

EXHIBIT “A”

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made this ___ day of June 2019, by and between CHAB FIVE REALTY, LLC, GOLDEN RAY, LLC and EAGLE RIDGE ESTATES, LLC each with an address of c/o Bluestein, Shapiro, Rich & Barone, LLP Attn: Gardiner S. Barone, Esq. 10 Matthews Street, Goshen, New York 10924 ("Plaintiffs") and THE TOWN OF MONROE, with a business address at 1465 Orange Turnpike, Monroe, New York 10950 ("Town"). The Plaintiffs and the Town are collectively referred to as "the Parties".

WITNESSETH:

WHEREAS, Plaintiff CHAB FIVE REALTY, LLC is the owner of certain parcels in the Town of Monroe, identified as Tax Map Section 31, Block 1 and Lots 18.31, 29, 62, and 63; and

WHEREAS, Plaintiff GOLDEN RAY, LLC is the owner of certain parcels in the Town of Monroe identified as Tax Map Section 31, Block 1, Lots 1.11 and 1.12; and

WHEREAS, Plaintiff EAGLE RIDGE ESTATES, LLC is the owner of a certain parcel in the Town of Monroe identified as Tax Map Section 31, Block 1 and Lot 2.4; and

WHEREAS, Plaintiffs collectively commenced litigation against the Town and additional Defendants in the United States District Court for the Southern District of New York, pending under Case No. 7:17-cv-07300 arising from the Town's enactment of a moratorium and certain zoning changes in the Town (the "Federal Litigation"); and

WHEREAS, Plaintiff GOLDEN RAY, LLC filed an Article 78 Petition and Complaint against the Town and additional Defendants in New York Supreme Court, Orange County, Index No. 000300-2017, arising from and challenging the enactment of a moratorium and certain zoning changes in the Town; and

WHEREAS, Plaintiff CHAB FIVE REALTY, LLC filed an Article 78 Petition and Complaint against the Town and additional Defendants in the New York State Supreme Court, Orange County, pending under Index No. 000338-2017 arising from and challenging the enactment of a moratorium and certain zoning changes in the Town; and

WHEREAS, the GOLDEN RAY LLC and CHAB FIVE REALTY, LLC proceedings filed in New York State Supreme Court are collectively referred to herein as the "State Litigations", and the State Litigations and Federal Litigation are collectively referred to herein as the "Litigations"; and

WHEREAS, the Plaintiffs and the Town desire to pursue a global settlement of the pending Federal Litigation and State Litigations and in furtherance of such settlement, the Plaintiffs and the Town desire to enter this MOU to set forth the mutually agreeable terms of settlement established by the Parties; and

WHEREAS, there exists a significant need in the Town of Monroe and County of Orange to provide affordable housing for the local workforce and seniors living on fixed and lower incomes; and

WHEREAS, affordable housing workforce attracts teachers, police officers, nurses, firefighters, and other key service providers to the community; and

WHEREAS, there is a growing portion of the local population that are seniors who live on fixed income who would greatly benefit by having affordable housing in our community; and

WHEREAS, the Town is contemplating the enactment of certain amendments to its land use and zoning laws that will give developers the incentive to build workforce and affordable senior housing units for the community; and

WHEREAS, the proposed zoning amendments are intended to provide developers, designers, and the Town the opportunity to work together to create economically vibrant communities which include market, workforce and affordable senior housing developments in the Town; and

WHEREAS, developing the Development Parcels as part of an integrated residential community presents a unique opportunity for the Town to fill the need to provide affordable housing and preserve open space for the community, and doing so will facilitate the settlement of the Federal Litigation and State Litigations; and

WHEREAS, the purpose and intent of this MOU between the Parties is to resolve all pending and potential Federal Litigation and State Litigations, disputes, claims, causes of action including any and all disputes, controversies, claims and causes of action that have been brought by Plaintiffs or that could be brought by the Plaintiffs against the Town in any Court or in any jurisdiction or in any administrative proceeding; and

WHEREAS, the Parties hereto desire to set forth in writing their mutual understandings and agreements with respect to the sale and purchase of the parcels identified below as the Development Parcels and their settlement of the Federal Litigation and State Litigations; and

WHEREAS, subject to the contingencies set forth herein and under the general terms of the Contract of Sale annexed as Exhibit "A," and in cooperation with the National Development Council ("NDC"), to facilitate the settlement of the Federal Litigation and State Litigations, a Special Purpose Entity (the "Purchaser") shall be created by the NDC and shall enter into a Contract of Sale with Plaintiffs to Purchase the parcels owned by Plaintiff GOLDEN RAY, LLC (S/B/L: 31-1-1.11 and 1.12) and the parcels owned by Plaintiff EAGLE RIDGE ESTATES, LLC (S/B/L: 31-1-2.4) (the "Development Parcels") for the purposes of development of such parcels under a zoning enactment to be established; and

WHEREAS, as further set forth herein and as part of the proposed settlement, Plaintiff CHAB FIVE REALTY, LLC desires to donate the parcels owned by CHAB FIVE REALTY,

LLC (S/B/Ls: 31-1-18.31, 29, 62, and 63) ("Open Space Parcels") to the Town of Monroe as open space and/or recreational uses and thereby forego any development of such parcels that could have otherwise been pursued; and

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the Parties hereto agree as follows:

1. Litigation Hold. Within seven (7) days of the execution of this MOU, counsel for the Parties shall notify the Federal and State Courts in the above-referenced Litigations, that the Parties have entered this MOU, are seeking to settle the pending Litigations, and are requesting, subject to the Court's approval, that **further** proceedings or issuance of pending decisions be placed on hold. To bring about the Litigation Hold for each of the several pending Litigations, counsel for the Parties shall enter into a Tolling Agreement in the form of that which is Attached hereto as Exhibit C, which Tolling Agreement shall be "So Ordered" by the judge presiding over the particular Litigation.

2. Special Purpose Entity ("SPE"). Within fourteen (14) days of execution of this MOU, the Town shall enter an agreement with the NDC to effectuate the process set forth in this MOU, and such agreement shall provide that the NDC shall establish a Special Purpose Entity ("SPE") to carry out the actions set forth in greater detail herein, which SPE shall be established within thirty (30) days of execution of this Agreement. The expected name of the SPE shall be Community Development Properties, TOM, Inc., ("CDP") a Delaware non-profit corporation, whose address will be One Battery Park, 24 Whitehall Street, Suite 710, New York, New York 10004. However, the expected name, address and nature of the SPE is not material to this MOU and is presented for informational purposes only. CDP will act solely on behalf of the NDC. This Agreement shall be contingent on the NDC executing the aforesaid agreement with the Town that incorporates the development process set forth herein and the Town shall exercise all diligent efforts to facilitate execution of such agreement.

3. Zoning Enactments and Status Reports.

a. The Town shall propose or receive proposed zoning amendments to the Town Zoning Code that will allow for development substantially similar to a conceptual development plan as described in paragraph 4 below. Such Zoning Enactments shall allow for development on certain parcels in the Town, including the Development Parcels, which Zoning Enactments shall require a combination of a mix of market townhomes, workforce apartments, senior patio homes, and senior apartments. The Zoning Enactments implemented to allow for such development shall be established and adopted by the Town no later than December **15, 2019**, subject to any contingencies herein. The Town Planner shall assist in the implementation of the Zoning Enactments review its consistency with the Town's Comprehensive Plan and if any addendum to the Town Comprehensive Plan is required to implement the Zoning Enactments, the Town shall facilitate such addendum in conjunction with the adoption of the Zoning Enactments. In the event that the Town fails to adopt the Zoning Enactments by **December 15, 2019**, Plaintiffs may deem the MOU null and void and exercise any rights it may have, including continuation of the Litigations.

b. The Town Attorney shall provide reports to Plaintiffs to confirm status of the Zoning Enactments and the milestone dates set forth herein. Confidential status reports shall be provided to Plaintiffs every sixty (60) days during the process and if it appears that a milestone date will not be met, Plaintiffs shall be notified in a timely manner as soon as practicable.

4. Development Plan / Development Project. The Town will finalize a conceptual development plan ("Development Plan" or "Development Project") prepared by an Engineer that will include development layout, unit count, density and other details for the development of the Development Parcels into 475 residential units (detailed below) that shall be consistent with and permissible under the Zoning Enactments adopted by the Town as set forth in paragraph 3 above. Such Zoning Enactments may apply to other parcels in the Town or otherwise permit similar developments in other locations in the Town as deemed appropriate and as determined by the Town, in its sole discretion. Plaintiffs agree and understand that the Zoning Enactments shall not be limited to, or adopted solely for the benefit of, the Development Parcels.

It is the mutual intent and understanding of the Parties that the Zoning Enactments will permit site plan approval to be granted for the development of the Development Parcels into no less than four hundred seventy-five (475) residential housing units that consist of the following:

Unit Type	Unit Count
Town Houses 2400 Sq Ft Unrestricted	120
Apartments 1100-1500 Sq Ft Unrestricted	96
Senior Apartments Restricted 600 +/- Sq Ft	98
Senior Patio Homes	11
Workforce Housing / 600-1100 Sq Ft Units	150
	475

"Unrestricted" means the price / rental rates shall not be restricted

5. Proposal Process: Within ninety (90) days of the signing of this MOU, the Town, in cooperation with the NDC, shall:

- a. Draft and Issue a Request for Qualifications and/or Request for Proposals for qualified developers to construct a development project on Plaintiffs' Parcels under the proposed Zoning Enactments ("Development Project").
- b. Facilitate the drafting of RFP/RFQ and/or other appropriate vetting process to attract responsible and capable developers to develop the proposed Development Project.
- c. CDP will review any potential developers in response to the RFQ and seek to determine if any responsible developer or developers responded to the RFP/RFQ.
- d. CDP will with the assistance of the Orange County Land Trust focus on acquisition of open space and conservation easements with the Town and will thereafter finalize a deal with a chosen developer ("Developer") in response to the RFQ. If any approvals are required for the final plans, CDP

or Developer shall, as may be agreed between the Developer and CDP, pursue any such approvals to the appropriate land use board.

6. Site Plan Approval and Applications Under the Zoning Enactments: CDP or Developer, as may be agreed between them, will pursue all necessary applications required to apply the Town Zoning Enactments to the Development Parcels and Open space Parcels so as to construct and develop the proposed Development Project, with the expectation that conditional final site plan approval will be obtained from the Planning Board of the Town of Monroe no later than **March 1, 2020**. The Town shall proceed with due diligence in facilitating the completion of the site plan process, however, Plaintiffs understand and agree that statutory requirements and environmental review requirements may not be set aside or otherwise circumvented because of the existence of this Agreement or the proposed settlement of litigation. Notwithstanding anything herein to the contrary, in the event that Conditional Final Site Plan approval of the Development Project is not obtained by **March 1, 2020**, the Parties may extend this MOU by mutual agreement or, at Plaintiffs' option, Plaintiffs may deem the MOU null and void and exercise any rights it may have, including continuation of the pending Federal and State Litigations.

CDP or Developer shall seek site plan and all other necessary approvals for the development of the Development Parcels into four hundred seventy-five (475) residential housing units consisting of the unit counts set forth in §4 above.

Because of the substantial expenses to be incurred in connection obtaining approvals for a 475 unit development, the Town agrees that it will not impose a moratorium and/or make revisions to its local laws that prevent the 475 unit Development Project from being approved and constructed, but nothing herein shall prevent the Town from imposing a moratorium or revising its local laws so long as the Development Project is not affected as set forth herein. To this end, the Town agrees once it adopts the Zoning Enactments referenced in §3 above, it will not impose a moratorium that affects the Development Parcel for at least five (5) years from the time the Zoning Enactments are adopted. In addition, the Town agrees all approvals obtained by CDP, Developer and/or Plaintiffs shall be good for at least five (5) years from the time such approvals are granted, and, if and as necessary, the same shall be extended so the developer of the project shall have at least five (5) years to be issued any necessary permits or approvals from governmental agencies and/or authorities outside the Town.

7. A. Closing with the Developer – the Litigations End: Upon the Town Planning Board granting Conditional Final Site Plan Approval of the Development Project, the Closing between Plaintiffs, CDP and Developer will take place, subject to the terms and conditions of the Contract of Sale.

At the Closing Plaintiff shall be paid the Purchase Price as determined by this MOU. Upon payment of the Purchase Price to Plaintiffs, the parties hereto shall exchange releases that are in the same form as Exhibit B hereto, and counsel for the parties hereto shall execute and file with the appropriate courts, the papers necessary to discontinue, with prejudice, without attorneys' fees and without costs, the Federal Litigation and State Litigations. The Releases shall discharge the Parties from any and all known or unknown claims, complaints, grievances, liabilities, obligations, promises, agreements, damages, causes of action, rights, debts, demands, controversies, costs, losses and expenses whatsoever, existing now or in the future, under any municipal, local, state or federal law, common or statutory, related to, concerning, or arising,

directly or indirectly, out of any injury, damage, loss or expense incurred in connection with the Town's enactment of a moratorium and certain zoning changes in the Town, including without limitation any and all claims described in, arising out of, or in any way related to the Federal and State Litigations.

B. 1. **No Closing – Plaintiffs' Election:** In the event Conditional Site Plan Approval is granted for the 475 Unit Development Project, but the Closing between Plaintiffs, CDP and Developer does not take place for reasons other than Plaintiffs being in breach of the Contract of Sale, then Plaintiffs shall have the absolute and unqualified right, notwithstanding anything herein to the contrary, to elect either (a) that the Litigation Hold be lifted and the Federal Litigation and State Litigations resume, or (b) discontinue the Litigations on the terms and conditions stated above, provided (1) the Development Project received Conditional Final Site Plan Approval from the Planning Board, (2) the Conditional Final Site Plan Approval is assigned and/or transferred to Plaintiffs, (3) the Site Plan for the Development Project is filed with the Clerk of the County of Orange and (4) no legal proceeding is filed to challenge any approval(s) relating to the Development Project.

B. 2. **Plaintiffs' Willful Default:** In the event the Closing between Plaintiffs, CDP and Developer does not take place because Plaintiffs' willful default, then Plaintiffs agree the CDP and Developer shall be entitled to seek appropriate relief, including but not limited to specific performance of the Contract of Sale, and, upon being paid the Purchase Price provided for in the Contract of Sale, Plaintiffs shall have no right to the Development Project and upon Plaintiffs' receipt of the Purchase Price the Litigation shall be discontinued on the terms and conditions stated above.

C. **No Closing – No Site Plan Approved and/or Appeal:** In the event that Conditional Final Site Plan Approval is not granted and/or a legal proceeding ("Legal Proceeding") is filed to challenge any approval(s) relating to the Development Project, then Plaintiffs shall have the absolute and unqualified right, notwithstanding anything herein to the contrary, to elect either (a) that the Litigation Hold be lifted and the Federal Litigation and State Litigations resume, or (b) continue with Litigation Hold while the Legal Proceeding is being adjudicated and/or the application for Conditional Final Site Plan Approval of the 475 Unit Development Project is being pursued. However, at any time thereafter Plaintiff can elect to have the Litigation Hold lifted and the Federal Litigation and State Litigations resume if Plaintiffs, in their sole discretion, believes doing so is in Plaintiffs' best interests.

D. **No Dual Remedy for Plaintiffs:** It is the intent of the Parties that either (a) the Litigations are resolved by the Plaintiff receiving the Purchase Price provided for in ¶8 hereof or Plaintiffs have the right to seek and obtain Conditional Site Plan Approval of the 475 Unit Development Project if there is no sale and closing with Plaintiffs, CDP and Developer, or (b) the Litigation Hold is removed if one of the contingencies stated in sub-part (a) does not come to fruition. Therefore, if at any time Plaintiffs elect to remove the Litigation Hold, then the Town has the right to rescind any Conservation Cluster Residential Floating Zone approval for the Development Parcels or cease any pending process that would lead to application of the Conservation Cluster Residential Floating Zone to any of the Development Parcels or Open Space Parcels. Further, if Plaintiffs elect to lift the Litigation Hold as set forth herein, Plaintiffs shall not be permitted to pursue approval of any application to apply the Conservation Cluster Residential

Floating Zone to any of the Development Parcels or Open Space Parcels unless and until all Litigations are finally determined or otherwise finally concluded. If Plaintiffs exercise such right to continue the Litigations, the Town shall have no further obligations with respect to pursuing approval of the Development Project. It also understood by the Parties that if the Zoning Enactments are approved and the Conditional Site Plan approval is obtained pursuant to the terms of this Agreement, Plaintiff shall be required to close on the sale of the property in accordance with the terms of the Contract of Sale and may not withdraw from its obligation to close.

However, in the event the Developer cancels the Contract of Sale, breaches the Contract of Sale, the Contract of Sale is deemed or declared void, or otherwise fails to close in accordance with the Contract of Sale (except in the case of Seller being in breach thereof), then Plaintiffs shall be entitled to continue with the application for approval of the 475 Unit Development Project. In the event the Plaintiffs pursue site plan approval of the 475 Unit Development Project, then the Litigations will be discontinued on the terms and conditions stated above, provided (1) the Development Project receives Conditional Final Site Plan Approval from the Planning Board, (2) the Conditional Final Site Plan Approval is assigned and/or transferred to Plaintiffs, (3) the Site Plan for the Development Project is filed with the Clerk of the County of Orange and (4) no legal proceeding is filed by a third party unaffiliated with Plaintiffs to challenge any approval(s) relating to the Development Project.

8. **Purchase Price:**

- a. If the final purchase price agreed to by the chosen Developer and the SPE shall exceed \$16,000,000, any excess amounts shall be distributed as follows:
 - i. Any excess over \$16,000,000 shall first be applied to the Town's costs and expenses incurred in preparing and carrying out the settlement process and provisions of this MOU, including but not limited to attorneys' fees, engineer's fees, payment to the NDC and payment to any other entities providing services to the Town in carrying out the settlement process; and then
 - ii. Any further excess, after payment of the Town's costs and expenses, up to \$1,000,000 shall be divided between the Town and Plaintiffs with 60% being paid to the Town and 40% being paid to Plaintiffs;
 - iii. Any further excess shall be retained solely by the Town.

For example, if the Developer agrees to a final purchase price of \$17,500,000 (after closing adjustments for taxes, etc.) and the Town's reimbursable expenses are \$250,000, then the Purchase Price shall be allocated and paid as follows:

Example	
Purchase Price	17,500,000
To Plaintiffs / Seller	- 16,000,000
Excess over \$16,000,000	1,500,000
Town's Expenses	-250,000
Net Excess over \$16,000,000	1,250,000
Town's 60% of 1 st \$1,000,000 excess	600,000
Plaintiffs / Sellers 40% of 1 st \$1,000,000	400,000
Balance of Excess to Town	250,000
Total to Town	
Expenses	250,000
60%	600,000
Excess	250,000
Total to Town	1,100,000
Total to Plaintiffs / Sellers	
Purchase Price	16,000,000
40%	400,000
Total to Plaintiffs / Sellers	16,400,000

The Parties understand that the Town's costs and expenses shall be limited to the reasonable and necessary costs and expenses paid by the Town to outside consultants, engineers, and attorneys, which costs and expenses are directly incurred in connection with the adopting the Zoning Enactments, Proposal Process and Site Plan Approval referred to above. Such costs shall include the reasonable and necessary fees the Town pays to the NDC and other entities for services provided to the Town in carrying out the settlement process.

b. In the event that the agreed Purchase Price is **less than \$16,000,000**:

- i. The Town shall have the option, within thirty (30) days of the disclosure of the chosen Developer's proposed Purchase Price to indicate the Town's intent to arrange for funding of the difference between the Purchase Price offered by the chosen Developer and \$16,000,000 and if such funding is secured, the Development Project shall proceed as set forth herein; and
- ii. If the Town does not exercise the option to fund the difference between the proposal price and \$16,000,000, the Plaintiffs shall have the right to proceed with the Development Project in accordance with the proposed site plan for the Development Project. Any determination by the Town Board or Town Planning Board against any substantial changes by Plaintiffs to the proposed site plan for the Development Project shall not constitute a breach of this

Agreement entitling Plaintiffs to continue the Litigations so long as Plaintiffs can proceed with the proposed site plan for the 475 Unit Development Project.

9. Contract of Sale: The Contract of Sale between CDP and Plaintiffs shall contain the terms in a form substantially similar to those set forth in Exhibit A ("Terms of Sale") annexed hereto. However, the Purchaser and Plaintiffs, as Sellers, shall be free to modify such terms as mutually agreed in writing by Purchaser and Plaintiffs, as Sellers, so long as such terms and conditions are not contrary to the purposes of this MOU. Such Contract of Sale may be assigned by CDP to the chosen Developer as may be agreed between CDP and such Developer, provided that there is adequate assurance of future performance by the chosen Developer. The Contract of Sale shall be executed within ten (14) days after the selection of the chosen Developer.

10. Authority. The undersigned, as authorized representatives of the respective Parties hereto, hereby agree to the terms of this MOU and affirm that they have been duly authorized to execute this MOU by all required action of their respective Boards and Entities and each Party may rely upon this representation to enforce the terms of this MOU.

11. Illegality, Unenforceability. In the event a court of competent jurisdiction declares any provision of this agreement illegal or unenforceable then to the extent practicable, and provided that the intent of this agreement may still be carried out, the Parties shall be bound by all other terms and provisions of this agreement.

12. Execution. This Agreement may be executed in two or more counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall constitute one and the same instrument and an original of this Agreement. For purposes of this Agreement, facsimile or electronically delivered signatures shall be deemed as originals and shall be sufficient to bind such party and for enforcing the terms herein.

13. Notices: All notices, demands, and requests or other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, return receipt requested, addressed as follows:

If to Plaintiffs:

Gardiner S. Barone, Esq.
Blustein, Shapiro, Rich & Barone
10 Matthews Street
Goshen, New York 10924

If to Town:

Town of Monroe
Town Supervisor's Office
1465 Orange Turnpike
Monroe, New York 10950

14. Extension and Modification. The Parties agree that any provisions of this Agreement, including all time frames as set forth above or as otherwise may apply, may be modified or extended upon mutual consent of the Parties, which agreements to modify or extend must be entered into in writing and duly authorized.

15. Binding Effect. The Parties agree that this Agreement shall be binding upon them and their successors in interest, and upon their heirs, executors, administrators and assigns.

16. Legal Interpretation. This agreement and the rights and obligations of the Parties shall be construed according to the laws of the State of New York, without regard to choice of law provisions, as an agreement made and to be performed within the State and entered into in Orange County, New York.

17. Construction. No party hereto shall be deemed to be a drafter of this agreement. Each party hereto has had the opportunity to have its counsel review and comment on this agreement.

18. Adherence to Agreement. The failure of any party to this agreement to insist upon adherence to any term of this agreement will not be considered a waiver of any right arising thereunder or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this agreement.

19. Entire Understanding. This Agreement contains the entire understanding and agreement of the Parties, and no prior or other agreement, statement, representation, warranty, covenant, undertaking, or promise, whether written or oral, made by any party hereto or thereto, or by any employee, officer, agent, or attorney of any party hereto, which is not contained herein, shall be valid or binding. This Agreement may not be modified, amended, waived, or supplemented, except if in writing signed by all the Parties.

20. Jurisdiction. The Supreme Court of The State of New York, Orange County or the United States District Court for the Southern District of New York will have jurisdiction to enforce this agreement.

TOWN OF MONROE

By: [Signature]
Anthony Cardone, Supervisor

CHAB FIVE REALTY, LLC

By: [Signature]
JOEL BRACH

GOLDEN RAY, LLC

By: [Signature]
JOEL BRACH

EAGLE RIDGE ESTATES, LLC

By: [Signature]
JOEL BRACH

EXHIBIT “A”

APPENDIX A

CONTRACT OF SALE

1. **AGREEMENT TO SELL:** Subject to compliance with conditions in this Contract of Sale, Seller hereby agrees to sell and Purchaser hereby agrees to purchase certain real property premises commonly known as known as S/B/L _____ on the Town of Monroe Tax Map. The premises are more specifically described on Exhibit A attached hereto and made a part hereof. The premises consists of vacant land and includes any and all buildings and improvements thereon, if any, all right, title and interest of Seller, if any, in and to any land lying in the bed of any street (opened or proposed) adjacent to or abutting or adjoining the premises, together with all strips and gores and all rights, privileges, rights of way and easements appurtenant to such premises, including, without limitation, all minerals, oil or gas on or under such premises, development rights, air rights, water rights, rights to any award made or to be made and any other easements, rights of way or other interests in, on, or under any land, highway, alley, street or right of way abutting or adjoining the premises and all fixtures, furnishings and equipment at the premises ("Premises" or "Property").

2. **PURCHASE PRICE:** The purchase price ("Purchase Price") for the Premises shall be \$ _____, subject to adjustments as hereinafter provided in Paragraph 12, payable as follows:

- (a) Upon execution hereof, the receipt of which is hereby acknowledged, to be held in escrow by escrow agent pending closing and pursuant to the provisions of Paragraph 4 ("Initial Deposit")

\$200,000.00

- (b) Within five (5) business days of notification of a resolution of Conditional Final Site Plan Approval being adopted by the Planning Board, which Payment shall be held in escrow by the escrow agent pending closing and pursuant to the provisions of Paragraph 4 ("Additional Deposit"):

\$200,000.00

- (c) Balance to be paid at closing of title by unendorsed official bank check drawn on a bank that is a member of the New York Clearing House Association and payable to the order of Seller's or as Seller's may otherwise direct or by wire transfer of immediately available federal funds pursuant to Seller's wire instructions

\$ _____

Total Purchase Price

\$ _____

3. TITLE:

(a) Title to the Premises shall be good title and insurable by any title insurance company willing to approve and insure in accordance with their standard form of title policy at standard New York rates authorized to do business in the State of New York, subject to the following exceptions which shall be deemed "Permitted Exceptions:"

(i) Laws, regulations or ordinances of federal, state, county or local entities or agencies having jurisdiction over the Premises.

(ii) Easements, covenants, and restrictions of record, provided the same have not been violated, would not render title to the Premises uninsurable, nor would materially interfere with the use of the Premises for which it is currently permitted and consistent with the zone district in which the property is located.

(iii) Such state of facts as would be shown on an accurate survey of the property, provided such facts do not render title to the property uninsurable.

(iv) The Permitted Exceptions set forth in Schedule A¹, attached.

(v) Slight variations between the description herein and the tax map description that don't render title uninsurable;

(vi) Assessments for public improvements or any installments thereof that are not due and payable at the date hereof;

(vii) Rights and easements, if any, relating to the construction, operation and maintenance, in connection with or by any utility company, of wires, poles, pipes, conduits, cables and other utility facilities, on, in, under, or across the Premises;

(viii) Liens of taxes, charges, and assessments, general or special, and installments thereof, which are not due and payable by the Closing Date, which are apportioned hereunder.

(b) Purchaser shall promptly notify Seller, in writing, of any title exceptions set forth in such preliminary certificate or in any amendments thereto which are not Permitted Exceptions. Purchaser shall provide to Seller a copy of the title report promptly upon receipt. Seller shall then have a forty-five (45) day period after such notice to clear or remove the non-Permitted Exceptions to the satisfaction of Purchaser and Purchaser's title company; provided, however that Seller shall not be required to spend more than \$15,000.00 to correct any non-permitted exceptions or institute any action or proceeding. Notwithstanding the foregoing or any provision of this Agreement to the contrary, no mortgage or other monetary lien (other than a lien against

¹ NOTE: Schedule A shall be the Schedule of Title from Sellers' existing title policy. A copy of which will be provided.

the Premises as a result of the CDP, the Developer (both as defined in the MOU) or Purchaser's actions shall be a permitted exception to title and all shall be paid and discharged at or before closing.

(c) In the event Seller is unable, after a reasonable time or chooses not to remove the non-Permitted Exceptions and deliver title as required in Paragraph 3(a) above, Purchaser shall have the right either to accept such title as Seller is able to convey, without abatement of the purchase price, or to terminate this Agreement whereupon the Deposit shall be returned to Purchaser and this Agreement shall be null and void and of no further force and effect and neither Seller or Purchaser shall have any further obligations hereunder except with respect to those matters expressly stated to survive the cancellation, termination or rescission of this Agreement.

4. ESCROW AGENT AND DEPOSIT:

(a) The escrow agent referred to in Paragraph 2 above shall be the attorney for the Seller the "Escrow Agent"). The Escrow Agent shall hold the Deposit in an I.O.L.A. escrow account. The account shall be maintained in the State of New York at any insured institution selected by Escrow Agent within Orange County, New York. The term Deposit as used herein shall mean the Initial Deposit and Additional Deposit.

(b) The Escrow Agent shall deliver the Deposit to Seller or to Purchaser, as the case may be, under the following conditions:

(i) To Purchaser upon termination of this Agreement in accordance with Paragraph 5, without any requirement for notice; or

(ii) Upon completing closing of title, to Seller, without any requirement for notice. Purchaser shall be entitled to a credit against the purchase price for the Deposit; or

(iii) To Seller, upon receipt of written demand therefor (hereinafter, the "Seller's Demand"), stating that Purchaser has defaulted in the performance of Purchaser's obligation to close under this Agreement and the facts and circumstances underlying such default; provided, however, that the Escrow Agent shall not honor such Seller's Demand until more than five (5) business days after the Escrow Agent shall have sent a copy of such Seller's Demand to Purchaser in accordance with the provisions of this Agreement nor thereafter if the Escrow Agent shall have received a "Notice of Objection" (as such quoted term is defined hereafter) from Purchaser within such five (5) business day period; or

(iv) To Purchaser, upon receipt of written demand therefor (hereinafter, the "Purchaser's Demand"), stating that Seller has defaulted in the performance of any of Seller's obligations under this Agreement and the facts and circumstances underlying such default, or if this Agreement is terminated for any other reason entitling Purchaser to the return of the Deposit (other than paragraph 5); provided, however, that the Escrow Agent shall not honor such Purchaser's Demand until more than five (5) business days after the Escrow Agent shall have sent a copy of such Purchaser's Demand to Seller in accordance with the provisions of this Agreement nor thereafter if the Escrow Agent shall have received a Notice of Objection from Seller within

such five (5) business day period.

(c) Within five (5) business days of the receipt by the Escrow Agent of a Seller's Demand or a Purchaser's Demand, the Escrow Agent shall send a copy thereof to the other party as provided in this Agreement. The other party shall have the right to object to the delivery of the Deposit by sending written notice (hereinafter, a "Notice of Objection") of such objection to the Escrow Agent as provided in this Agreement, which Notice of Objection shall be deemed null and void and ineffective if such Notice of Objection is not received by the Escrow Agent within the time periods prescribed in this paragraph 4. Such Notice of Objection shall set forth the basis for objecting to the delivery of the Deposit. Upon receipt of a Notice of Objection, the Escrow Agent shall promptly send a copy thereof to the other party.

(d) If the Escrow Agent shall have received a Notice of Objection within the time periods prescribed in this Paragraph 4, the Escrow Agent shall continue to hold the Deposit until: (i) the Escrow Agent receives written notice from Seller and Purchaser directing the disbursement of the Deposit, in which case the Escrow Agent shall then disburse the Deposit in accordance with such direction, or (ii) in the event of litigation between Seller and Purchaser, the Escrow Agent shall deliver the Deposit to the clerk of the court in which said litigation is pending, or (iii) the Escrow Agent takes such affirmative steps as the Escrow Agent may, at the Escrow Agents option, elect in order to terminate the Escrow Agent's duties including, but not limited to, delivering the Deposit to a court of competent jurisdiction within the judicial jurisdiction where the Premises are located and bringing an action for interpleader. Each party shall be responsible for their own attorney's fees and costs.

(e) Seller and Purchaser, by their execution hereof, indemnify and agree to hold the Escrow Agent harmless from and against all claims, causes of action, loss, injury or damage arising out of or in any way relating to the performance of Escrow Agents duties hereunder except for those matters arising out of the Escrow Agents gross negligence or willful misconduct. In the event of a dispute as to whom is entitled to the deposit or in any other dispute between the parties, the escrow agent shall not be precluded from representing the Seller.

(f) Seller and Purchaser agree that upon Escrow Agents disbursement of the escrow funds to Seller or to Purchaser, in accordance with the terms set forth hereinabove or upon deposit thereof with a court of competent jurisdiction, the Escrow Agent shall have no further obligation under this Agreement or with respect of the escrow funds.

5. **TERMINATION OF AGREEMENT:** If, pursuant to the terms of this Agreement, this Agreement shall be terminated, deemed null and void, or canceled, Escrow Agent shall return the Deposit to Purchaser and neither Seller nor Purchaser shall have any further liability to the other. Upon termination of the Agreement for reasons not attributable to Plaintiff, and after payment of any costs and expenses associated with the preparation of the Site Plan, data and reports used to prepare the site plan, applications and other materials and information, then Purchaser shall be deemed to have transferred to Seller any and all right, title and interest in the Site Plan, data and reports used to prepare the Site Plan, the application(s) pending before the any governmental agency or board relative to approval or permits for the Development Project, and all such other materials, standing, information, etc. as is necessary for Seller to obtain conditional final approval of the Development Project and/or file the Site Plan(s) for the Development Project

with the Clerk of the County of Orange and shall sign any and all documents needed to assign and all right, title and interest in the Site Plan, data and reports used to prepare the Site Plan, the application(s) pending before the any governmental agency or board relative to approval or permits for the Development Project, and all such other materials, standing, information, etc. free and clear of any liens.

6. **PURCHASER'S DUE DILIGENCE:**

(a) Purchaser shall have until 5:00 P.M. (local time) on the 45th day after its receipt of a fully signed Contract of Sale ("Due Diligence Period") to inspect and review, at Purchaser's sole cost and expense, all matters relating to the Property (the "Due Diligence Review"), including without limitation, title, structural, environmental and zoning conditions of the Property. Seller shall provide reasonable access to the Property to Purchaser and Purchaser's agents and employees to examine and make such non-invasive tests and investigations including soil and ground water tests, structural tests and such other engineering as well as environmental tests. Purchaser shall give Seller reasonable notice before entering the Property for the purposes described herein. Seller shall deliver to Purchaser within ten (10) days of receipt of a fully executed copy of this contract, any title information, surveys, building plans, any environmental reports and environmental site assessments in Seller's possession or control. In no event shall Seller be required to incur any expense requiring the requested information. Purchaser shall provide Seller with copies of all said reports promptly upon receipt of same.

(b) Purchaser shall have the right to terminate this Agreement on or prior to the end of the Due Diligence Period for any or no reason, in Purchaser's sole and absolute discretion. Purchaser shall be deemed to have waived its right to terminate this Agreement if Purchaser does not so notify Seller prior to the end of the Due Diligence Period (time declared to be of the essence as to the expiration of the Due Diligence Period) that Purchaser has terminated this Agreement or that Purchaser affirmatively in writing waived its right to terminate this Agreement in accordance with this Paragraph. If Purchaser terminates this Agreement, as provided above, Purchaser shall immediately receive back the Deposit and any Additional Deposit, and the parties hereto shall have no further obligations under this Agreement, except as otherwise expressly provided in this Agreement to the contrary.

(c) Purchaser agrees to use reasonable diligence and act in good faith in pursuit of the satisfaction of all contingencies.

7. **PHYSICAL CONDITION OF THE PROPERTY:** Subject to other provisions herein to the contrary, this property is being sold "As Is." Seller does not make any claims or promises about the condition or value of the property included in this sale, except as otherwise provided in this Agreement. Purchaser has or will inspected the property and relies on its inspection(s), including, but not limited to, environmental, radon, mold, water quality, etc. Seller, however, shall disclose to Purchaser any environmental issues, boundary issues, property disputes, or any other information already known to Sellers that would materially affect the value of the property.

8. **PROPERTY INSPECTION**: The Purchaser is hereby granted the right, at its sole cost and expense, to have the property inspected by an engineer or real estate inspection service to determine the overall condition of the Premises.

9. **PURCHASER'S INTENDED USE**: Seller and Purchaser agree that Purchaser is purchasing the Premises for the Purchaser's own purposes and Purchaser will close subject to all zoning laws, rules and regulations in effect on the date of closing. However, any existing violations of law on which the Seller has been issued a summons or citation by the municipality, as of the date hereof, shall be corrected at the Seller's own expense.

10. **PURCHASER'S FINANCIAL CONTINGENCIES**: The Purchaser's obligation to purchase the property is subject to the assignment of this Agreement to a non-profit Single Purpose Entity ("SPE") that shall pursue approval and construction of the Development Project, which will provide certain land for open space and recreational purposes and other land for development of workforce housing, senior housing as well as market rate housing consistent with any requirements of the Zoning Enactments in effect prior to the date of closing. The Purchaser, at its sole costs and expense, shall obtain all required land use approvals. The Purchaser's obligation to purchase the property is contingent upon Purchaser obtaining all required land use approvals necessary to the Purchaser or to any assignee or contract vendee of the Purchaser to develop the property in accordance with the applicable zoning requirements. Purchaser shall set aside certain land for open space and recreational purposes and other land for development of workforce housing, senior housing, as well as market rate housing.

The Purchaser's obligation to purchase the property is contingent upon Purchaser obtaining Conditional Final Site Plan Approval from the Town Planning Board to construct the property in accordance with the Development Plan referred to in Memorandum of Understanding ("MOU") made between Seller and the Town of Monroe, and execution of Development Agreement(s) with Qualified and Capable Developer(s) who have been procured and approved by the SPE and who have agreed to purchase the SPE's rights to the property for the amounts specified in Sections ___ of the MOU.

Consistent with the Development Plan, certain land for open space and recreational purposes will be offered for gratuitous dedication by the Seller, if Seller elects to be the grantee of such lands, and, if not, then by the Purchaser. Such lands are identified in the MOU as the Open Space Parcels. The conveyance of the Open Space Parcels will occur at the Closing of title, subject to Seller's receipt of the Purchase Price.

Purchaser will pursue obtaining conditional final site plan approval of the proposed Development Plan, which approval shall be obtained no later than March 1, 2020.

11. **CLOSING AND DELIVERY OF DOCUMENTS**: The parties shall exercise their best efforts to ensure that Closing of title shall take place at the offices of Seller's counsel on or before forty-five (45) days after the Resolution of the Planning Board granting Conditional Final Site Plan Approval of the Development Project is filed with the Clerk of the Town of Monroe, unless a legal proceeding is timely filed that challenges the Planning Board's grant of Conditional Final Site Plan approval of the Development Project.

At the closing, Seller shall deliver: (a) a Bargain and Sale with Covenants Deed duly executed and acknowledged by Seller and in form for recording, conveying the Premises, with the appropriate New York State forms; (b) an affidavit of title in usual form reasonably acceptable to Purchaser's title insurer and Purchaser, in order to allow the title insurer to remove its standard printed exceptions from the title commitment; (c) a FIRPTA affidavit (Non-Foreign Person Affidavit per IRC §1445); (d) a true and complete copy of Seller's formation documents, together with an incumbency certificate, entity authorizing resolution and other evidence of the authority of the persons executing Seller's closing documents, reasonably acceptable to Purchaser's title insurer, and a current good standing certificate and (e) any additional documents and information reasonably required by Purchaser's title insurer and Purchaser in order to close and convey title as required by this Agreement or as otherwise required by this Agreement. In the event Purchaser obtains a survey of the Premises from a surveyor licensed in the State of New York, Seller agrees to use a legal description in accordance with such survey, provided such survey is certified to Seller and at no expense to Seller, a copy of which shall be provided to Seller by Purchaser in advance of closing. Seller and Purchaser agree to exchange Closing Statements and copies of the closing documents not less than five (5) business days prior to the date for closing of title.

Provided that there is no legal challenge to the Planning Board's grant of Site Plan approval, if the Closing of Title does not occur on or before April 15, 2020², **TIME DECLARED TO BE OF THE ESSENCE**, then any party to the within Contract of Sale can terminate the same. If the Contract of Sale is terminated by Purchaser because either a timely legal proceeding is filed to challenge the Conditional Final Site Plan Approval of the Development Project or it does not obtain such approval in spite of its good faith efforts, then Purchaser shall be entitled to a refund of all deposits paid by it on account of this Contract of Sale, provided Purchaser is not otherwise in default of this Contract of Sale. If the Zoning Enactments have been adopted and substantial progress has been made in the Site Plan approval process as of April 15, 2020 and Seller opts to terminate the Contract of Sale, Seller shall not be entitled to return of the Deposit. If substantial progress has not been made in the Site Plan approval process by April 15, 2020 and the Contract of Sale is terminated by Seller because the Closing of Title did not occur on or before April 15, 2020, then Seller shall be entitled to payment and delivery by the Escrow Agent of the Deposit, unless Seller is in willful default. Regardless of the presence of substantial progress, Seller may terminate the Contract of Sale if Closing of Title does not occur on or before July 15, 2020 and shall be entitled to payment and delivery by the Escrow Agent of the Deposit, unless Seller is in willful default.

If legal action by a third party was commenced resulting in a delay of the processes set forth in the MOU and Contract of Sale and Sellers have not exercised any option to terminate the Contract of Sale, the parties shall agree to negotiate a revised schedule for the Closing of Title.

12. **ADJUSTMENTS AT CLOSING:** At the time of closing and delivery of deed, taxes, water and sewer charges, if applicable, shall be adjusted between Seller and Purchaser as of the closing date with charges for the day of closing attributable to the Purchaser. Seller shall bear the expense of payment of the realty transfer fee and NYS Transfer Tax. Real estate taxes shall be apportioned on the basis of the calendar year for which assessed, except that if the closing date shall occur before the final tax rate is fixed, the apportionment of taxes shall be tentative,

based upon the parties best knowledge of the current year's assessments. At such time as the full year's taxes are known, the parties shall thereafter adjust as of the date of closing based upon the full year's taxes. Seller will obtain final readings of all utilities not more than ten (10) business days before closing and all utilities will be transferred to Purchaser's name as of closing. All other items customarily apportioned shall be apportioned as of closing. The obligations of this Paragraph with regard to any adjustments or payments subsequent to closing for real property taxes shall survive closing, not to exceed thirty (30) days.

13. **FILING**: The Parties hereto agree that this Agreement shall not be filed or recorded.

14. **POSSESSION AND PRE-CLOSING ENTRY**: Purchaser may enter into and upon the said lands and Premises upon delivery of deed and Purchaser shall have the right, from time to time upon reasonable notice to the Seller, to enter upon the Premises prior to the date of closing hereunder for the purpose of conducting non-invasive inspections, surveys and tests related to Purchaser's intended use. Prior to entering upon the Property for any inspections that require Purchaser to make more than a visual inspection or perform any tests that may disturb any part of the Property, Purchaser shall provide Seller and any Tenant with certificates of insurance evidencing public liability insurance in standard form for both Seller/Tenant and Purchaser, in the minimum amount of Two Million and 00/100 (\$2,000,000.00) Dollars single limits for personal injury and property damage. Purchaser agrees that if title does not close for any reason whatsoever, other than Seller's default, it shall, at its sole expense, restore the Property to its condition prior to the performance of said inspections and tests within thirty (30) days of Purchaser's decision not to purchase the property. Seller shall be permitted to hold an amount from escrow at Seller's discretion to be returned to Purchaser upon Purchaser restoring the property to its condition prior to the performance of said inspections, and, whether or not title closes, Purchaser shall indemnify and save harmless Seller/Tenant from all claims, expenses and liabilities, which may arise pursuant to any action taken by Purchaser, its agents, employees and contractors in connection with the performance of said inspections and tests, other than damages due to mere discovery or disclosure of conditions as a result of Purchaser's entry onto the Premises and/or investigations. This indemnity shall survive closing or other termination or cancellation of this Agreement.

Purchaser shall also remove any mechanic's lien filed against the Premises within ten (10) days of filing the same with the Clerk of the County of Orange. Nothing contained herein shall be deemed to operate as Seller giving any type or form of consent for the rendition of any work or services that is sufficient for filing a mechanic's lien against the Premises. This provision shall survive closing or termination of this Agreement. Should Seller have to expend any sums of money to bond or discharge a lien as a result of Purchaser's actions.

15. **ASSESSMENTS**: Assessments are to be apportioned in the same manner as taxes. Seller represents that it has no knowledge of existing or pending assessments.

16. **REAL ESTATE BROKERAGE COMMISSION**: Purchaser and Seller each represent and warrant to each other that it has not dealt or negotiated with, or engaged on its own behalf or for its benefit, any broker, finder, consultant, adviser, attorney or professional in the

capacity of a broker for the acquisition of the Property in connection with this transaction, whether licensed or unlicensed, other than Seller engaged Hudson Valley Realty & Business Brokers, Inc. for this transaction. Each of Seller and Purchaser hereby agrees to indemnify and hold the other harmless from and against any and all claims, demands, causes of action, losses, costs and expenses (including attorneys' fees) and other liabilities arising from such party's breach of the representations and warranties contained in this Section.

Seller shall pay the Hudson Valley Realty & Business Brokers, Inc. a commission pursuant to separate agreement(s), if, as and when same becomes payable in accordance with the terms of such agreement(s). The Hudson Valley Realty & Business Brokers, Inc. shall not be deemed to be a third-party beneficiary of this provision and shall have no claim against Purchaser arising out of this Agreement.

The provisions of the foregoing shall survive the Closing or earlier termination of this Agreement.

17. **RISK OF LOSS**: Risk of loss, by reason of fire or other casualty, shall remain with Seller until the time of closing.

18. **DEFAULT BY PURCHASER-LIQUIDATED DAMAGES**: If Purchaser intentionally and willfully fails to complete closing as and when required hereunder, and Seller is then ready, willing and able to close title, and such failure continues for more than thirty (30) calendar days' after written notice of default is received by Purchaser, Seller shall be entitled to receive the Deposit, but not the Additional Deposit, in accordance with this Paragraph as liquidated damages for Purchaser's default. Purchaser and the Seller specifically agree that if the Purchaser defaults as provided in the immediately preceding sentence, the damages which Seller will suffer cannot be calculated in advance with any degree of mathematical certainty. However, in good faith, the Purchaser and the Seller have agreed to estimate the amount of such damages which will reasonably compensate the Seller for such default. This is called "liquidated damages." Payment of the Deposit as liquidated damages shall be Seller's sole and exclusive remedy and shall be in lieu of any other monetary or any other relief. In all events, the liability of Purchaser for loss or damage resulting from or in any way connected with this Agreement or any default hereunder in the event such sale shall not be consummated shall be limited to the aggregate amount of the Deposit.

19. **PERSONAL PROPERTY AND FIXTURES**: Not Applicable / Vacant land.

20. **CONDEMNATION**: In the event condemnation or eminent domain proceedings shall be commenced by any governmental or quasi-governmental authority having jurisdiction therefor against all or any part of the Premises, Seller shall promptly notify Purchaser and provide Purchaser with all information concerning such proceedings. Purchaser may, at its option, by giving written notice to Seller within ten (10) days after its receipt of the notice of such proceedings, terminate this Agreement. If this Agreement is terminated as provided in this Paragraph, the Deposit shall be returned to Purchaser and thereafter the parties shall have no further rights or liabilities hereunder.

In the event Purchaser does not elect to terminate this Agreement, then any award in

condemnation and/or unpaid claims and rights in connection with such condemnation shall be assigned to Purchaser at closing, or if paid to Seller prior thereof, shall be credited against the unpaid balance of the Purchase Price due at closing. If Purchaser determines not to terminate this Agreement, Seller shall not adjust or settle any condemnation awards without the prior written approval of Purchaser and shall allow Purchaser to participate in all proceedings.

21. **FLOOD HAZARD AREA**: Intentionally Omitted.

22. **BOUNDARY LINES**: Intentionally Omitted.

23. **NOTICES**: All notices, made pursuant to, under or by virtue of this Agreement must be in writing. Counsel for Purchaser and Seller, as the case may be, is authorized to execute notices on behalf of Purchaser or Seller, as the case may be. All notices, demands or requests shall be personally delivered or mailed to the party to which the notice, demand or request is being made by certified or registered mail, return receipt requested or by delivered by overnight courier service with a signature required for delivery personally or by overnight courier service, or sent via telecopy or email with confirmation of receipt addressed as follows:

IF TO PURCHASER:

WITH A COPY TO:

IF TO SELLER:

WITH A COPY TO: Gardiner S. Barone, Esq.
Blustein, Shapiro, Rich & Barone, LLP
10 Matthews Street
Goshen, NY 10924
Email: gbarone@mid-hudsonlaw.com
Facsimile: (845) 291-0021

A notice or communication which is mailed or personally delivered shall be deemed to be given on the actual date of receipt. A notice that is sent by telecopy or email shall be deemed to be given when sent and received.

24. **ENTIRE AGREEMENT**: This Agreement constitutes the entire agreement between the parties hereto. No amendment or modification hereof shall have any force or effect unless in writing and executed by all parties.

25. **BINDING EFFECT**: This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective legal representatives, their heirs, executors, administrators, successors and assigns.

26. **GOVERNING LAW:** This Agreement shall be construed in accordance with the procedural and substantive laws of the State of New York.

27. **HEADINGS:** The article headings contained in this Agreement are for reference only for the convenience of the parties. They shall not be deemed to constitute a part of this Agreement nor shall they alter or supersede the contents of the paragraphs themselves.

28. **SURVIVAL:** Whenever the context of this Agreement allows, expressly provides, or reasonably implies a continuing obligation, such continuing obligation shall survive the closing of title and delivery of the deed and shall not merge therein.

29. **LOAN OF DOCUMENTS:** Seller agrees that within ten (10) days from the date hereof, it shall loan to Purchaser copies of any title insurance policy, survey, Deed, Environmental reports and other closing documents in its possession, if any. Upon closing of title or earlier termination of this Agreement, Purchaser shall return to Seller all of the documents so loaned to the extent same is in Seller's possession and at no cost to Seller. Seller shall also make available to Purchaser plans and specifications utilized by Seller in connection with any applications made by Seller for any governmental approvals or in connection with the construction of any improvements on the Premises.

30. **CALCULATION OF TIME PERIODS:** With respect to any time periods set forth herein which are calculated from the date of this Agreement, it is understood and agreed that such time period commences from the date of final execution of this Agreement by all parties hereto, including execution of any riders or amendments hereto. The date of this Agreement shall be the date the last signatory executes this Agreement and any such riders or amendments.

31. **REPRESENTATIONS AND WARRANTIES OF SELLER:** In order to induce Purchaser to enter into this Agreement, Seller makes the following representations, warranties and agreements, as of the date hereof, which shall be deemed to be restated and repeated as of the Closing and shall survive Closing. All references to Seller's "Affiliates" shall mean any entity owning, owned by or under common ownership or control with Seller or any of the entities listed in this sentence. No representation by Seller herein or in any statement, schedule or certificate by or of Seller furnished or to be furnished to Purchaser pursuant hereto contains or will contain any knowingly untrue statement of a material fact, or knowingly omits or will knowingly omit to state a material fact necessary to make the statements contained herein or therein not misleading:

(a) This Agreement is, and all agreements, instruments and documents herein provided to be executed or to be caused to be executed by Seller shall be, upon consummation of the transaction contemplated under this Agreement, duly authorized, executed and delivered by, and upon delivery thereof shall be binding and enforceable against Seller in accordance with their respective terms, and Seller has the legal right, power and authority to enter into this Agreement and perform all of its obligations hereunder;

(b) To the best of Seller's knowledge the execution and delivery of this Agreement and the performance by Seller of its obligations hereunder, shall not conflict with, or result in a breach of any law or regulation, or order, judgment, writ, injunction or decree of any court or

governmental instrumentality, or any agreement or instrument to which Seller is a party or by which it is bound, or to which Seller or any portion of the Premises is subject;

(c) Seller has not granted any option or other right to purchase or otherwise acquire any portion of the Premises or any interest therein, to any party except Purchaser pursuant to this Agreement;

(d) Intentionally left blank;

(e) To the best of Seller's knowledge there exists no actual, contemplated, or threatened (in writing), assessment for municipal improvements with respect to the Premises, no work has been commenced for which an assessment could be imposed, and no improvements have been undertaken at the Premises for which an added or omitted assessment could be imposed in the future;

(f) Seller is not a "foreign person" and is not in any manner controlled by a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code. Seller is currently (i) in compliance with and shall at all times during the term of this Agreement remain in compliance with the regulations of the Office of Foreign Assets Control ("OFAC") of the U.S. Department of Treasury and any statute, executive order (including Executive Order 13224, dated September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), or regulation relating thereto, and (ii) not listed on, and shall not during the term of this Agreement be listed on, the Specially Designated Nationals and Blocked Persons List maintained by OFAC and/or on any other similar list maintained by OFAC or other governmental authority pursuant to any authorizing statute, executive order, or regulation;

(g) There is no tenant presently in possession of the Premises;

(h) The Premises are assessed as multiple tax lots;

(i) Omitted;

(j) Between the date hereof and the Closing, Seller shall continue, in the ordinary course of business consistent with Seller's past practices, to maintain the Property and to comply with and perform the obligations of owner;

(k) Between the date hereof and the Closing, Seller shall deliver all written notices received by Seller respecting the Property from any occupant or governmental authority;

(l) Omitted ;

(m) Omitted;

(n) There are no service agreements entered into by Seller and at present in force, concerning the real property;

(o) Omitted

(p) All sums payable by reason of any labor or materials heretofore furnished at the express request of the Seller with respect to the Premises have been paid; Seller has disclosed any existing knowledge of or information concerning adverse environmental conditions of the Premises, any claims materially affecting title to the premises or other conditions that would materially affect title to the premises being insured at the normal rates of insurance for a property of this nature and type ;

(q) Intentionally Omitted;

(r) Seller has received no notice that either the Property or Seller is in violation of any applicable law, rule, ordinance or regulation of any governmental authority having jurisdiction.

Seller shall have a reasonable time after receiving notice from Purchaser to cure any of the foregoing representations, agreements and/or warranties.

32. **REPRESENTATIONS AND WARRANTIES OF PURCHASER:**

Purchaser represents and warrants to Seller that it has full power, in accordance with law to enter in this Agreement and to carry out the transactions provided for herein. Neither the execution and delivery of this Agreement nor the consummation of the transactions provided for herein will constitute a violation or breach by Purchaser of any provision of any agreement or other instrument to which Purchaser is a party or to which Purchaser may be subject although not a party, or will result in or constitute a violation or breach of any judgment, order, writ, injunction or decree issued against Purchaser. Purchaser has sufficient financial ability to consummate the transaction contemplated herein and this transaction is not dependent on any financing contingency.

33. **CONFIDENTIALITY OF AGREEMENT:** The Seller and Purchaser agree that the terms of this Agreement are to resolve pending litigation issues and that the contents of this Agreement are considered as exempt from disclosure under the FOIL. It is further understood and agreed that the contents of this Agreement are considered as part of the settlement of this litigation and that the contents of this Agreement cannot be used by any Party as against the other Party in any litigation, arbitration, mediation or other form.

34. **DELIVERIES AT CLOSING:** The following additional deliveries shall be made by Seller at Closing:

(a) Seller shall deliver to Purchaser a fully executed appropriate Affidavit of title, in usual form.

(b) Seller shall deliver to Purchaser a payoff letter or release with respect to any mortgages or liens encumbering the Premises at Closing or deposit with title insurance company sufficient monies to insure obtaining and recording any satisfactions.

(c) Seller shall deliver to Purchaser any and all warranties and guarantees, if any,

with respect to the Premises, and any work performed thereon, with an executed assignment thereof which it may have in its possession.

(d) Both parties shall execute all forms reasonably required by the Internal Revenue Service, including, but not limited to 1099 B.

(e) Seller shall deliver to Purchaser any and all documents reasonably required by Purchaser's title company in order to insure title, provided same are either in Seller's possession, or prepared by the title company at no cost to Seller.

(f) Seller shall provide such other reasonable and customary items to the Purchaser, provided Purchaser requests same prior to the time of closing of title provided same is in Seller's possession or can be obtained at no cost to Seller.

35. **TENANCY**: There is no Tenant presently in possession of the Premises.

36. **CONSTRUCTION**: Each party has contributed to the preparation of this Agreement and it shall not be construed as being for or against either party on that account.

37. **PARTIAL INVALIDITY**: If any provision of this Agreement shall be declared invalid or illegal for any reason whatsoever, then notwithstanding such invalidity or illegality, the remaining terms and provisions of this Agreement shall remain in full force and effect in the same manner as if the invalid or illegal provisions had not been contained herein.

38. **EXHIBITS**: Each of the exhibits and schedules annexed to this Agreement constitutes an integral part hereof.

39. **CONDITION OF PREMISES**:. Purchaser has examined or shall during the Due Diligence Period examine the Premises and is familiar or shall become familiar with the physical condition thereof. Except as expressly provided in this Agreement, Seller, or any person on Seller's behalf, has not made and does not make any promises, representations or warranties, express or implied, oral or written, as to the condition of or any other matter affecting the Premises, including its physical condition, surface and subsurface conditions, planning matters, zoning matters, building matters, composition, fitness for purpose or use, income, rents, expenses, operations, taxes, water, sewer, sewer charges, or the amounts thereof or any other matters. The Premises shall be conveyed, and Purchaser shall take title to and possession of the Premises **AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED (ALL OF WHICH SELLERS DISCLAIMS), INCLUDING AS TO QUALITY, LAYOUT, AREA/FOOTAGE, PHYSICAL CONDITION, OPERATION, COMPLIANCE WITH SPECIFICATIONS, ABSENCE OF LATENT DEFECTS, COMPLIANCE WITH LAWS AND REGULATIONS (INCLUDING THOSE RELATING TO HEALTH, SAFETY OR THE ENVIRONMENT), FITNESS FOR ANY PARTICULAR USE OR MERCHANTABILITY, OR ANY OTHER MATTER WHATSOEVER AFFECTING OR RELATING TO THE PREMISES; WITHOUT LIMITING THE FOREGOING, SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE PRESENCE OR ABSENCE OF**

ANY HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PREMISES OR ANY ADJACENT REAL PROPERTY OR THE COMPLIANCE OR NON-COMPLIANCE OF THE PREMISES WITH THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, THE RESOURCE CONSERVATION RECOVERY ACT OR ANY OTHER FEDERAL, STATE OR LOCAL STATUTE, LAW, ORDINANCE, CODE, RULE OR REGULATION RELATING TO OR IMPOSING OBLIGATIONS, LIABILITY OR STANDARDS OF CONDUCT CONCERNING ANY HAZARDOUS MATERIALS, INCLUDING THE PRESENCE, USE, TRANSPORTATION, STORAGE, DISPOSAL, TREATMENT OR REMEDIATION THEREOF. Upon Closing, Purchaser shall be deemed to have waived, released and discharged any claims it has, might have or may have against Seller, or any of Seller's affiliates, officers, directors, shareholders, members, partners, agents, employees, representatives, attorneys and accountants, or any of Seller's lenders having a lien on the Premises, with respect to the condition of the Premises, either patent or latent, its ability or inability to obtain or maintain building permits, temporary or final certificates of occupancy or other licenses for the use or operation of the Premises, and/or certificates of compliance for the Premises, the actual or potential income or profits to be derived from the Premises, the real estate taxes or assessment now or hereafter payable thereon, the Premises' compliance with any and all federal, state and local laws, ordinances, rules and regulations, including the federal Americans with Disabilities Act ("ADA") or any state or local accessibility standards, or with any environmental protection, pollution, subdivision or land use laws, rules, regulations or requirements, and any other state of facts which may exist with respect to the Premises. The provisions of this paragraph shall survive delivery of the Deed.

40. **SELLER'S 1031 EXCHANGE**. Seller reserves the right to include this transaction as part of an IRC, Section 1031 tax deferred exchange for the benefit of Seller, at no cost, expense or liability to Purchaser. Purchaser further agrees to execute any and all documents (subject to the reasonable approval of Purchaser's counsel) as are reasonably necessary in connection therewith, provided that the close of this transaction for the conveyance of Seller's property shall not be contingent upon or subject to the completion of such exchange. Seller agrees to indemnify and hold Purchaser free and harmless from any cost, expense or liability, including attorney's fees resulting from Purchaser's participation in such exchange.

41. **MISCELLANEOUS:**

(a) This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument. In order to expedite the transaction contemplated herein, this Agreement can be legally executed and delivered by telecopy from one party to the other party or the other party's legal counsel. If so delivered, at least two originally executed counterparts shall be sent to the other party or its counsel for delivery on the next business day, but failure or delay in doing so shall not affect the validity or enforceability of this Agreement.

(b) This Agreement and the rights and obligations hereunder shall be governed by and construed in accordance with the substantive and procedural laws of the State of New York without regard to principles of conflicts of law. **THE PARTIES HERETO AGREE THAT A**

JURY TRIAL IS WAIVED IN ALL PROCEEDINGS ARISING OUT OF OR UNDER THIS AGREEMENT. The Parties further agree to the venue and jurisdiction of the County of Orange, Supreme Court, New York for any and all disputes, claims, defenses or other matters related to this Agreement whether directly or indirectly.

(c) This Agreement contains all of the terms agreed upon between the parties with respect to the subject matter hereof.

(d) This Agreement may not be changed, modified or terminated except by an instrument executed by the parties hereto or who are or will be affected by the terms of such instrument. No waiver by either party of any failure or refusal of the other party to comply with its obligations shall be effective unless in writing and shall not be deemed a waiver of any other or subsequent failure or refusal to so comply.

(e) If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such text or provision to persons 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 Agreement shall be valid and be enforced to the fullest extent permitted by law.

(f) The terms and provisions of this Agreement are to apply to and bind, and inure to the benefit of, the successors and assigns of the parties hereto.

(g) As used herein, business day means a day other than a Saturday, Sunday or day when banks in the State of New York are not open for business. Whenever in this Agreement a date for delivering notice or for the performance of any act shall fall or occur on a day that is not a business day, the date for delivering notice or the performance of such act shall be extended to the next business day.

(h) Seller and Purchaser agree that, prior to the Closing, Seller, or its agent, shall not make or cause any material alterations to be made to the property without disclosure to Purchaser after execution of the Contract of Sale and prior to Closing of Title;

(i) Purchaser/Buyer's acceptance of the Deed at closing shall represent Seller's full compliance with all terms and conditions set forth in this Contract of Sale and Rider, with the exception of those items and matters specifically designated in the contract and rider, if any, to survive closing of title and delivery of the deed.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

WITNESS/ATTEST:

SELLER:

ATTEST/WITNESS:

PURCHASER:

The undersigned has executed this Agreement solely to confirm its acceptance of the duties of Escrow Agent as set forth in Section 4 hereof.

By: _____

CONFIDENTIAL

EXHIBIT “B”

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, KNOW THAT

[[*releasor*]], as RELEASOR, in consideration of the sum of Ten Dollars and other good and valuable consideration, received from [*releasee*] as RELEASEE, receipt whereof is hereby acknowledged, releases and discharges RELEASEE, RELEASEE'S heirs, executors, administrators, successors and assigns from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against the RELEASEE, the RELEASOR, RELEASOR'S heirs, executors, administrators, successors and assigns ever had, now have or hereafter can, shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this RELEASE, in connection with the Town's enactment of a moratorium and certain zoning changes in the Town, including without limitation any and all claims described in, arising out of, or in any way related to the following litigation:

That certain civil action filed in United States District Court for the Southern District of New York, pending under Case No. 7:17-cv-07300; and that certain civil action and proceeding filed by GOLDEN RAY, LLC in New York Supreme Court, Orange County, Index No. 000300-2017.

Whenever the text hereof requires, the use of singular number shall include the appropriate plural number as the text of the within instrument may require.

This RELEASE may not be changed orally.

In Witness Whereof the RELEASOR has hereunto set RELEASOR'S hand and seal on the _____ day of _____, 2020.

In presence of _____ L.S.

STATE OF NEW YORK)
) ss.:
COUNTY OF ORANGE)

On the _____ day of _____, 2020 before me personally came _____ to me known, and known to me to be the individual described in, and who executed the foregoing RELEASE, and duly acknowledged to me that he executed the same.

NOTARY PUBLIC

EXHIBIT “C”

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

C H A B FIVE REALTY, LLC

Petitioner-Plaintiff,

-against-

TOWN OF MONROE; TOWN OF MONROE
TOWN BOARD; and AUDRA SCHWARTZ,
as Town of Monroe Planning Board Chairperson,

Respondents-Defendants.

Index No. 2017/00338

Hon Gretchen Walsh, J.S.C

TOLLING AGREEMENT

THIS TOLLING AGREEMENT ("Tolling Agreement") with an effective date of June 20, 2019, is entered by and between CHAB FIVE REALTY, LLC ("Plaintiff"), with an address of c/o Bluestein, Shapiro, Rich & Barone, LLP Attn: Gardiner S. Barone, Esq. 10 Matthews Street, Goshen, New York 10924 ("Plaintiffs") and TOWN OF MONROE, TOWN OF MONROE TOWN BOARD, and AUDRA SCHWARTZ ("Defendants"), with a business address at 1465 Orange Turnpike, Monroe, New York 10950. The Plaintiff and the Defendants are collectively referred to as "the Parties",

WHEREAS, Plaintiff duly commenced the above-captioned matter against the Defendants in the New York Supreme Court, Orange County, Index No. 000338-2017; and

WHEREAS, Defendants appeared by the law firm of Feerick Lynch MacCartney & Nugent, PLLC, which was later renamed Feerick Nugent MacCartney PLLC as counsel of record for Defendants; and

WHEREAS, before filing an Answer to Plaintiff's First Amended Complaint, Defendants made an application to the Court by Notice of Motion dated April 20, 2018, that sought to have this matter dismissed pursuant to CPLR §§ 7804 (f) & 3211; and

WHEREAS, while said application was fully submitted and pending *sub judice*, the Parties engaged in certain discussions and negotiations with the intent of bringing about the settlement of this matter on terms and conditions that are mutually agreeable to all Parties; and

WHEREAS, the settlement contemplated by the Parties includes the Town of Monroe enacting certain local laws and amendments to its zoning code, the necessary review under the State Environmental Quality Review Act (SEQRA) and review and approval of a development plan ("Site Plan") to develop four hundred seventy five (475) housing units and establish open space upon certain properties within the Town of Monroe, including the properties that are the subject of the within litigation; and

WHEREAS, said SEQRA review and Site Plan review is expected carry on over the course of the ensuing twelve to fourteen months before the Town of Monroe will be in a position to performed those terms contemplated by the proposed settlement that will result in within litigation being discontinued with prejudice and the exchange of mutual releases; and

WHEREAS, during said SEQRA review and Site Plan review the Parties do not want to engage in unnecessary litigation, and, therefore, seek to maintain the status quo by putting the litigation on hold; and

WHEREAS, the time that it is contemplated for the SEQRA review and Site Plan review to be completed exceeds the pre-note standards and goals applicable to this matter under Comprehensive Civil Justice Program, and, therefore, unless this matter is marked off the court's calendar, the Parties will be constrained to continue with litigation of the within matter; and

WHEREAS, the Court suggested the Parties have this matter discontinued without prejudice, so it can be marked off the calendar, but allowing the litigation to be resumed by making a written request via letter to the Court; and

WHEREAS, the Court advised the Parties that, if necessary, the litigation would resume at the same stage that it was when the matter was marked-off the calendar, and without the need to re-file or re-commence the litigation; and

WHEREAS, the Parties desire to continue to pursue the settlement negotiations without the expense of ongoing litigation and to bring about the

settlement if they reach a final agreement with respect to the settlement of this matter; and

NOW THEREFORE, based on the foregoing recitals and in consideration of the mutual undertakings set forth below, it is hereby agreed as follows:

1. Defendants hereby withdraw their pre-answer motion, without prejudice to reasserting all claims and arguments in any further proceedings in this matter.
2. That the within matter is hereby discontinued without prejudice, so the Parties can continue with their settlement negotiations and pursue the settlement of this matter. Plaintiff or Defendants can, at any time, reinstate the within litigation by giving written notice of its election to do so.
3. In the event Plaintiff or Defendants elect to resume the within litigation, then Plaintiff or Defendants can do so by giving notice via letter to the Court with a copy of the letter sent via email to opposing counsel. No written application and/or motion shall be required to resume the litigation. The litigation shall be resumed on the same pleadings and papers as were heretofore filed in this matter, and the litigation shall continue as follows:
 - a. Within sixty (60) days of the filing with the Court of an election to resume the litigation, Defendants shall serve and file their answer and supporting papers in response to the Article 78 claims, any application pursuant to CPLR § 408 for disclosure from Plaintiff, and a motion pursuant to CPLR § 3212 for summary judgment on the Plenary Action.
 - b. Within thirty days (30) after Defendants serve the foregoing papers under sub-part (a), Plaintiff shall serve and file its opposition to the motion for summary judgment in the Plenary Action and shall also serve and file its reply affidavits and/or cross-motion to any application pursuant to CPLR § 408 for disclosure, whereupon the Article 78 proceeding in this matter shall be deemed fully submitted for adjudication by the Court.
 - c. Within fifteen days (15) after Plaintiff serves the foregoing papers under sub-part (b), Defendants shall serve and file their reply in further support of its motion for summary judgment,

whereupon the Plenary Action in this matter shall be deemed fully submitted for adjudication by the Court.

d. The deadlines set forth herein for the submission of the foregoing papers can be extended and/or revised by stipulation of the Parties and/or order of the Court.

e. In none of its submissions shall Defendant assert as a defense based on any statute of limitations, laches, or any other defense based upon delay or the passage of time, unless such defense would have been available before the effective date of this Tolling Agreement or unless such defense arises after a recommencement of the litigation.

4. This Tolling Agreement is solely for the benefit of the Parties and convenience of the Court. Nothing in this Agreement is intended or shall be construed as an admission of liability or the validity of any claim or defense. This Agreement is for the sole purpose of suspending the within litigation and does not otherwise affect or impact upon any claim or defense the parties may have against one another. Nor is this Agreement intended to suggest that any applicable statute of limitations has or has not started to run.

5. No addition, amendment, or modification to this Agreement shall be effective unless set forth in a writing executed by the counsel of record for the Parties hereto.

6. All notices sent pursuant to this Agreement shall be given in the manner prescribed by the CPLR and/or applicable Court Rules.

7. This Agreement is entered into as part of settlement negotiations and cannot be used in any proceedings for or against any of the Parties on the issue of liability, except to establish the terms of this Agreement.

8. Each party represents and warrants that it has the authority to execute this Agreement, and that the signatures which appear below bind it and its principals to the terms of the Agreement.

9. This Agreement is the entire agreement between the parties with respect to the subject matter hereunder and supersedes all prior and contemporaneous oral and written agreements and discussions.

10. No day within which this Agreement is in effect shall be counted against the running of any statute of limitations applicable to any claim, defense and/or Cause of Action as to one party hereto against the other.

11. The parties hereto do not intend by this Agreement to modify, release or waive any of their rights, obligations, claims or defenses except as expressly set forth herein. Any claims as to which the statute of limitations already has expired are not revived by this Agreement.

12. This Tolling Agreement shall continue in full force and effect until counsel for the parties hereto execute and file a stipulation that discontinues the within action with prejudice, which stipulation shall expressly refer to the termination of the within Tolling Agreement.

IN WITNESS WHEREOF, the Parties have caused this Tolling Agreement to be signed by their counsel of record in this matter and intend to be legally bound hereby as if the within were a stipulation made on the record in court pursuant to CPLR 2104.

Feerick Nugent MacCartney PLLC	Blustein, Shapiro, Rich & Barone, LLP
By:	By:
Brian D. Nugent Attorneys for Defendants-Respondents 96 South Broadway South Nyack, NY 10960 (845) 353-2000 bnugent@fnmlawfirm.com	Gardiner S. Barone Attorneys for Petitioner-Plaintiff 10 Matthews Street Goshen, NY 10924 (845) 291-0011 gbarone@mid-hudsonlaw.com

Dated: White Plains, NY
June __, 2019

So ordered

Gretchen Walsh, J.S.C.

