30 11.4 Seller shall pay the cost of Seller's attorneys' fees. Purchaser shall pay
31 Purchaser's attorneys' fees, the cost of recording the Deed, all costs of the title company selected
32 by Purchaser set forth herein to insure title and the cost of owner's title insurance policy.
33 Purchaser shall be responsible for all roll-back taxes or agricultural transfer taxes and any other
34 form of taxes or county assessments which become due as a result of the transfer of title to
35 Purchaser. Purchaser will pay any fees or taxes arising from the recording of any Purchaser
36 mortgage on the Property, and Seller will pay the cost of releasing any liens against the Property.

1 All other adjustments, if any, shall be completed in accordance with the custom in the state in
2 which the Property is located. The parties agree to cooperate in all reasonable respects to
3 minimize all such costs, premiums, taxes and fees.

4 11.5 Exclusive possession of the Property shall be delivered to Purchaser
5 immediately upon completion of the Closing.

6 11.6 All lienable utility billings or other charges related to the Real Property shall
7 be prorated as of the Closing Date based on the then current billing cycle for which they are
8 assessed. Seller shall cause actual readings to be taken the day immediately prior to the Closing
9 Date. Purchaser shall not be required to reimburse Seller for any oil or propane gas in any tank
10 located on the Property or for any utility deposits.

11 11.7 If, after the Closing, the parties discover any errors in adjustments and
12 apportionments, same shall be corrected as soon after their discovery as possible. No adjustments
13 shall be made later than ninety (90) days after the Closing Date (except with respect to taxes and
14 assessments, in which case such re-proration shall be made within thirty (30) days after the
15 information necessary to perform such re-proration is available) unless prior to such date the
16 party seeking the adjustment shall have delivered a written notice to the other specifying the
17 nature and basis for such claim. The provisions of this Section 11 shall survive the Closing.

18 12. RISK OF LOSS CONDITION.

19 12.1 Prior to Closing, Seller shall bear all risk of loss to the Property and all
20 liabilities arising from the Property except as otherwise set forth in Section 5.2 hereinabove. If
21 any improvement on the Real Property is damaged by a fire or other casualty, Seller, at its cost
22 and expense, shall cause such improvement to be placed in a safe and secure condition and free
23 of all debris in accordance with all applicable laws and codes.

24 12.2 If, prior to the Closing Date, Seller receives notice that all or a portion of the
25 Real Property (or access or other material rights in connection therewith) as would, in
26 Purchaser's reasonable judgment, materially adversely affect the development and construction
27 of the planned Project, the operation of the Project, or other uses of the Real Property is, or has
28 been threatened in writing by a governmental authority of competent jurisdiction, to be taken by
29 condemnation or eminent domain, Seller shall promptly notify Purchaser, and at the election of
30 Purchaser this Agreement shall terminate as of the giving of notice of such event or of the
31 condemning authorities' intention so to take the Real Property. If Purchaser elects to terminate
32 this Agreement prior to the Closing Date as provided in this Section 12.2, the Deposit shall be
33 promptly returned to Purchaser and neither party shall have any further obligations hereunder,
34 except as otherwise expressly provided herein. If Purchaser does not elect to terminate this
35 Agreement prior to the Closing Date, on the Closing Date all of the proceeds of any award or
36 payment made or to be made by reason of such taking shall be assigned by Seller to Purchaser,
37 and any money theretofore received by Seller in connection with such taking shall be paid over
38 to Purchaser, whereupon Purchaser shall pay the Purchase Price without abatement by reason of
39 such taking. To the extent permitted by law, Seller shall not settle, agree to, or accept any award
40 or payment in connection with a taking of less than all of the Real Property without obtaining

1 Purchaser's prior written consent in each case, which consent shall not be unreasonably withheld
2 or delayed.

3 13. REMEDIES.

4 13.1 In the event that Seller breaches or fails to perform any of its covenants,
5 obligations, representations or warranties set forth herein and Purchaser is not in default under
6 this Agreement, Purchaser will give Seller written notice of its right to cure such default (the
7 "Notice to Cure"). Thirty (30) days after the Notice to Cure is given, if Seller has not cured or has
8 not commenced curing such default (in the event cure cannot be completed within such thirty
9 (30) day time period, Seller shall have commenced to cure the default and be diligently pursuing
10 such cure), at Purchaser's sole option, Purchaser may declare this Agreement to be null and void
11 without further obligation by the Parties to each other and Purchaser shall be entitled, as its sole
12 and exclusive remedy (i) to an order of specific performance or, to the extent that specific
13 performance cannot be used as a remedy against the Seller, such other non-monetary equitable
14 remedy as may be appropriate to enforce Purchaser's rights under this Agreement, provided
15 such remedy does not require Seller to expend any funds to cure such default, except to comply
16 with Seller's obligations under this Agreement.; or (ii) to terminate this Agreement and have the
17 Deposit promptly returned to Purchaser.

18 13.2 In the event Purchaser breaches or fails to perform any of its covenants,
19 obligations, representations or warranties set forth herein, including the obligation of Purchaser
20 to purchase the Property if all conditions precedent to such obligations have been satisfied, and
21 Seller is not in default under this Agreement, the Seller will give Purchaser Notice of Cure.
22 Thirty (30) days after the Notice to Cure is given, if Purchaser has not cured or has not
23 commenced curing such default (in the event cure cannot be completed within such thirty (30)
24 day time period, Purchaser shall have commenced to cure the default and be diligently pursuing
25 such cure), at Seller's sole option, Seller may declare this Agreement to be null and void without
26 further obligation by the Parties to each other and Seller shall be entitled to receive as its sole
27 and exclusive remedy (whether at law or in equity) (i) the Deposit and (ii) copies of any and all
28 engineering studies, site plans, and similar material owned by Purchaser and prepared by
29 Purchaser or its agents or employees in connection with the contemplated development of the
30 Property, but only to extent of Purchaser's rights in such studies, plans or other material, and
31 without any representation or warranty of the contents thereof. Said amount shall be the full,
32 agreed and liquidated damages for the failure of Purchaser to close and consummate the
33 transactions herein contemplated. All other claims to damages (including, without limitation,
34 any special, consequential, punitive, speculative or indirect damages) or other remedies in
35 connection with Purchaser's failure to close and consummate the transactions contemplated
36 herein are expressly waived by Seller. The parties acknowledge that the Deposit represents a
37 reasonable effort to ascertain the damages to Seller in the event of a Purchaser default, which
38 damages are difficult or impossible to quantify.

39 13.3 A failure by either party to perform any act required by it under this
40 Agreement, other than the requirement to close if all conditions have been met, shall not be
41 deemed a default under this Agreement until such party has received written notice from the

1 other party setting forth the alleged failure, and such failure has not been cured within ten (10)
2 days of receipt of such notice.

3 13.4 Intentionally Omitted.

4 14. BROKERAGE COMMISSION.

5 14.1 Purchaser shall be responsible for broker fees, if any, payable at Closing.
6 Purchaser shall indemnify, defend and hold Seller harmless from and
7 against any liability arising from a breach of the above representation or
8 claims that Purchaser has utilized other realtors' services in connection with
9 this Agreement. This paragraph shall survive delivery of the deed.
10

11 15. GENERAL PROVISIONS.

12 15.1 The terms and conditions of this Agreement shall be binding upon, and
13 inure to the benefit of the parties hereto and their respective successors and assigns.

14 15.2 All representations, warranties, and indemnities contained in this
15 Agreement or in any instrument, document or agreement delivered pursuant hereto shall survive
16 the delivery of the Deed and the transfer and conveyance of the Real Property to Purchaser.

17 15.3 Except as otherwise expressly provided in this Agreement, all notices,
18 requests, demands and other communications hereunder shall be in writing and shall be deemed
19 delivered by (i) hand delivery upon receipt, (ii) registered mail or certified mail, return receipt
20 requested, postage prepaid, upon delivery to the address indicated in the notice, (iii) by
21 electronic mail upon delivery, with a confirmed copy sent by overnight courier as provide in the
22 following provision, and (iv) overnight courier (next business day delivery) on the next business
23 day, whichever shall occur first, as follows:

24 If to Purchaser:

25 BNE Acquisitions, LLC
26 16 Microlab Road, Suite A
27 Attn: Mr. Marc Pantirer
28 Livingston, NJ 07039
29 Telephone: (973) 992-2443
30 E-Mail: mpantirer@bnerealestate.com

31 With a copy to:

32 Emanuel Law P.C.
33 4 Laurel Road
34 New City, NY 10956
35 Att: Ira M. Emanuel, Esq.
36 Telephone: (845) 634-4141
37 E-Mail: ira@emanuellaw.com

1
2 If to the Seller:

3
4 Supervisor Howard Phillips
5 Town of Haverstraw
6 One Rosman Road
7 Garnerville, New York 10923
8 Telephone: (845) 429-2200
9 E-Mail: supervisor@townofhaverstraw.org

10
11 With a copy to:

12
13 William Stein, Esq.
14 Town Attorney
15 Town of Haverstraw
16 One Rosman Road
17 Garnerville, NY 10923
18 Telephone: (845) 429-2200
19 E-Mail: bill@steinandsteinlaw.com

20 Any correctly addressed notice that is refused, unclaimed or undelivered because of an act or
21 omission of the party to be notified shall be considered to be effective as of the first day that the
22 notice was refused, unclaimed or considered undeliverable by the postal authorities, messenger
23 or overnight delivery service. The parties hereto shall have the right from time to time, and at
24 any time, to change their respective addresses and each shall have the right to specify as its
25 address any other address within the United States of America, by giving to the other party at
26 least five (5) business days prior notice thereof, in the manner prescribed herein; provided,
27 however, that to be effective, any such change of address must be actually received (as
28 evidenced by a return receipt). Telephone numbers and e-mail addresses, if listed, are listed for
29 convenience purposes only and not for the purposes of giving notice pursuant to this
30 Agreement. Any notice that is required or permitted to be given by either party to the other
31 under this Agreement may be given by such party or its legal counsel, who are hereby
32 authorized to do so on the party's behalf.

33 15.4 Whenever used herein, unless expressly provided otherwise, the term "days"
34 shall mean consecutive calendar days, except that if the expiration of any time period measured
35 in days occurs on a Saturday, Sunday, legal holiday or other day when banks are closed in New
36 York, NY, such expiration shall automatically be extended to the next business day.

37 15.5 This Agreement and the Escrow Agreement constitute the entire agreement
38 between the parties concerning the Property and supersede all prior agreements or
39 undertakings. This Agreement may not be modified except by the written agreement of the
40 parties.

41 15.6 In the event any one or more of the provisions contained in this
42 Agreement are held to be invalid, illegal, or unenforceable in any respect, such invalidity,

1 illegality, or unenforceability will not affect any other provisions hereof, and this Agreement
2 shall be construed as if such invalid, illegal, or unenforceable provision had not been
3 contained herein.

4 15.7 This Agreement shall be binding upon and shall inure to the benefit of the
5 parties hereto and their respective heirs, legal representatives, successors and assigns. This
6 Agreement may not be assigned by Seller to any person, firm, corporation or other entity,
7 without prior written consent and approval of Purchaser, in its sole discretion. This Agreement
8 may be assigned by Purchaser with advanced written consent of Seller, which consent shall not
9 be unreasonably withheld, delayed or denied (i) to any other entity in which the direct owners or
10 members of Purchaser have an equal or greater ownership interest or which controls, is
11 controlled by, or is under common control with Purchaser (a “Related Entity”). If such an
12 assignment results in the Town having to designate another entity as an eligible and qualified
13 developer under the Urban Renewal Plan, Purchaser shall reimburse the Town for those costs
14 incurred by the Town, including consultant and attorneys’ fees, through the application escrow.
15 An assignment by Purchaser that is not to a Related Entity shall require the written consent of
16 Seller, which consent may be withheld, conditioned or delayed for any or no reason as it is
17 specifically understood that the Seller is entering into this Agreement because it believes
18 Purchaser is capable of executing the Project in a manner consistent with the goals of the Town
19 under the Urban Renewal Plan for the development of the Project. Unless otherwise expressly
20 agreed by Seller in writing, an assignment by Purchaser to a party that is not a Related Entity
21 consented to by Seller will not relieve Purchaser of its obligations hereunder.

22 15.8 Any section headings or captions contained in this Agreement shall be for
23 convenience of reference only and shall not affect the construction or interpretation of any
24 provisions of this Agreement.

25 15.9 This Agreement shall be governed by and construed in accordance with
26 the laws of the State of New York. Any action or proceeding to enforce any portion of this
27 Agreement shall be brought in the Supreme Court of the State of New York, in and for the
28 County of Rockland. Purchaser hereby waives any affirmative defense related to personal
29 jurisdiction for any action brought in Rockland County Supreme Court related to this
30 Agreement.

31 15.10 The individuals executing this Agreement represent and warrant that they
32 have full authority and/or have been duly authorized by their respective parties to do so on behalf
33 of such parties.

34 15.11 It is acknowledged and agreed by all parties hereto that each party to this
35 Agreement has had the benefit of competent, independent legal counsel and other advisors, that
36 each party has had an equal right to negotiate the terms hereof and participate in the drafting of
37 this Agreement. No rule of law or construction that would require that this Agreement be
38 construed more strongly for or against any party hereto shall be applicable to the enforcement,
39 interpretation or construction of this Agreement.

1 15.12 Whenever and so often as requested by a party, the other party will
2 promptly execute and deliver or cause to be executed and delivered all such other and further
3 instruments, documents or assurances, and promptly do or cause to be done all such other and
4 further things as may be necessary and reasonably required in order to further and more fully
5 vest in such requesting party all rights, interests, powers, benefits, privileges and advantages
6 conferred or intended to be conferred upon it by this Agreement, or to effectuate the termination
7 of this Agreement and cancellation of the escrow (if otherwise permitted hereunder). The terms
8 of this section shall survive Closing and/or termination of this Agreement.

9 15.13 This Agreement may be executed and delivered in several counterparts,
10 each of which, when so executed and delivered, shall constitute an original, fully enforceable
11 counterpart for all purposes.

12 15.14 The Exhibits attached hereto are incorporated in this Agreement by
13 reference and are hereby made a part hereof.

14 15.15 Neither party shall make any public disclosure of the terms of this
15 transaction without the prior written consent of the other party prior to the Closing Date,
16 except as may be required by applicable law. Seller and Purchaser expressly acknowledge
17 that the existence of this Agreement and the parties hereto will be subject to public
18 disclosure in connection with one or more applications for Approvals. The provisions of
19 this Section 15.15 shall survive any termination of this Agreement.

20 15.16 Intentionally omitted.

21 15.17 Seller and Purchaser agree that there are no third parties who are intended to
22 benefit from or who are entitled to rely on any of the provisions of this Agreement. No third party
23 shall be entitled to assert any claims or to enforce any rights whatsoever pursuant to this
24 Agreement. The covenants and agreements provided in this Agreement are solely for the benefit
25 of Seller and Purchaser and their permitted successors and assigns respectively.

26 15.18 The execution of this Agreement and all notices given hereunder and all
27 amendments hereto, may be effected by facsimile or PDF signatures, all of which shall be treated
28 as originals; provided, however, that the party receiving a document with a facsimile or PDF
29 signature may, by notice to the other, require the prompt delivery of an original signature to
30 evidence and confirm the delivery of the facsimile or PDF signature. Purchaser and Seller each
31 intend to be bound by their respective facsimile or PDF transmitted signatures, and is aware that
32 the other party will rely thereon, and each party waives any defenses to the enforcement of the
33 Agreement, and documents delivered by facsimile or PDF transmission.

34 15.19 Intentionally Omitted.

35 15.20 Seller shall have no recourse against any of the past, present or future, direct
36 or indirect, members, owners, officers, directors, employees, agents and representatives of
37 Purchaser and Purchaser's affiliates or any of Purchaser's successors or assigns or of any of the
38 assets or property of any of the foregoing for the payment or collection of any amount, judgment,
39 judicial process, arbitral award, fee or cost or for any other obligation or claim arising out of or

1 based upon this Agreement and requiring the payment of money by Purchaser, except if and to
2 the extent permitted by law.

3 15.21 Purchaser shall have no recourse against any of the past, present or future,
4 direct or indirect, members, owners, officers, directors, employees, agents and representatives of
5 Seller and Seller's affiliates or any of Seller's successors or assigns or of any of the assets or
6 property of any of the foregoing for the payment or collection of any amount, judgment, judicial
7 process, arbitral award, fee or cost or for any other obligation or claim arising out of or based
8 upon this Agreement and requiring the payment of money by Seller, except if and to the extent
9 permitted by law.

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(Signatures appear on the following page.)

DRAFT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates written below.

SELLER:

THE TOWN OF HAVERSTRAW, a New York municipal corporation

Date: _____ By: _____
Name: Howard T. Phillips, Jr.
Title: Supervisor

PURCHASER:

BNE ACQUISITIONS, LLC, a New Jersey limited liability company

Date: _____ By: _____
Name: Marc Pantirer
Title: Authorized Signatory

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