

**NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

**APPLICATION FOR FINANCIAL ASSISTANCE  
(Straight Lease)**

*ORIGINAL*

**APPLICATION OF:**

Kim & Bae Trading Corp, d/b/a K&B Trading

**APPLICANT NAME**

Please respond to all questions in this Application for Financial Assistance (the "Application") by, as appropriate:

- filling in blanks;
- checking the applicable term(s);
- attaching additional text (with notation in Application such as "See Schedule II, Item # 1", etc.); or
- writing "N.A.", signifying "not applicable".

All attachments responsive to questions found in this Application should be clearly labeled and attached as Schedule II to the Application. If an estimate is given, enter "EST" after the figure. One signed original and one photocopy of the Application (including all attachments) must be submitted.

The following amounts are payable to the Nassau County Industrial Development Agency (the "Agency") at the time this Application is submitted to the Agency: (i) a \$1,000 non-refundable application fee (the "Application Fee"); (ii) a \$3,500 expense deposit for the Agency's Transaction Counsel fees and expenses (the "Counsel Fee Deposit"), (iii) a \$2,500 expense deposit for the cost/benefit analysis with respect to the project contemplated by this Application (the "Cost/Benefit Deposit"), and (iv) a \$500 expense deposit for the real property tax valuation analysis, if applicable, with respect to the project contemplated by this Application (the "Valuation Deposit"). The Application Fee will not be credited against any other fees or expenses which are or become payable to the Agency in connection with this Application or the project contemplated herein (the "Project"). In the event that the subject transaction does not close for any reason, the Agency may use all or any part of the Counsel Fee Deposit, the Cost/Benefit Deposit and/or the Valuation Deposit to defray the cost of Transaction Counsel fees and expenses, the cost of obtaining a cost/benefit analysis and/or the cost of obtaining a real property tax valuation with respect to the Project. In the event that the subject transaction does close, the Counsel Fee Deposit, the Cost/Benefit Deposit and the Valuation Deposit shall be credited against the applicable expenses incurred by the Agency with respect to the Project.

**Every signature page comprising part of this Application must be signed by the Applicant or this Application will not be considered complete or accepted for consideration by the Agency.**

The Agency's acceptance of this Application for consideration does not constitute a commitment on the part of the Agency to undertake the proposed Project, to grant any Financial Assistance with respect to the proposed Project or to enter into any negotiations with respect to the proposed Project.

Information provided herein may be subject to disclosure under the New York Freedom of Information Law (New York Public Officers Law § 84 et seq.) ("FOIL"). If the Applicant believes that a portion of the material submitted with this Application is protected from disclosure under FOIL, the Applicant should mark the applicable section(s) or page(s) as "confidential" and state the applicable exception to disclosure under FOIL.

9/30/15

DATE

**PART I. APPLICANT**

A. APPLICANT FOR FINANCIAL ASSISTANCE (If more than one applicant, copy application and complete for each applicant):

Name: Kim & Bae Trading Corp. d/b/a K&B Trading

Address: 119 W. 29th Street, New York, New York 10001

Primary Contact: Tim Lee

Phone: 212-967-0974 Fax: 212-967-8821

E-Mail: timlee@kbethos.com

NY State Dept. of Labor Reg #: \_\_\_\_\_ Federal Employer ID #: \_\_\_\_\_

NAICS Code #: 453990

B. BUSINESS TYPE (Check applicable status. Complete blanks as necessary):

Sole Proprietorship \_\_\_ General Partnership \_\_\_ Limited Partnership \_\_\_

Limited Liability Company \_\_\_ Privately Held Corporation

Publicly Held Corporation \_\_\_ Exchange listed on \_\_\_\_\_

Not-for-Profit Corporation \_\_\_

Income taxed as: Subchapter S \_\_\_ Subchapter C  C. Corp.  
501(c)(3) Corporation \_\_\_ Partnership \_\_\_

State and Year of Incorporation/Organization: New York 2001

Qualified to do Business in New York: Yes  No \_\_\_ N/A \_\_\_

C. ANY ENTITY PROPOSED TO BE A USER OF THE PROJECT:

Name: Same as above

Relationship to Applicant: \_\_\_\_\_



G. Is the Applicant related to any other entity by reason of more than 50% common ownership? If YES, indicate name of related entity and relationship.

YES

NO

H. List parent corporation, sister corporations and subsidiaries, if any:

N/A

I. Is the Applicant (including any parent company, subsidiary or related entity or person) or any principal(s) of the Applicant or its related entities involved in any litigation or aware of any threatened litigation that would have a material adverse effect on the Applicant's financial condition or the financial condition of said principal(s)? If YES, attach details.

YES

NO

J. Has the Applicant (or any parent company, subsidiary or related entity or person) or any principal(s) of the Applicant or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, ever been involved, as debtor, in bankruptcy, creditors rights or receivership proceedings or sought protection from creditors? If YES, attach details.

YES

NO

K. Has the Applicant (or any parent company, subsidiary or related entity or person) or any principal(s) of the Applicant or its related entities, ever been charged with or convicted of any felony or misdemeanor (other than minor traffic offenses), or have any such related persons or principal(s) held positions or ownership interests in any firm or corporation charged or convicted of a felony or misdemeanor (other than minor traffic offenses)? If YES, attach details.

YES

NO

L. Has the Applicant (or any parent company, subsidiary or related entity or person) or any principal(s) of the Applicant or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, been cited for (or is there pending proceeding or investigation with respect to) a violation of federal, state or local laws or regulations with respect to labor practices, hazardous wastes, environmental pollution, taxation, or other operating practices? If YES, attach details.

YES

NO

M. Is the Applicant (or any parent company, subsidiary or related entity or person) or any principal(s) of the Applicant or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, delinquent or have any of the foregoing persons or entities been delinquent on any New York State, federal or local tax obligations within the past five (5) years? If YES, attach details:

YES

NO

N. Complete the following information for principals (including, in the case of corporations, officers and members of the board of directors and, in the case of limited liability company, members and managers) of the Applicant:

<u>Name</u>	<u>Title</u>	<u>Other Business Affiliations</u>
Chul Kim	President	N/A
Sung Bae	President	N/A
Tim Lee	Manager	N/A

Do any of the foregoing principals hold elected or appointive public positions? If YES, attach details.

YES

NO

Are any of the foregoing principals employed by any federal, state or local municipality or any agency, authority, department, board, or commission thereof or any other governmental or quasi-governmental organization?

YES

NO

O. Operation at existing location(s) (Complete separate Section O for each existing location):

1) 119 W. 29th Street, New York, New York 10001

1. (a) Location: 2) 396 Veterans Boulevard, Carlstadt, New Jersey 07072

(b) Number of Employees: Full-Time: 8 Part-Time: 5

(c) Annual Payroll, excluding benefits: \$1,000,000

(d) Type of operation (e.g. manufacturing, wholesale, distribution) and products or services: NY: Marketing and Accounting  
NJ: Shipping and Distribution

(e) Size of existing facility real property (i.e., acreage of land): See below

NY: 1000 SF Office

(f) Buildings (number and square footage of each): NJ: 15000 SF Warehouse

(g) Applicant's interest in the facility,

NJ FEE TITLE (i.e. own)    NY LEASE    OTHER (describe below)

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(h) If Applicant leases, state annual rent  
and lease expiration date;

annual rent - NY Expires: 2017

2. If any of the facilities described above are located within the State of New York (other than in Nassau County), is it expected that any of the described facilities will be closed or be subject to reduced activity? If YES, complete the attached Anti-Raiding Questionnaire (Schedule D).

YES

NO

P. Has the Applicant considered moving to another state or another location within New York State? If YES, explain circumstances.

YES

NO

We have considered remaining in and moving our offices to New Jersey. We have also considered locations in Long Island City and Brooklyn because of the proximity of both locations to retail buying offices in New York City and to shipping facilities necessary for our business .

Q. Does any one supplier or customer account for over 50% of Applicant's annual purchases or sales, respectively? If YES, attach name and contact information for supplier and/or customer, as applicable:

YES

NO

Hochang/Located in Vietnam. 60% of production.

R. Does the Applicant (including any related entity or person) or any principal(s) of the Applicant or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, have any contractual or other relationship with the Agency or the County of Nassau? If YES, attach details.

YES

NO

S. Attach a brief history of the Applicant and its business/operations at Schedule H.

By signing this Application, the Applicant authorizes the Agency to obtain credit reports and other financial background information and perform other due diligence on the Applicant and/or any other entity or individual related thereto, as the Agency may deem necessary to provide the requested financial assistance.

## **PART II. PROPOSED PROJECT**

A. Description of proposed Project (check all that apply):

- New Construction
- Addition to Existing Facility
- Renovation of Existing Facility
- Acquisition of Facility
- New machinery and equipment
- Other (specify): \_\_\_\_\_

B. Briefly describe the proposed Project, the reasons why the Project is necessary to the Applicant and why the Agency's financial assistance is necessary, and the effect the Project will have on the Applicant's business or operations:

Please see attached additional page:

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C. If the Applicant is unable to obtain financial assistance for the Project, what will be the impact on the Applicant and Nassau County? Would the Applicant proceed with the Project without Agency financial assistance? Describe:

Please see attached additional page.

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D. Location of Project (attach map showing the location):

Street Address:

45 Seaview Boulevard

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City/Village(s):

Port Washington, New York 11050

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Town(s):

North Hempstead

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## Inserts to Part II - Proposed Project

### **B.**

We have been successful in our business for over 15 years and we have built a solid base for the KBTHOS brand. K&B Trading currently has two locations, midtown Manhattan (1000SF) and Meadowlands, NJ (15,000SF). Our business has outgrown our current spaces. We need at least double the space as our current space so that we can consolidate our locations and continue to rapidly increase our growth.

The financial assistance is key for us. Our other location candidates are Long Island City, Brooklyn and New Jersey, which have better access to all shipping facilities and are close to our buyers' offices in Manhattan. The financial assistance the IDA could provide will make a major difference to us, especially because of the initial large investment we will have in the Port Washington location.

This project will give us enough room to grow on current growth pace for at least the next 15 years.

### **C.**

The impact on K&B Trading of not receiving assistance from the IDA is that we may miss the chance of moving our operations to Nassau County. This is particularly important for the management (the majority of whom currently live in Nassau) and we would need to re-focus our attention to the Long Island City, Brooklyn or New Jersey locations. This would also mean keeping our current operations and just consolidating under one roof somewhere else.

We would not know how it would impact Nassau by the IDA not providing assistance to K&B, but what we do know is how this would look in our industry. We are in the fashion clothing industry and our particular business is mostly based in New Jersey. Should the IDA provide assistance, we would probably be the pioneers in this industry by being the company who initially moves from Carlstadt, New Jersey to Port Washington, New York and strongly believe others in our industry and related industries would also follow us.

A significant financial assistance can help K&B make a successful landing here and, if we do this, it will definitely have a positive and significant impact on our existing business.

School District(s):  
Port Washington - 4

Section: 6 Block: 89 Lot: 16 & 17

Census Tract Number: \_\_\_\_\_

Size of proposed facility real property  
(i.e., acreage of land): 1.08622 acres

Square Footage of Existing Improvements: 32, 925 square feet

If exact street address is not available, please provide a survey and the most precise description available.

E. Describe the present use of the Project site: Office and Warehouse

F. (a) What are the current real estate taxes on the Project site? (If amount of current taxes is not available, provide assessed value for each):

General: \$77,346.00  
School: \$86,315.82  
Village: \$

(b) Are tax certiorari proceedings currently pending with respect to the Project real property? If YES, attach details including copies of pleadings, decisions, etc.

YES x NO    

G. Describe Project ownership structure (i.e., Applicant or other entity):

CDC Estate

H. To what purpose will the building or buildings to be acquired, constructed or renovated be used by the Applicant? (Include description of goods to be sold, products to be manufactured, assembled or processed and services to be rendered.)

The continuing business of K&B Trading and KBETHOS.com Manufacturer

(importer) of headwear brand KBETHOS.

I. If any space in the Project is to be leased to or occupied by third parties, or is currently leased to or occupied by third parties who will remain as tenants, provide the names and

contact information for each such tenant, indicate total square footage of the Project to be leased to each tenant, and describe proposed use by each tenant.

The current layout of the building has a space of approximately 1000SF initially put aside to lease. If we decide to lease the space on an interim basis, we would still have 23000SF of space for our consolidated business. This is almost 70% larger than our current locations combined and should be enough in the short term. It's not final, but leasing the smaller space could make sense in the short term and would bring additional business to the area.

- J. Provide, to the extent available, the information requested in Part I. Questions A, B, E, and G, with respect to any party described in the preceding response.

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- K. List principal items or categories of equipment to be acquired as part of the Project:  
Office furniture, Warehouse Rack Structures, Supplies.

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- L. Will Project meet zoning/land use requirements at proposed location?

YES  NO

1. Describe present zoning/land use: MPIP (Modified Planned Industrial Park)

2. Describe required zoning/land use, if different: \_\_\_\_\_

3. If a change in zoning/land use is required, please provide details/status of any request for change of zoning/land use requirements:

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- M. Does the Applicant, or any related entity or person, currently hold a lease or license on the Project site? If YES, please provide details and a copy of the lease/license.

YES  NO

- N. Does the Applicant, or any related entity or person, currently hold fee title to (i.e. own) the Project site?

YES  NO

If YES, indicate:

(a) Date of purchase: \_\_\_\_\_

- (b) Purchase price: \$ \_\_\_\_\_
- (c) Balance of existing mortgage, if any: \$ \_\_\_\_\_
- (d) Name of mortgage holder: \_\_\_\_\_
- (e) Special conditions: \_\_\_\_\_

If NO, indicate name of present owner of Project site: \_\_\_\_\_

Q. Does the Applicant or any related person or entity have an option or a contract to purchase the Project site and/or any buildings on the Project site?

YES  NO

If YES, attach copy of contract or option and indicate:

- (a) Date signed: 8/26/15
- (b) Purchase price: \$ 4,718,000.00
- (c) Closing date: 10/31/15

Is there a relationship legally or by virtue of common control or ownership between the Applicant (and/or its principals) and the seller of the Project (and/or its principals)?  
If YES, describe:

YES  NO

Q. Will customers personally visit the Project site for either of the following economic activities? If YES with respect to either economic activity indicated below, complete the attached Retail Questionnaire (Schedule F).

Sales of Goods: YES  NO  Sales of Services: YES  NO

Q. Describe the social and economic conditions in the community where the Project site is or will be located and the impact of the proposed Project on the community (including impact on infrastructure, transportation, fire and police and other government-provided services):

Our shopping operations will bring activity to the area. We are receiving over three million hats a year and we will be re-packing and shipping out almost as much if not more. This means USPS, UPS, FEDEX and other supply trucks going in and out of the area all the time. We are moving into a new home. We want to make our approach to the community as a new family member. Our employees will spend most of their time here. We will have company meetings, events and family gatherings at local businesses. We will also have frequent visits daily from partnering companies. Once we hopefully settle in to our new location, we will explore ways we can better support the local community, such as providing donations of headwear to support local community projects.

R. Identify the following Project parties (if applicable):

Architect: \_\_\_\_\_  
Engineer: \_\_\_\_\_  
Contractors: \_\_\_\_\_  
\_\_\_\_\_

S. Will the Project be designed and constructed to comply with Green Building Standards? (if YES, describe the LEED green building rating that will be achieved)

YES \_\_\_\_\_ NO  x

T. Is the proposed Project site located on a Brownfield? (if YES, provide description of contamination and proposed remediation)

YES \_\_\_\_\_ NO  x

U. Will the proposed Project produce a unique service or product or provide a service that is not otherwise available in the community in which the proposed Project site is located?

YES \_\_\_\_\_ NO  x

**PART III. PROJECT COSTS**

A. Provide an estimate of cost of all items listed below:

	<u>Item</u>	<u>Cost</u>
1.	Land Acquisition	\$4,718,000
2.	Building Acquisition	\$
3.	Construction or Renovation	\$50,000
4.	Site Work	\$
5.	Infrastructure Work	\$
6.	Engineering Fees	\$
7.	Architectural Fees	\$
8.	Applicant's Legal Fees	\$
9.	Financial Fees	\$
10.	Other Professional Fees	\$
11.	Furniture, Equipment & Machinery (not included in 3, above)	\$75,000.00
12.	Other Soft Costs (describe)	\$
13.	Other (describe)	\$
	Total	\$4,843,000

B. Source of Funds for Project Costs:

a.	Bank Financing:	\$2,750,000 +
b.	Equity	\$2,093,000
	TOTAL	\$4,843,000

C. Have any of the above costs been paid or incurred (including contracts of sale or purchase orders) as of the date of this application? If YES, describe particulars on a separate sheet.

YES NO X

D. Has the Applicant made any arrangement for the provision of third party financing? If YES, indicate with whom (subject to Agency approval) and provide a copy of any term sheet or commitment letter issued with respect to such financing.

YES \_\_\_\_\_ NO X

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E. Construction Cost Breakdown:

Total Cost of Construction: \$125,000.00 (sum of 3 and 11 in Question A above)

Cost for materials: \$ 50,000

% Sourced in County: 100 %

% Sourced in State: 100 % (incl. County)

Cost for labor: \$ 25,000

% Sourced in County: 100 %

% Sourced in State: 100 % (incl. County)

Cost for "other": \$ 50,000

% Sourced in County: 100 %

% Sourced in County: 100 % (incl. County)

**PART IV. COST/BENEFIT ANALYSIS**

A. If the Applicant presently operates in Nassau County, provide the current annual payroll, excluding benefits. Estimate payroll, excluding benefits, in First Year, Second Year and Third Year after completion of the Project.

	Present	First Year	Second Year	Third Year
Full-time:	\$ 0	\$ 1,140,000 EST	\$ 1,300,000 EST	\$ 1,450,000 EST
Part-time:	0			
Seasonal:	0			
Total Annual Payroll:	\$ 0	\$ 1,140,000 EST	\$ 1,300,000 EST	\$ 1,450,000 EST

What are the average wages of employees (excluding benefits) presently employed by the Applicant in Nassau County? \$ 0

What is the average annual value of employee benefits paid per job, if any, for the employees presently employed by the Applicant in Nassau County? \$ 0

What are the estimated average wages of the jobs (excluding benefits) to be created by the Applicant upon completion of the Project? \$35,000 per year/per employee

What is the estimated average annual value of employee benefits per job, if any, for jobs to be created upon completion of the Project? \$ TBD

Estimate the percentage of jobs to be created by the Applicant upon completion of the Project that will be filled by County residents: 50% %





Year 2	\$ EST 75,000.00	<u>100%</u>	<u>100%</u>
Year 3	\$ EST 100,000.00	<u>100%</u>	<u>100%</u>

- F. Describe, if applicable, other benefits to the County anticipated as a result of the Project, including a projected annual estimate of additional sales tax revenue generated, directly and indirectly, as a result of undertaking the project:
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- F. Costs to the County and affected municipalities:

Estimated Value of Sales Tax Exemption: \$ 10,725.00

Estimated Value of Mortgage Tax Exemption: \$ 28,875.00

Estimated Property Tax Exemption: \$ TBD

Existing Property Tax paid on the Land and/or Building: (please provide current tax bills) \$ 163,661.82

Estimated new Real Property Tax Revenue if the Project did **not** receive Real Property Tax exemption: \$ \_\_\_\_\_

Estimated new Real Property Tax Revenue if the Project does receive Real Property Tax exemption: \$ \_\_\_\_\_

- G. Describe any other one-time municipal revenues (not including fees payable to the Agency) that the Project will create:

There may be additional revenues such as permitting and other application fees related to the construction to be performed at the Project.

**PART V. PROJECT CONSTRUCTION SCHEDULE**

- A. Has construction work on the Project begun? If YES, indicate the percentage of completion:

1. (a) Site clearance YES NO X \_\_\_\_\_% complete

(b) Environmental YES NO X \_\_\_\_\_% complete

Remediation

(a) Foundation	YES	NO <u>X</u>	% complete
(b) Roofings	YES	NO <u>X</u>	% complete
(c) Steel	YES	NO <u>X</u>	% complete
(f) Masonry	YES	NO <u>X</u>	% complete
(g) Interior	YES	NO <u>X</u>	% complete
(h) Other (describe below)	YES	NO <u>X</u>	% complete

2. If NO to all of the above categories, what is the proposed date of commencement of construction, renovation or acquisition of the Project?

Our contemplated date for the acquisition and renovation of the Project is  
October 31, 2015.

- B. Provide an estimate of time schedule to complete the Project and when the first use of the Project is expected to occur (attach additional sheet if necessary):

We expect to complete the renovation of the Project by December 31, 2015, but hope to move into and use the Project prior to that date.

**PART VI. ENVIRONMENTAL IMPACT**

- A. What is the expected environmental impact of the Project? (Complete the attached Environmental Assessment Form (Schedule G)).

None

- B. Is an environmental impact statement required by Article 8 of the N.Y. Environmental Conservation Law (i.e., the New York State Environmental Quality Review Act)?

YES

NO X

- C. Please be advised that the Agency may require at the sole cost and expense of the Applicant the preparation and delivery to the Agency of an environmental report in form and scope satisfactory to the Agency, depending on the responses set forth in the

Environmental Assessment Form. If an environmental report has been or is being prepared in connection with the Project, please provide a copy.

- D. The Applicant authorizes the Agency to make inquiry of the United States Environmental Protection Agency, the New York State Department of Environmental Conservation or any other appropriate federal, state or local governmental agency or authority as to whether the Project site or any property adjacent to or within the immediate vicinity of the Project site is or has been identified as a site at which hazardous substances are being or have been used, stored, treated, generated, transported, processed, handled, produced, released or disposed of. The Applicant will be required to secure the written consent of the owner of the Project site to such inquiries (if the Applicant is not the owner), upon request of the Agency.

THE UNDERSIGNED HEREBY CERTIFIES that the answers and information provided above and in any statement attached hereto are true, correct and complete.

Name of Applicant: Kim & Bae Trading Corp. d/b/a K&B Trading

Signature: Bae Sung M.

Name: SUNG M. BAE

Title: PRESIDENT

Date: \_\_\_\_\_

Sworn to before me this 29  
day of September, 2015

  
Notary Public

**JASON NOVATT**  
Notary Public, State Of New York  
No. 01NO6043465  
Qualified in Kings County  
Certified in New York County  
Commission Expires 06/19/2018

**RULES AND REGULATIONS OF THE NASSAU COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY**

The Nassau County Industrial Development Agency (the "Agency") in order to better secure the integrity of the projects it sponsors, declares that it is in the public interest (I) to ensure the continuity of user premises and the jobs created by such projects, (II) to prevent the abandonment of the use of the premises upon which the sponsored project is to be constructed or renovated and (III) to limit and prevent unreasonable and excessive exploitation of a project, and does hereby find, declare and determine as follows:

**FIRST:**

Upon the approval of a sponsored project, the Agency shall take title to and acquire a leasehold or other interests in all premises upon which an Agency sponsored project is to be constructed or renovated and shall lease said leasehold or other interests to the Applicant for a term to be determined by the Agency.

At all times as, among other things, the Applicant fails to recruit or create the jobs as represented in the Application or changes the use of the project or ownership of the project or the Applicant during the life of the project in a manner inconsistent with the Application, and such employment reduction or change of use or ownership does not meet with the prior written approval of the Agency, a recapture of benefits may be required to be paid by the Applicant to the Agency. The amount and sufficiency with respect to a particular applicant of the applicable recapture of benefits payment shall be determined by the Agency and shall be set forth in the appropriate lease documents.

**SECOND:**

At such time as a proposed project is reviewed, the members of the Agency must disclose any blood, marital or business relationships they or members of their families have or have had with the Applicant or its affiliates. The Applicant represents that no member, manager, principal officer or director of the Applicant has any such relationship with any member of the Agency (or any member of the family of any member of the Agency).

**THIRD:**

All applicants must disclose whether they have been appointed, elected or employed by, hold, or manage, any political division of New York State or any other governmental agency.

**FOURTH:**

All proposed lenders, all copromoters and all guarantors of a project must be satisfied in writing by the Agency.

Understood and Agreed to:

Name of Applicant: Kim & Bae Trading Corp. d/b/a K&B Trading

By:   
Name Title: SUNG M. BAE

**CERTIFICATION AND AGREEMENT  
WITH RESPECT TO FEES AND COSTS**

The undersigned deposes and says that I am an authorized representative of the Applicant named in the attached application for financial assistance ("Application") and that I hold the office specified below my signature at the end of this Certification and Agreement, that I am authorized and empowered to deliver this Certification and Agreement and the Application for and on behalf of the Applicant, that I am familiar with the contents of said Application (including all schedules and attachments thereto), and that said contents are true, correct and complete to my knowledge. Capitalized terms used but not otherwise defined in this Certification and Agreement shall have the meanings assigned to such terms in the Application.

The grounds of my belief relative to all matters in the Application that are not based upon my own personal knowledge are based upon investigations I have made or have caused to be made concerning the subject matter of this Application, as well as upon information acquired in the course of my duties and from the books and records of the Applicant.

As an authorized representative of the Applicant, I acknowledge and agree on behalf of the Applicant that the Applicant hereby releases the Nassau County Industrial Development Agency, its members, officers, servants, attorneys, agents and employees (collectively, the "Agency") from, agrees that the Agency shall not be liable for and agrees to indemnify, defend (with counsel selected by the Agency) and hold the Agency harmless from and against any and all liability, damages, causes of actions, losses, costs or expenses incurred by the Agency in connection with: (A) examination and processing of, and action pursuant to or upon, the Application, regardless of whether or not the Application or the financial assistance requested therein are favorably acted upon by the Agency, (B) the acquisition, construction and/or installation of the Project by the Agency, and (C) any further action taken by the Agency with respect to the Project; including, without limiting the generality of the foregoing, (i) all fees and expenses of the Agency's general counsel, transaction counsel, economic development consultant, real property tax valuation consultant and other experts and consultants (if deemed necessary or advisable by the Agency), and (ii) all other expenses incurred by the Agency in defending any suits, actions or proceedings that may arise as a result of any of the foregoing. If, for any reason whatsoever, the Applicant fails to conclude or consummate necessary negotiations or fails within a reasonable or specified period of time to take reasonable, proper or requested action or withdraws, abandons, cancels, or neglects the Application or is unable to secure third party financing or otherwise fails to conclude the Project, then upon presentation of an invoice by the Agency, its agents, attorneys or assigns, the Applicant shall pay to the Agency, its agents, attorneys or assigns, as the case may be, all fees and expenses reflected in any such invoice.

As an authorized representative of the Applicant, I acknowledge and agree on behalf of the Applicant that each of the Agency's general counsel, transaction counsel, economic development consultant, real property tax valuation consultant and other experts and consultants is an intended third-party beneficiary of this Certification and Agreement, and that each of them may (but shall not be obligated to) enforce the provisions of the immediately preceding paragraph, whether by lawsuit or otherwise, to collect the fees and expenses of such party or person incurred by the Agency (whether or not first paid by the Agency) with respect to the Application.

Upon successful closing of the "straight lease" transaction, the Applicant shall pay to the Agency an administrative fee set by the Agency (which amount is payable at closing) in accordance with the following schedule:

- (A) Six-tenths (6/10) of one percent (1%) for the first twenty million dollars (\$20,000,000) of total project costs and, if applicable, two-tenths (2/10) of one percent (1%) for any additional amounts in excess of twenty million dollars (\$20,000,000) of total project costs.

- (B) General Counsel Fee - One-tenth (1/10) of one percent (1%) of total project costs, with a minimum fee of \$2,000.
- (C) Two Thousand Five Hundred Dollars (\$2,500) closing compliance fee payable at closing and One Thousand Dollars (\$1,000) per year (or part thereof) administrative fee, payable in advance, at the closing for the first year (or part thereof) and on January 1st of each year for the term of the financing. The annual service fee is subject to periodic review and may be adjusted from time to time in the discretion of the Agency.
- (D) Refinancings - The Agency fee shall be determined on a case-by-case basis.
- (E) Assumptions - The Agency fee shall be determined on a case-by-case basis.
- (F) Modifications - The Agency fee shall be determined on a case-by-case basis.

Transaction counsel fees and expenses are payable at closing and are based on the work performed in connection with the Project.

Upon the termination of the Project, Applicant agrees to pay all costs in connection with any conveyance by the Agency to the Applicant of the Agency's interest in the Project and the termination of all related Project documents, including the fees and expenses of the Agency's general counsel, transaction counsel, and all applicable recording, filing or other related fees, taxes and charges.

Kim & Bae Trading Corp, d/b/a K&B Trading



Name

Title:

Sworn to before me this 29  
day of September, 2015

  
Notary Public

**JASON NOVATT**  
Notary Public, State Of New York  
No. 01NO6043465  
Qualified in Kings County  
Certified in New York County  
Commission Expires 06/19/2018



TABLE OF SCHEDULES

<u>Schedule</u>	<u>Title</u>	<u>Complete as Indicated Below</u>
A.	Intentionally omitted	
B.	New York State Financial and Employment Requirements for Industrial Development Agencies	All applicants
C.	Guidelines for Access to Employment Opportunities	All applicants
D.	Anti-Raiding Questionnaire	If Applicant checked "YES" in Part I, Question Q 2, of Application
E.	Retail Questionnaire	If Applicant checked "YES" in Part II, Question P of Application (See Page 11)
F.	Applicant's Financial Attachments, consisting of: <ol style="list-style-type: none"> <li>1. Applicant's audited financial statements for the last two fiscal years (unless included in Applicant's annual reports).</li> <li>2. Applicant's annual reports (or Form 10-K's) for the two most recent fiscal years.</li> <li>3. Applicant's quarterly reports (Form 10-Q's) and current reports (Form 8-K's) since the most recent Annual Report, if any.</li> <li>4. In addition, attach the financial information described above in items 1, 2, and 3 of any anticipated Guarantor of the proposed transaction, if different than the Applicant, including the personal financial statement of any anticipated Guarantor that is a natural person.</li> <li>5. Dun &amp; Bradstreet report.</li> </ol>	All applicants
G.	Environmental Assessment Form	All applicants
H.	Other Attachments	As required

Schedule A

Intentionally omitted



**NEW YORK STATE FINANCIAL AND EMPLOYMENT REPORTING  
REQUIREMENTS FOR INDUSTRIAL DEVELOPMENT AGENCIES**

- A. Pursuant to applicable law, the Agency requires the completion of an Initial Employment Plan (see Schedule C) and a year-end employment plan status report, both of which shall be filed by the Massena County Industrial Development Agency (the "Agency") with the New York State Department of Economic Development on January 15. The Project documents will require the Applicant to provide such report to the Agency on or before January 1 of each year, together with such employment verification information as the Agency may require.

Except as otherwise provided by collective bargaining agreements, the Applicant agrees to and any new employment opportunities with the New York Department of Labor Community Service Division and the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (PL 97-248) or any successor state statute (the "JTPA facilities"). In addition, except as otherwise provided by collective bargaining agreements, the Applicant, where practicable, will first consider persons eligible to participate in JTPA programs who shall be referred by the JTPA facilities for such new employment opportunities.

- B. The Applicant will be required to file annually a statement with the New York State Department of Taxation and Finance and the Agency of the value of all sales or use tax exemptions claimed in connection with the Project in reason of the involvement of the Agency.

- C. Please be advised that the New York State Industrial Development Agency has imposed additional annual reporting requirements on the Agency, and the Applicant will be required to furnish information in accordance with such reporting, as follows:

The following information must be provided for straight-lease mortgages entered into or terminated during the year:

Name, address and owner of the project; total amount of tax exemptions granted; broken out by state and local sales tax, property taxes, and mortgage recording tax; payments in kind of taxes made; total non-reside units on the Project prior to completion; number of jobs created and retained; and other economic benefits realized.

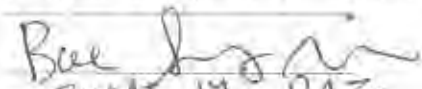
**Failure to provide any of the aforesaid information will be constitute a DEFAULT under the Project documents to be entered into by the Agency and the Applicant in connection with the proposed Project.**

Please state clearly in response that the Applicant has read and understood the above and agrees to provide the described information on a timely basis.

Name of Applicant

Kim & Bae Trading Corp./J. Kim & B. Trading

Signature Name Title Date

  
SUNNY BAE  
PRESIDENT

**GUIDELINES FOR ACCESS TO EMPLOYMENT OPPORTUNITIES****INITIAL EMPLOYMENT PLAN**

Prior to the granting of financial assistance, the Applicant shall complete the following employment plan:

Applicant Name: K&B Trading  
 Address: 119 W. 29th Street, New York, New York 10001  
 Type of Business: Wholesale Distribution of Headwear  
 Contact Person: Tim Lee Tel. No. 212-967-0974

Please complete the following table describing the Applicant's projected employment plan following receipt of financial assistance:

<u>Current and Planned Occupations</u> (provide NAICS Code for each)	<u>Current Number Full Time Equivalent Jobs Per Occupation</u>		<u>Estimated Number of Full Time Equivalent Jobs in the County After Completion of the Project:</u>		
	<u>County</u>	<u>Statewide</u>	<u>1 year</u>	<u>2 years</u>	<u>3 years</u>
		<u>0</u>	<u>8</u>	<u>12</u>	<u>16</u>

Please indicate the number of temporary construction jobs anticipated to be created in connection with the acquisition, construction and/or renovation of the Project: 5-10

Please indicate the estimated hiring dates for the new jobs shown above and any special recruitment or training that will be required:

Immediately

Are the Applicant's employees currently covered by a collective bargaining agreement?

YES       

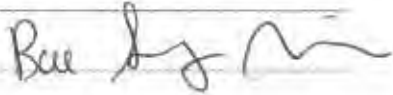
NO   x

NY S, Union State and Local \_\_\_\_\_

Please note that the Agency may utilize the foregoing employment projections, among other things, to determine the financial assistance that will be offered by the Agency to the Applicant. The Applicant acknowledges that the transaction documents may include a covenant by the Applicant to retain the above number of jobs, types of occupations and amount of payroll with respect to the proposed project.

Attached hereto is a true, correct and complete copy of the Applicant's most recent Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return (Form NYS-45-MN). Upon request of the Agency, the Applicant shall provide such other or additional information or documentation as the Agency may require with respect to the Applicant's current employment levels in the State of New York.

The UNDERSIGNED HEREBY CERTIFIES that the answers and information provided above and in any statement attached hereto are true, correct and complete.

Name of Applicant:	Kim & Bas Trading Corp., d/b/a K&B Trading
Signature:	
Name:	
Title:	
Date:	

**ANTI-RAIDING QUESTIONNAIRE**

(To be completed by Applicant if Applicant checked "YES" in Part I, Question 02 of the Application for Financial Assistance)

- A. Will the completion of the Project result in the removal of a plant or facility of the Applicant or of a proposed occupant of the Project, or a relocation of any employees of the Applicant or of a proposed occupant of the Project, from an area in New York State (but outside of Nassau County) to an area within Nassau County?

YES NO 

If the answer to Question A is YES, please provide the following information:

Address of the to-be-removed plant or facility or the plant or facilities from which employees are relocated: 119 W 29th Street, New York, New York

Names of all current occupants of the to-be-removed plant or facility:

Chul Kim, Sung Bae, Chang Lee, Yohan Zimmermann, Ja Kim, Sangwong Lee

- B. Will the completion of the Project result in the abandonment of one or more plants or facilities of the Applicant, or of a proposed occupant of the Project, located in an area of the State of New York other than in Nassau County?

YES NO 

If the answer to Question B is YES, please provide the following information:

Addresses of the to-be-abandoned plants or facilities: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Names of all current occupants of the to-be-abandoned plants or facilities: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- C. Has the Applicant contacted the local industrial development agency at which its current plants or facilities in New York State are located with respect to the Applicant's intention to move or abandon such plants or facilities?

YES NO

If the answer to Question C is YES, please provide details in a separate attachment.

IF THE ANSWER TO EITHER QUESTION A OR B IS "YES", ANSWER QUESTIONS D AND E.

D. Is the Project reasonably necessary to preserve the competitive position of the Applicant, or of a proposed occupant of the Project, in its industry?

YES  NO

E. Is the Project reasonably necessary to discourage the Applicant, or a proposed occupant of the Project, from removing such plant or facility to a location outside of the State of New York?

YES  NO


IF THE ANSWER TO EITHER QUESTION D OR E IS "YES", PLEASE PROVIDE DETAILS IN A SEPARATE ATTACHMENT.

THE UNDERSIGNED HEREBY CERTIFIES that the answers and information provided above and in any statement attached hereto are true, correct and complete.

Name of Applicant:

Kim & Bae Trading Corp. (d/b/a K&B Trading)

Signature:

  
\_\_\_\_\_  
SUNG M BAE

Name:

Title:

Date:

\_\_\_\_\_  
PRESIDENT

Additional Attachment to Schedule D of the Application

It is critical for the Applicant to consolidate all of its operations at one property in order to remain competitive in its industry. Although the Applicant has considered moving all such operations to its current or another New Jersey location, it views the Port Washington location as a good fit for accomplishing all of its business goals.

**RETAIL QUESTIONNAIRE**

(To be completed by Applicant if Applicant checked either "YES" in Part II, Question F of the Application for Financial Assistance)

- A. Will any portion of the Project (including that portion of the cost to be financed from equity or other sources) consist of facilities or property that are or will be primarily used in making retail sales to customers who personally visit the Project?

YES \_\_\_\_\_ NO \_\_\_\_\_

For purposes of Question A, the term "retail sales" means (i) sales by a registered vendor under Article 28 of Tax Law of the State of New York (the "Tax Law") primarily engaged in the retail sale of tangible personal property (as defined in Section 1101(b)(4)(i) of the Tax Law), or (ii) sales of a service to customers who personally visit the Project.

- B. If the answer to Question A is YES, what percentage of the cost of the Project (including that portion of the cost to be financed from equity or other sources) will be expended on such facilities or property primarily used in making retail sales of goods or services to customers who personally visit the Project?

\_\_\_\_\_ %

- C. If the answer to Question A is YES, and the amount entered for Question B is greater than 33.33%, indicate whether any of the following apply to the Project:

1. Is the Project likely to attract a significant number of visitors from outside the economic development region (i.e., Long Island) in which the Project is or will be located?

YES \_\_\_\_\_ NO \_\_\_\_\_

2. Is the predominant purpose of the Project to make available goods or services which would not, but for the Project, be reasonably accessible to the residents of the city, town or village within which the Project will be located, because of a lack of reasonably accessible retail trade facilities offering such goods or services?

YES \_\_\_\_\_ NO \_\_\_\_\_

3. Will the Project be located in one of the following: (a) an area designated as an enterprise zone pursuant to Article 18-B of the General Municipal Law; or (b) a census tract or block numbering area (or census tract or block numbering area contiguous thereto) which, according to the most recent census data, has (i) a poverty rate of at least 20% for the year in which the data relates, or at least 20% of the households receiving public assistance, and (ii) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relates?

YES \_\_\_\_\_ NO \_\_\_\_\_

If the answer to any of the subdivisions 1 through 3 of Question C is YES, attach details.

- D. If the answer to any of the subdivisions 2 through 3 of Question C is YES, will the Project preserve permanent, private sector jobs or increase the overall number of permanent, private sector jobs in the State of New York? If YES, attach details.

YES \_\_\_\_\_

NO \_\_\_\_\_

- E. State percentage of the Applicant's annual gross revenues comprised of each of the following:

Retail Sales: \_\_\_\_\_%

Services: \_\_\_\_\_%

- F. State percentage of Project premises utilized for same:

Retail Sales: \_\_\_\_\_%

Services: \_\_\_\_\_%

The UNDERSIGNED HEREBY CERTIFIES that the answers and information provided above and in any statement attached hereto are true, correct and complete.

Name of  
Applicant:

\_\_\_\_\_

Signature:  
Name:  
Title:  
Date:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**APPLICANT'S FINANCIAL ATTACHMENTS**

KIM & BAE TRADING CORP.  
BALANCE SHEET  
DECEMBER 31, 2014

ASSETS

Current assets

Cash and Equivalents

Accounts Receivable

Inventory

Investment

Other Current Assets

Total current assets

Property, Plant & Equipments

Less, accumulated depreciation

Total property plant & equipments

Other assets

Security Deposit

Total Assets

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities

Accounts payable

Loan Payable

Total current liabilities

Common stock, No par value, 200 shs authorized,  
200 shares issued & outstanding

Retained earnings

Total liabilities & stockholders' equity

See accountant's report and notes to financial statements

KIM & BAE TRADING CORP.  
STATEMENT OF INCOME  
FOR THE YEAR ENDED DECEMBER 31, 2014

Sales

Cost of goods sold

Beginning inventory, January 1, 2014

Purchase

Other cost

Ending inventory, December 31, 2014

Cost of goods sold

Gross Profit

Operating expenses

Advertising expense

Amortization & depreciation

Auto

Bank service charge

Communitaion

Delivery charge

Due

Entertainment

Insurance

Merchant service charge

Office expenses

Payroll

Pension & Profit-sharing plans

Professional fee

Promotion & show expenses

Repair

Royalty

Rent

Sales commission

Sanitation

Subscription

Taxes

Travel expense

Utility

Warehouse expense

Total operation expenses

Income before Taxes

Other income

Income tax

Net Income

KBETHOS.COM INC.  
BALANCE SHEET  
OCTOBER 31, 2014

ASSETS

Current assets

Cash and Equivalents

Inventory

Total current assets

Property, Plant & Equipments

Less, accumulated depreciation

Total property, plant & equipments

Total Assets

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities

Accounts payable

Loan Payable

Total current liabilities

Common stock, No par value, 200 shs authorized,

200 shares issued & outstanding

Retained earnings

Total liabilities & stockholders' equity

See accountant's report and notes to financial statements

KBETHOS.COM INC  
STATEMENT OF INCOME AND RETAINED EARNING  
FOR THE YEAR ENDED OCTOBER 31, 2014

Sales

Cost of goods sold

Beginning Inventory, Sept 1, 2013

Purchase

Less, ending inventory, October 31, 2014

Cost of goods sold

Gross Profit

Operation expenses

Amortization & depreciation

Billing service charge

Delivery

Due

Internet selling fee

Merchagnt service charge

Payroll

Professional fee

Supplies

Taxes

Total operating expenses

Income before Taxes

Net Income(Loss)

Retained earning at ending

CDC ESTATE LLC  
BALANCE SHEET  
DECEMBER 31, 2014

ASSETS

Current assets

Cash and Equivalents

Land

Property, Plant & Equipments

Less, accumulated depreciation

Total property, plant & equipments

Other assets

Less, accumulated amortization

Total other assets

Total Assets

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities

Mortgage payable

Accrued Expenses

Total current liabilities

Long-term Liabilities

Non-current Mortgage Payable

Loan from partners

Partners' Capital Accounts

Total liabilities & stockholders' equity

See accountant's report and notes to financial statements

CDC ESTATE LLC  
STATEMENT OF INCOME  
FOR THE YEAR ENDED DECEMBER 31, 2014

Rental Income

Operating Expenses

Amortization & depreciation

Bank fee

Communication

Insurance

Interest

Professional fee

Property tax

Repair

Security

Utility

Total operating expenses

Net Income



Schedule G

**ENVIRONMENTAL ASSESSMENT FORM**

## Short Environmental Assessment Form Part 1 - Project Information

### Instructions for Completing

**Part 1 - Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.


Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<b>Part 1 - Project and Sponsor Information</b>				
Name of Action or Project K & B Trading Acquisition				
Project Location (describe, and attach a location map) 45 Seaview Boulevard, Port Washington, New York				
Brief Description of Proposed Action: Acquisition and renovation of an existing 32,925 square foot building for the use and operation of a hat and headwear sales and distribution company.				
Name of Applicant or Sponsor: Kim & Bae Trading Corp.		Telephone: 212-967-0974 E-Mail: umlee@kbeltrbs.com		
Address: 118 W 29th Street				
City (PO): New York		State: New York	Zip Code: 10001	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? (If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If No, continue to question 2.)			NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(ies) name and permit or approval.			NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
(a) Total acreage of the site of the proposed action?		1,056.27 acres		
(b) Total acreage to be physically disturbed?		0 acres		
(c) Total acreage (project site and any contiguous properties owned or controlled by the applicant or project sponsor)?		0 acres		
4. Check all land uses that occur on, adjoining and near the proposed action. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (not agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify) _____ <input type="checkbox"/> Parkland				

	NO	YES	N/A
5. Is the proposed action, a. A permitted use under the zoning regulations?  b. Inconsistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built/ornatural landscape?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?  b. Are public transportation services available at or near the site of the proposed action?  c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply?  If No, describe method for providing potable water: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities?  If No, describe method for providing wastewater treatment: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?  b. Is the proposed action located in an archaeological sensitive area?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?  b. Would the proposed action physically alter or encroach into any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
16. Is the project site located in the 100 year flood plain?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES  b. Will storm water discharge be disposed to established compliance systems (runoff and storm drains)? If Yes, briefly describe: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____	NO	YES
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____	NO	YES
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____	NO	YES

**I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.**

Applicant/sponsor name: Kim & Bae Trading Corp. o/b/a K & B Trading Date: 7/26/15  
 Signature: 

**CONTRACT OF SALE**

Between

**45 SEAVIEW, LLC**  
(Seller)

and

**CDC ESTATE LLC**  
(Purchaser)

---

Premises:

45 Seaview Boulevard  
Port Washington, Nassau County, New York

---

**GOLDFARB & FLEECE LLP**  
**560 LEXINGTON AVENUE, 6<sup>TH</sup> FLOOR**  
**NEW YORK, NEW YORK 10022**

00319765.7

Execution

**CONTRACT OF SALE** (referred to herein as this "Contract" or "Agreement") dated August 26, 2015, between **45 SEAVIEW, L.L.C.**, a New York limited liability company, having an address of c/o Attn.: Michael P. O'Brien, General Counsel, 48 Harbor Park Drive, Port Washington, New York 11050 (referred to herein as "Seller") and **CDC ESTATE L.L.C.**, a New York limited liability company, having an address of 119 West 29<sup>th</sup> Street, New York, New York 10001 (referred to herein as "Purchaser"); and together with Seller, collectively, the "Parties" and each individually a "Party").

**WHEREAS:**

- I. Seller is the owner of the hereinafter described Premises;
- II. Purchaser desires to purchase the Premises in accordance with the provisions of this Contract; and
- III. Seller is willing to sell the Premises to Purchaser in accordance with and subject to the provisions of this Contract.

**NOW IN CONSIDERATION OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED IN THIS CONTRACT**, Seller and Purchaser hereby covenant and agree as follows:

**SECTION 1. SALE OF PREMISES AND ACCEPTABLE TITLE**

**§1.01. Premises to be Sold.** Seller shall sell to Purchaser and Purchaser shall purchase from Seller, at the price and upon the terms and conditions set forth in this Contract, the following: (a) the land, together with all strips and gores appurtenant thereto (the "Land") more particularly described in **Schedule A** attached to and made a part of this Contract ("Description of Land"); (b) all right, title and interest of Seller, if any, to all buildings and improvements situated on the Land (collectively, the "Building"); (c) all right, title and interest of Seller, if any, in and to the land lying in the bed of any street or highway in front of or adjoining the Land to the center line thereof and to any unpaid award for any taking by condemnation, or any damage to the Land by reason of a change of grade of any street or highway; (d) the appurtenances and all life estate and rights of Seller in and to the Land and Building; (e) all right, title and interest of Seller, if any, in and to the fixtures, equipment and other personal property attached or appurtenant to the Land or the Building; and (f) all right, title and interest of Seller, if any, in and to all easements, privileges and other rights, if any, appurtenant to the Land and Building (the Land, Building and interests described in subsections (c) through (f) above are referred to herein collectively as the "Premises"). The Premises are located at 45 Seaview Boulevard, Port Washington, Nassau County, New York (Section 0, Block 89, Lot 16 and 17).

**§1.02. Permitted Exception:** Seller shall convey and Purchaser shall accept fee simple title to the Premises in accordance with the terms and provisions of this Contract, subject to: (a) the Permitted Exceptions (as hereinafter defined) and (b) such other matters as any national title insurance company licensed in the State of New York (referred to herein as "Purchaser's Title Company") shall be willing, without additional premium or cost to Purchaser, to (i) omit as exceptions to coverage or (ii) except from such coverage with insurance against collection out of or enforcement against the Premises.

**SECTION 2. PURCHASE PRICE AND DEPOSIT AMOUNT**

**§2.01. Purchase Price/Deposit Amount:** The purchase price (referred to herein as the

08/11/15

1

Execution

"Purchase Price") to be paid by Purchaser to Seller for the Premises is payable as follows:

**§2.01.1. Deposit Amount:**

(the "Deposit Amount") at the time of execution and delivery of this Contract, by (i) official bank check drawn on a nationally recognized domestic bank, to the order of Goldfarb & Fleece LLP, as escrow agent (referred to herein as the "Escrow Agent") or (ii) by wire transfer in federal funds immediately available in New York City, to be held by Escrow Agent in accordance with the escrow provisions contained in Exhibit 1 annexed hereto and made a part hereof (the "Escrow Provisions"); and

**§2.01.2. Cash Payment at Closing:** Purchaser shall pay to Seller the sum of

at the Closing (as hereinafter defined), by official bank check or wire transfer in federal funds immediately available in New York City transferred to such account or accounts in such bank or banks as Seller shall designate. Such sum may be adjusted by the following provisions of this Contract, and such sum as so adjusted is referred to herein as the "Closing Cash Amount".

**SECTION 3. THE CLOSING**

**§3.01.** The closing of title pursuant to this Contract (referred to herein as the "Closing" and the actual date of the Closing is referred to herein as the "Closing Date") shall take place on or about the date which is thirty (30) days following the Study Period Expiration Date (as hereinafter defined) at 10:00 A.M. (said date and time is hereinafter referred to as the "Scheduled Closing Date") at the offices of Seller's attorneys, Goldfarb & Fleece LLP, 560 Lexington Avenue, 6<sup>th</sup> Floor, New York, New York 10022 or at the office of Purchaser's lending institution, if any, provided same is in the City of New York or in Nassau or Suffolk County.

**SECTION 4. REPRESENTATIONS AND WARRANTIES OF SELLER**

**§4.01. Seller's Representations and Warranties:** As an inducement to Purchaser to purchase the Property and intending that the warranties and representations contained in this §4 shall survive the Closing for a period of one hundred twenty (120) calendar days, Seller hereby represents and warrants to Purchaser that the following matters are true and correct in all material respects as of the date of this Contract and subject to Section 4.03 below, shall be true and correct in all material respects as of the Closing Date:

**§4.01.1. No Pending Condemnation:** Seller has not received any written notice from any Governmental Authority of any condemnation proceedings pending against the Premises and, to Seller's knowledge (without any independent investigation being made by Seller, Seller is not aware of any threatened or contemplated condemnation proceedings against the Premises. For the purposes of this Contract, the term "Governmental Authority" shall mean the United States of America, the State of New York, the County of Nassau, the Town of North Hempstead, the unincorporated area of Port Washington, any political subdivision thereof and any agency, department, commission, board, bureau or instrumentality of any of the foregoing, now existing or hereafter created, having jurisdiction over the Premises, Seller, Purchaser or the relevant subject matter as so used in within the context of this Contract.



**§4.01.2. Seller's Good Standing:** Seller is duly organized, validly existing and in good standing under the laws of the State of New York.

**§4.01.3. Seller's Authority:** Seller has all requisite power and authority, has taken all actions required by its organizational documents and applicable law and has obtained all consents which are necessary to authorize or enable it to execute and deliver this Contract and to consummate the transactions contemplated in this Contract. The individuals executing this Contract on Seller's behalf have been duly authorized and are empowered to bind Seller to this Contract.

**§4.01.4. Litigation:** Except for any personal injury actions covered by insurance, if any, Seller is not a party to any action, or proceeding, (i) against the Seller which would adversely affect the ability of Seller to perform its obligations under this Contract or (ii) which adversely affects the Premises in any respect.

**§4.01.5. Employees:** There are no employees of Seller whose employment Purchaser shall be obligated to retain from and after the Closing, or with respect to whom Purchaser shall be liable for severance or other payments.

**§4.01.6. Leases:** At Closing, the Premises shall be delivered vacant, free of any and all tenancies, subtenancies, assignments, licenses and the like, but subject only to the Permitted Exceptions. Seller shall not enter into any other lease, amendment to lease or any other agreement for the use and occupancy of the Premises or any portion thereof which will be binding on Purchaser or affect the Premises for any period following the Closing.

**§4.01.7. Service Contracts:** At Closing, there will be no service, property management, maintenance or other contracts in existence to which Seller is a party or bound which will affect Purchaser or the Premises after the Closing.

**§4.01.8. Assessments:** Except as otherwise shown in the Title Commitment (as hereinafter defined) or in the public records, Seller has received no written notice that the Premises is subject to any special assessments, nor has Seller received written notice of the intention of any governmental authority to impose any such special assessments.

**§4.01.9. Rights of Others:** Seller has not granted any right or option, nor made any offer, to any third party to purchase the Premises, where such right, option or offer remains outstanding.

**§4.01.10. Mechanics' Liens:** Seller has not and will not enter into any contracts for improvements to the Premises which remain unpaid or which will not be paid in the normal course of Seller's business. From and after the date hereof, Seller shall not voluntarily create or consent to any lien or encumbrance which will affect the Premises.

**§4.02. Seller's Knowledgeable Officers/Knowledge of Seller:** All references in this Contract to the phrase "to Seller's knowledge", or words of like import, shall, notwithstanding any ordinary meaning to the contrary, be deemed to mean only the actual current knowledge of the following person without further inquiry or investigation: Michael O'Brien, General Counsel of Seller (such person is referred to herein as the "Seller's Knowledgeable Officer"). In no event, shall the knowledge of any other employee of Seller, Seller's Representatives (as defined herein) or any person or entity which is affiliated with Seller, or any of the agents of the foregoing be imputed to Seller. Whenever a



representation or warranty is made in this Contract on the basis of "the best knowledge of Seller" or "best knowledge of Seller", or a statement is made by Seller that "Seller has received written notice", such representation and warranty or statement is made with the exclusion of any facts disclosed to or otherwise actually known by Purchaser at the time made by Seller, and is made solely on the basis of the actual, as distinguished from implied, imputed and constructive, knowledge on the date that such representation or warranty is made, without inquiry or investigation or duty, only of Seller's Knowledgeable Officer, without attribution of facts and matters otherwise within the personal knowledge of any other employees of Seller or its agents, or any other member(s) of Seller. Purchaser acknowledges and agrees that Seller's Knowledgeable Officer is acting solely as a representative of Seller and not personally and that such Seller's Knowledgeable Officer shall have no personal or individual liability whatsoever to Purchaser, whether based in law or equity, for any claim, action, courses of action, expense, or loss, or by reason of any statement, representation or action or inaction of Seller under this Contract or any §4.01 Warranty Breach (as hereinafter defined) or other breach or default of Seller under this Contract. For the purposes of this Contract, the term "Seller's Representatives" shall mean any employee, agent, servant, attorney, accountant, advisor of Seller or any other person or entity acting on Seller's behalf.

**§4.03. Purchaser's Remedies for a §4.01 Warranty Breach:** Except as otherwise expressly set forth in this Contract, Seller shall have no liability for any losses, claims, costs or expenses suffered or incurred by Purchaser as a result of the inaccuracy of any of the representations or warranties of Seller set forth in this §4 and/or under any instruments or documents set forth in or delivered pursuant to this Contract or for the breach or failure of any covenant contained in this Contract, provided however, that notwithstanding the aforesaid or any other provision of this Contract to the contrary, in the event of any breach or failure of any representation or warranty contained in §4.01 (a "§4.01 Warranty Breach") the following provisions of §4.03 shall apply.

**§4.03.1.** In the event of any §4.01 Warranty Breach which does not have a Material Adverse Effect (as hereinafter defined), Purchaser shall not have the right to refuse to close this transaction (and pay the full Purchase Price) by reason thereof on the Closing Date nor shall Seller have any liability in connection therewith. Notwithstanding anything contained in any of the provisions of §4 to the contrary, for purposes of §4.03, a representation or warranty shall not be deemed to have been breached or to have a Material Adverse Effect if such representation or warranty is not true and correct as of the Closing Date by reason of changed facts or circumstances which (i) pursuant to the terms of this Contract are permitted to have occurred or (ii) are not within the reasonable control of Seller or (iii) if Seller does not require Purchaser to assume the agreement which violate(s) such representations and warranties or (iv) if such representations and warranties are no longer true by reason of the actions of Seller as permitted by the provisions of §6.01. For the purposes of this Agreement, the term "Material Adverse Effect" shall mean any circumstance or event which reasonably would be expected to have a material and adverse effect on the business, results of operations, operations or value in the Property taken as whole and the aggregate of the losses and damages resulting therefrom shall exceed the sum of \$75,000.00.

**§4.03.2.** Within five (5) Business Days of learning of any §4.01 Warranty Breach which Purchaser believes, in the aggregate, has or have (as the case may be) a Material Adverse Effect, Purchaser shall notify Seller within such five (5) Business Day period of such breach (referred to herein as "Purchaser's Warranty Breach Notice") and in such notice Purchaser shall specify the nature of such claimed §4.01 Warranty Breach which has a Material Adverse Effect, the act or action on the part of Seller which would constitute a cure of such claimed §4.01 Warranty Breach, if any, and whether or not Purchaser is exercising its right to terminate this Contract (in accordance with the provisions of this §4.03.2) by reason of such §4.01 Warranty Breach. Purchaser's failure to timely give such Purchaser's

Warranty Breach Notice as provided for above shall be deemed a waiver of such §4.01 Warranty Breach. If Purchaser has knowledge of such a §4.01 Warranty Breach which has a Material Adverse Effect, Purchaser shall have the right, as its sole and exclusive remedy, to terminate this Contract, subject to the following provisions of this §4.03.2, by notifying Seller of such election in Purchaser's Warranty Breach Notice. Purchaser's failure to so terminate this Contract shall be deemed a waiver of such breach. If Purchaser shall, in such Purchaser's Warranty Breach Notice, so terminate this Contract such termination shall be effective ten (10) days next following the date of the giving such Purchaser's Warranty Breach Notice, provided, however, that if in such ten (10) day period Seller shall give to Purchaser a notice that Seller intends to cure such §4.01 Warranty Breach, then Seller shall be given the right to cure such §4.01 Warranty Breach within a period of sixty (60) days from the giving of such Purchaser's Warranty Breach Notice and during such cure period Purchaser's termination of this Contract and the Purchaser's Warranty Breach Notice shall be tolled. If such §4.01 Warranty Breach is cured within such cure period, then Purchaser's termination of this Contract and such Purchaser's Warranty Breach Notice shall be of no further force and effect, this Contract and the respective obligations of Seller and Purchaser under this Contract shall remain fully in effect and the Closing Date shall occur on the date which is the later of (a) the originally scheduled Closing Date or (b) the date which is ten (10) Business Days from the date of such Seller's notice of cure and reinstatement. If (x) Seller shall fail to give a notice within the aforesaid ten (10) day period that Seller intends to cure such claimed §4.01 Warranty Breach, or (y) Seller shall fail to cure such §4.01 Warranty Breach within the aforesaid cure period or (z) at any time after Purchaser's Warranty Breach Notice, Seller shall give Purchaser notice that Seller elects not to cure such §4.01 Warranty Breach or otherwise acknowledges that Purchaser's termination of this Contract is effective, then Purchaser's Warranty Breach Notice terminating this Contract will be effective, and this Contract will terminate effective as of the day next following the last day of the applicable time period or Seller's notification to Purchaser acknowledging the termination or that Seller will not cure such §4.01 Warranty Breach. Upon such termination in accordance with this §4.03.2 and the return of the Deposit Amount to Purchaser, this Contract shall be of no force and effect, except those provisions hereunder that expressly survive any such termination.

**§4.03.3.** If Purchaser learns of a §4.01 Warranty Breach after the Closing solely with respect to those representations set forth above in §4.01 as expressly surviving the Closing, Seller shall have a reasonable period of time after notice by Purchaser to Seller of such breach within which to cure such breach. If any such breach is not so cured within such reasonable period of time, Purchaser shall not have the right to rescind this Contract or the transaction contemplated herein, but Purchaser's sole and exclusive remedy shall be to institute an action against Seller for damages by reason of such breach, subject to the following limitations and conditions:

(a) such action shall be commenced within a period (the "§4.01 Warranty Breach Period") of one hundred twenty (120) calendar days from the Closing Date. Time is of the essence with respect to Purchaser commencing such action prior to the expiration of the §4.01 Warranty Breach Period and in the event that Purchaser fails to commence such action prior to the expiration of the §4.01 Warranty Breach Period, Purchaser shall be deemed to have waived such §4.01 Warranty Breach;

(b) Purchaser's damages by reason the claimed §4.01 Warranty Breach shall exceed \$15,000.00 in the aggregate and in the event that such damages do not exceed the sum of \$15,000.00 in the aggregate, Purchaser shall not have the right to institute any action or lawsuit based thereon; and Purchaser shall not have the right to institute any action for any separate and distinct item of damage of \$5,000.00 or less; and

(c) notwithstanding the aforesaid, in no event shall the aggregate liability of

Seller arising out of or pursuant to or in connection with §4 exceed \$250,000.00).

**§4.04. Instruments to Control Over Representation:** Notwithstanding anything contained in the provisions of §4 to the contrary, if any document, instrument, notice, statement, or plan or other similar document submitted to or reviewed by Purchaser or any of Purchaser's agents or representatives or if the Licenses and Permits (as hereinafter defined) contain provisions or statements which are inconsistent with the foregoing statements, representations and warranties of Seller in §4.01.1 et seq. or any other statement, representation or warranty of Seller contained elsewhere in this Contract (including, without limitation, the Schedules and Exhibits to this Contract), then such statements, representations and warranties shall be deemed modified to the extent necessary to eliminate such inconsistency and Purchaser hereby agrees that such statement, representation and warranty shall be deemed to conform to the provisions or statements of such document, instrument, notice, statement, plan or Licenses and Permits.

## **SECTION 5. PURCHASER REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS**

**§5.01. Acceptance - As Is/No Seller Representations:** Purchaser hereby acknowledges and agrees to the following:

**§5.01.1.** Subject to Purchaser's due diligence review of the Premises, Purchaser has thoroughly inspected the Premises and the operation thereof, including all fixtures and property included in this sale and upon the Study Period Expiration Date (as hereinafter defined) shall be fully familiar with the physical condition and state of repair thereof (including, without limitation, the Building's roof); such inspections include, but are not limited to, inspections for: (i) building code and other violations of any Legal Requirements (as hereinafter defined), (ii) structural, mechanical and other defects or deficiencies, (iii) infestation by termites and other insects, (iv) asbestos, toxic and hazardous wastes and materials, (v) underground storage tanks, and (vi) compliance with any certificates of occupancy, if any and the licenses and permits for the operation of the Premises (sometimes collectively referred to herein as the "Licenses and Permits"), (vii) all applicable parking and zoning requirements and other Legal Requirements by any relevant Governmental Authority having jurisdiction over the Premises, (viii) the facts shown on a survey or physical inspection of the Premises, and (ix) the environmental condition of the Premises. Purchaser has made, or will make during the Study Period, such examination of the Premises, the operation, income and expenses thereof and all other matters affecting or relating to the Premises and this transaction as Purchaser deemed necessary. For the purposes of this Contract, the term "Legal Requirements" shall mean all present and future laws, codes, ordinances, statutes, requirements, orders and regulations, ordinary and extraordinary, foreseen and unforeseen and the rules and regulations promulgated thereunder and any successor laws of like import of any Governmental Authority (hereinafter defined) and all directions, requirements, orders and notices of violations thereof with respect to the Premises, Seller, Purchaser or the relevant subject matter as so used within the context of this Contract. Notwithstanding the foregoing, prior to the Closing Seller shall (at Seller's sole cost and expense) remove the existing racking and appurtenant sprinkler system from the Building so that the existing fire sprinkler system is consistent throughout the Building.

**§5.01.2.** Accordingly, Purchaser acknowledges and agrees that, except as expressly provided in this Contract or in any instruments or documents to be delivered by Seller to Purchaser at Closing to the contrary, Seller has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, contracts or guarantees of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to,



concerning or with respect to the Premises including, without limitation the following: (a) the value of the Premises, (b) the income to be derived from the Premises, (c) the nature, quality or condition of the Premises, including, without limitation, the manner, quality, state of repair or lack of repair of the Premises and the water, soil and geology thereof and any drainage from or onto the Premises, (d) the conformity of the Building to any plans or specifications for the Premises, including any plans and specifications that may have been or may be provided to Purchaser, (e) the suitability of the Premises for any and all activities and uses which Purchaser may conduct thereon including any development, (f) the compliance of or by the Premises or its operation with any Legal Requirements including, without limitation, the Americans with Disabilities Act, any zoning rules, parking requirements, regulations, plans or resolutions, any applicable federal, state or local landmark designations, and any rules and regulations promulgated under or in connection with any of the foregoing, (g) the habitability, merchantability or fitness for a particular purpose of the Premises, (h) the current or future real estate tax liability, assessment or valuation of the Premises, (i) the availability or non-availability or withdrawal or revocation of any benefits or incentives conferred by any federal, state or municipal authorities, (j) the fact that all or a portion of the Premises may be located on or near an earthquake (fault) line, or (k) any other matter with respect to the Premises, and specifically, without limiting the aforesaid, that Seller has not made, does not make and specifically disclaims any representations regarding any asbestos or hazardous or solid waste, as defined by the U.S. Environmental Protection Agency regulations at 40 C.F.R., Part 261, in or about the Premises or the disposal or existence, in or on the Premises, of any hazardous substance, as defined by both the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and by applicable other Legal Requirement, including without limitation, the Federal Water Pollution Control Act, the Federal Resource Conservation and Recovery Act, the U.S. Environmental Protection Agency Regulations Act 40 C.F.R., part 261, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act of 1976, the Clean Water Act, the Safe Drinking Water Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, and regulations promulgated under any of the foregoing. In addition, Purchaser acknowledges and agrees that neither the environmental condition of the Premises, nor the presence of any asbestos or hazardous or toxic materials or substances (including, but not limited to mold and/or lead paint) on or about or adjacent to the Premises shall affect this Contract and Purchaser's obligation to purchase the Premises and pay the Purchase Price, or entitle Purchaser to any abatement or credit against the Purchase Price, or entitle Purchaser to assert any claim or bring any action against Seller by reason hereof. Purchaser further acknowledges and agrees that having been given the opportunity to inspect the Premises, Purchaser is relying solely on its own investigation of the Premises and not on any information provided or to be provided by Seller.

**§5.01.3.** Purchaser further acknowledges and agrees that (a) Purchaser is purchasing the Premises subject to all latent and patent defects (whether physical, financial or legal, including the Permitted Exceptions), based on Purchaser's own inspection, analysis and evaluation of the Premises and not in sole reliance on any records or other information obtained from Seller or on Seller's behalf and (b) any information provided or to be provided with respect to the Premises was obtained from a variety of sources and that Seller, except as otherwise expressly provided in this Contract, has not made any independent investigation or verification of such information.

**§5.01.4. IN FURTHERANCE OF THE AFORESAID AND WITHOUT ANY LIMITATION THEREOF (EXCEPT AS OTHERWISE PROVIDED IN THIS CONTRACT), PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT TO THE SELLER'S EXECUTION AND DELIVERY OF THIS CONTRACT, THE SALE OF THE**

PREMISES AS PROVIDED FOR HEREIN IS ON AN "AS IS, WHERE IS" CONDITION AS OF THE DATE OF THIS CONTRACT SUBJECT TO ANY AND ALL DEFECTS LATENT AND PATENT AND, SUBJECT TO THE PROVISIONS OF THIS CONTRACT, PURCHASER SHALL, SUBJECT TO SECTION 8, ACCEPT THE PREMISES IN THE CONDITION EXISTING AS OF THE DATE HEREOF (REASONABLE WEAR AND TEAR EXCEPTED), WITHOUT ANY REDUCTION IN THE PURCHASE PRICE FOR ANY CHANGE IN SUCH CONDITION OCCURRING BETWEEN THE DATE OF THIS CONTRACT AND THE CLOSING DATE DUE TO SUCH REASONABLE WEAR AND TEAR.

**§5.02. Purchaser's Acknowledgment – Equal Bargaining Position:** Purchaser acknowledges, represents and warrants to Seller that Purchaser is not in a significantly disparate bargaining position with respect to Seller in connection with the transaction contemplated by this Contract; that Purchaser freely and fairly agreed to the provisions of §5.01 above as part of the negotiation of this Contract; and that Purchaser is represented by sophisticated legal counsel in connection with this transaction and Purchaser has conferred with such legal counsel concerning the provisions of §5.01 above.

**§5.03. No Purchaser Inducement or Reliance:** In furtherance of the aforesaid, Purchaser agrees that in entering into this Contract, Purchaser has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, oral or in writing, made by Seller or any agent, employee or other representative of Seller or by any broker or any other person representing or purporting to represent Seller, which are not expressly set forth in this Contract as a representation or warranty of Seller.

**§5.04. General Representations and Warranties of Purchaser:** As a further inducement to Seller to sell the Premises to Purchaser, Purchaser warrants and represents to Seller as follows (which warranties and representations contained in this §5.04 shall survive the Closing for ninety (90) days):

**§5.04.1.** Neither the execution of this Contract nor the consummation by Purchaser of the transactions contemplated by this Contract will (i) conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default, or result in a termination of, any Contract or instrument to which Purchaser is a party, (ii) violate any restriction to which Purchaser is subject, or (iii) constitute a violation of any applicable code, resolution, law, statute, regulation, ordinance, judgment, rule, decree or order to which Purchaser is subject.

**§5.04.2.** Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the New York and is qualified to do business in the State of New York.

**§5.04.3.** Purchaser has all requisite power and authority, has taken all actions required by its organizational documents and applicable law and has obtained all consents which are necessary to authorize or enable it to execute and deliver this Contract and to consummate the transactions contemplated in this Contract and the individuals executing this Contract on Purchaser's behalf have been duly authorized and are empowered to bind Purchaser to this Contract.

**§5.04.4.** Purchaser is not acquiring the Property with the assets of an employee benefit plan as defined in Section 3 of the Employment Retirement Income Security Act of 1974, as amended ("ERISA") that constitute "plan assets" subject to ERISA and the transaction which is

the subject of this Contract is not a prohibited transaction under Section 406 of ERISA.

**§5.04.5.** Purchaser hereby certifies that (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order of the United States Treasury Department as a terrorist, "Specially Designated National or Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation.

**§5.05. Survival:** Except as otherwise provided in this §5, the provisions of this §5 shall survive the Closing or, if the Closing does not occur for any reason, shall survive the cancellation or termination of this Contract.

## **SECTION 6. DUE DILIGENCE REVIEW/TITLE AND SURVEY**

**§6.01.** Notwithstanding anything herein to the contrary, Purchaser shall have a period (the "Study Period") to expire at 5:00 P.M. (local New York time) on the date which is sixty (60) days following the date hereof (the "Study Period Expiration Date"), to conduct, at Purchaser's sole cost and expense, a due diligence review of the Premises, including, without limitation, Purchaser's ability to obtain financing for the acquisition of the Premises and a non-invasive Phase I environmental inspection (a "Phase I") and report by a duly licensed and reputable environmental consultant reasonably satisfactory to Seller (such approved consultant, "Purchaser's Environmental Consultant"), engineering inspection and/or zoning inspection of the Premises. Purchaser shall cause a complete copy of the results of any such Phase I report to be delivered to Seller promptly after Purchaser's receipt thereof. In the event that Purchaser's Environmental Consultant recommends in such Phase I report further investigation or testing of the subject Premises (i.e., Phase II Inspection), then Purchaser shall have the right (at Purchaser's sole cost and expense and subject to the following provisions of this Section 6.01) to have Purchaser's Environmental Consultant conduct a Phase II inspection of the Premises (a "Phase II") prior to the Study Period Expiration Date solely to get extent expressly set forth in the Phase I report. In the event that a Phase II is required, prior to commencement of such Phase II, Purchaser shall first submit, for Seller's approval, a written detailed description of the scope and extent of the proposed Phase II and such testing shall be performed during normal business hours and in strict accordance with all applicable laws and the provisions of this Section 6.01. Upon Seller's approval the scope of such Phase II, Seller shall grant Purchaser's Environmental Consultant limited access to enter the Premises described solely for the purposes set forth in the scope of work determined to be necessary by the Phase II inspection report and approved by Seller. Purchaser agrees that, in the exercise of the right of access granted hereby, it will not unreasonably interfere with or permit unreasonable interference with any person occupying the Premises. Purchaser agrees to give Seller forty-eight (48) hours prior written notice of its intent to conduct any inspections or tests so that Seller will have the opportunity to have a representative present during any such inspection or test, the right to do which Seller expressly reserves. Purchaser agrees to cooperate with any reasonable request by Seller in connection with the timing of any such inspection or test, and all such inspections or tests shall be performed at times and in a manner to minimize interference with Seller's business at the Premises. Purchaser agrees that the results of any environmental reports shall not be disclosed to any governmental authority or agency. Upon the completion of the Phase II inspection: (x) Purchaser and/or its contractor shall restore the Premises to its original physical state including the grading thereof, all of which shall be completed as soon as is reasonably practicable following the completion of the Phase II testing, weather permitting and (y) Purchaser shall cause a complete copy of the results of any such Phase II report to be delivered to Seller promptly after Purchaser's receipt thereof.



Purchaser shall have the absolute right, by written notice to Seller, to cancel this Contract for any reason or for no reason whatsoever on or prior to the expiration of the Study Period, and receive a return of the Deposit Amount, plus any interest earned thereon, from the Escrow Agent. Following any such termination by Purchaser, neither party shall have any liability to the other (except to the extent same specifically survives the termination of this Contract) **TIME IS OF THE ESSENCE WITH RESPECT TO PURCHASER'S CANCELLATION OPTION UNDER THIS §6.01. PURCHASER'S RIGHT TO CANCEL THIS CONTRACT UNDER THE PROVISIONS OF THIS §6.01 SHALL TERMINATE UPON THE EXPIRATION OF THE STUDY PERIOD, AND ANY SUCH NOTICE GIVEN AFTER THE EXPIRATION OF THE STUDY PERIOD SHALL HAVE NO FORCE AND EFFECT.** The obligations of Purchaser set forth in this Section 6.01 shall survive the Closing or any termination of this Contract.

**§6.02. Title/Survey:** (a) Promptly following the date hereof, Purchaser shall order a title commitment for the Premises from the Purchaser's Title Company (said title commitment and underlying documents are sometimes collectively referred to herein as the "Title Commitment"). If the Title Commitment discloses exceptions to title for the Premises which are not acceptable to Purchaser (any such exception being referred to herein as an "Unpermitted Title Exception"), then Purchaser shall give Seller notice of any Unpermitted Title Exception on or prior to the Study Period Expiration Date and in such notice Purchaser shall specify the nature of such Unpermitted Title Exception and the act or action on the part of Seller which would constitute a cure of such Unpermitted Title Exception. Any such exceptions not objected to by Purchaser on or prior to the expiration of the Study Period Expiration Date shall be deemed "Permitted Exceptions". Purchaser may, within five (5) business days of its receipt of notice of any continuation or update to the Title Commitment containing any exception that is not a Permitted Exception and first appearing after the effective date of Purchaser's Title Commitment, object to such exception(s) and to declare such exception(s) to be Unpermitted Title Exceptions by giving Seller notice thereof within such period of five (5) business days. In the event that Purchaser fails to object to such exception(s) within such five (5) business day period, such exception(s) shall be deemed to be Permitted Exception(s). Seller shall have ten (10) business days following the receipt of any such notice (either with respect to matters shown in the initial Title Commitment or in any continuation or update to such Title Commitment, as aforesaid) in which to give Purchaser notice that Seller will either (a) cause the Unpermitted Title Exception(s) referenced in such notice to be deleted as an exception(s) from the Title Commitment or (b) refuse to cause such Unpermitted Title Exception(s) to be deleted as an exception from the Title Commitment (and in the event Seller fails to deliver such notice within such ten (10) business day period, Seller shall be deemed to have elected under clause (b)). With respect to any such notice, if Seller gives notice (or is deemed to have given notice) that it will not cause any or all of the Unpermitted Title Exceptions referenced in such notice to be deleted from the Title Commitment, then Purchaser will thereafter have the right, as its sole remedy, to either (x) terminate this Contract as a result of any such Unpermitted Title Exception (in which event Seller and Purchaser shall direct Escrow Agent to promptly return the Deposit Amount and any interest earned thereon to Purchaser, and upon such return neither party shall have any further obligation under this Contract, except for those obligations which are expressly provided to survive such termination) or (y) waive the right to terminate this Contract on account of such undeleted Unpermitted Title Exception(s) and proceed to Closing without abatement of the Purchase Price (in which event, for purposes hereof, any such waived Unpermitted Title Exceptions previously objected to by Purchaser shall be deemed Permitted Exceptions). Seller acknowledges that Purchaser shall have the right to elect under either of the foregoing clauses (x) or (y) in its sole and absolute discretion.

(b) Purchaser acknowledges receipt of a copy of the survey of the Premises made by Barrett, Bollaodi & VanWeele, P.C. dated July 17, 2006 (the "Existing Survey"). Purchaser

acknowledges and agrees that the matters shown in the Existing Survey are hereby deemed to be Permitted Exceptions. Purchaser shall have the right promptly after the date hereof to obtain, at its expense, an update of the Existing Survey (and any such updated Survey or new Survey, is hereinafter referred to as the "New Survey"). If the New Survey discloses conditions which are not shown in the Existing Survey and are unacceptable to Purchaser (any such condition being referred to herein as an "Unpermitted Survey Condition"), then Purchaser shall give Seller notice of any Unpermitted Survey Condition on or prior to the Study Period Expiration Date and in such notice Purchaser shall specify the nature of such Unpermitted Survey Condition and the act or action on the part of Seller which would constitute a cure of such Unpermitted Survey Condition. Any conditions shown in the New Survey that are not objected to by Purchaser on or prior to the expiration of the Study Period shall be deemed Permitted Exceptions. Seller shall have ten (10) business days following the receipt of any such notice in which to give Purchaser notice that Seller will either (a) cause the Unpermitted Survey Condition(s) referenced in such notice to be cured in the manner requested by Purchaser in said notice or (b) refuse to cause the Unpermitted Survey Condition(s) referenced in such notice to be cured in the manner requested by Purchaser in said notice (and in the event Seller fails to deliver such notice within such ten (10) business day period, Seller shall be deemed to have elected under clause (a)). With respect to any such notice, if Seller gives notice that it will not cause any or all of the Unpermitted Survey Conditions referenced in such notice to be cured, then Purchaser will thereafter have the right, as its sole remedy, to either (x) terminate this Contract as a result of any such Unpermitted Survey Conditions (in which event Seller and Purchaser shall direct Escrow Agent to promptly return the Deposit Amount, and any interest earned thereon, to Purchaser, and upon such return neither party shall have any further obligation under this Contract, except for such obligations which are expressly provided to such termination) or (y) waive the right to terminate this Contract on account of such uncured Unpermitted Survey Condition(s) and proceed to Closing without abatement of the Purchase Price (in which event, for purposes hereof, any such waived Unpermitted Survey Condition(s) previously objected to by Purchaser shall be deemed Permitted Exceptions). Seller acknowledges that Purchaser shall have the right to elect under either of the foregoing clauses (x) or (y) in its sole and absolute discretion.

## **SECTION 7. VIOLATIONS**

**§7.01. Purchaser Accepts Subject To Violations:** Without limiting the generality of the provisions of this §7, Purchaser agrees to purchase the Premises subject to any and all notes or notices of violations of any Legal Requirement (as hereinafter defined) noted (whether or not noted before or after the date of this Contract) in or issued by any Governmental Authority (individually, a "Violation" and collectively, "Violations"), but not the lien, monetary fines, penalties, charges, interest and sums imposed by any Governmental Authority and related to the Violations (collectively, the "Violation Fines"), payment of which shall be the responsibility of Seller prior to or at the Closing, unless Seller elects to deposit at Closing one hundred twenty-five percent (125%) of the unpaid amounts required to satisfy any such Violation Fines including any interest and penalties thereon (the "Violation Amount") in escrow with the Title Company, pursuant to escrow instructions reasonably acceptable to the Title Company, Purchaser and Seller, which instructions shall provide that, to the extent any such Violation Fines are not paid within ninety (90) days of the Closing, then the Title Company shall use all or a portion of the Violation Amount to pay such Violation Fines and shall return the balance of the Violation Amount, if any, to Seller. Notwithstanding anything to the contrary contained in this Contract, Seller shall have no duty to remove or comply with or repair or disrepair any (i) condition, matter or thing, whether or not noted, which, if noted, would result in a Violation being placed on the Property or (ii) of the aforementioned Violations and Purchaser shall accept the Property subject to all such Violations without any abatement of or credit against the Purchase Price, except that Seller shall be obligated to pay or escrow for the Violation Fines as provided above.



## **SECTION 8. DESTRUCTION, DAMAGE OR CONDEMNATION**

**§8.01. Damage or Destruction of the Premises.** Subject to the provisions of §8.03, in the event of any damage or destruction to the Premises by fire or other casualty or any taking by condemnation of all or any part of the Premises, this Contract and Purchaser's obligation to pay the Purchase Price shall not be affected thereby, however:

**§8.01.1.** Seller shall not settle any loss under any such insurance policy resulting from damage or destruction to the Premises, without the written approval of Purchaser, which approval shall not be unreasonably withheld, conditioned or delayed.

**§8.01.2.** Seller shall have the right to make any emergency or other repairs or restoration to the Premises occasioned by reason of any such damage, destruction or partial condemnation without Purchaser's consent.

**§8.01.3.** All insurance or condemnation proceeds/awards received by Seller resulting from damage or destruction to the Premises or the taking of the Premises, as applicable, less the reasonable costs, including reasonable counsel fees, incurred by Seller in collecting the same, shall be paid over or assigned to Purchaser at the Closing; however, if any sums are expended for any such emergency repairs or restoration, such sums shall either be deducted from the amounts to be paid over to Purchaser at the Closing or at Seller's election, shall be paid by Purchaser to Seller at the Closing.

**§8.02. Total Loss/No Available Insurance Proceeds - Purchaser Right of Termination.** In the event that prior to the Closing more than twenty five (25%) percent of the Building is "Materially Damaged" by a fire or casualty which is not due to the acts or omissions of Purchaser, its agents or anyone acting on behalf of Purchaser, Purchaser shall have the right to terminate this Contract by notice of termination to Seller and if Purchaser gives such notice of termination, this Contract shall be deemed terminated as of the date of such notice and the provisions of this §13.03 shall apply. For the purpose hereof, the Premises shall be deemed "Materially Damaged" if the work necessary to repair such damage will, in the estimate of an independent architect hired by Seller (subject to Purchaser's consent not to be unreasonably withheld or delayed), take more than three (3) months to complete. In the event of such fire or casualty, either Seller or Purchaser shall, upon notice to the other, have the right to adjourn the Closing Date for not more than thirty (30) days to determine if such fire or other casualty caused Material Damage to the Premises.

**§8.03. Condemnation.** If, prior to the Closing, all or any significant portion (as defined in this §8.03) of the Premises is taken by eminent domain (or is the subject of a pending taking which has not yet been consummated), Seller shall notify Purchaser of such fact promptly after obtaining knowledge thereof and Purchaser shall have the right to terminate this Contract by giving notice to Seller not later than ten (10) days after the receipt of Seller's notice. Such termination shall be effective as of the date of such notice given in accordance with the provisions of §15.01 and upon such termination, the provisions of §13.03 shall apply. For the purposes of this §8.03, a "significant portion" of the Premises shall mean such a portion of the Premises which has a value, as reasonably determined by Seller, in excess of \$200,000. If Purchaser elects not to terminate this Contract as aforesaid, or if an "insignificant portion" (i.e., anything other than a significant portion) of the Premises is taken by eminent domain (or becomes the subject of a pending taking), there shall be no abatement of the Purchase Price and Seller shall assign to Purchaser (without recourse) at the Closing the rights of Seller to the awards, if any, for the taking,

and Purchaser shall be entitled to receive and keep all awards for the taking of the Premises or such portion thereof and accordingly, to the extent that Seller has any proceeds in hand, such proceeds shall be delivered to Purchaser at Closing; provided, however, Seller shall not settle or compromise any such award without the consent of Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed.

**§8.04. Contract Controls Over GOL:** The provisions of §5-1311 of the General Obligations Law shall not apply to the transaction contemplated under this Contract and the foregoing provisions of this §8.01 et seq. shall apply instead.

**SECTION 9. INTENTIONALLY OMITTED.**

**SECTION 10. SELLER'S CLOSING OBLIGATIONS**

At the Closing, Seller shall deliver the following to Purchaser or Purchaser's Title Company, as applicable:

**§10.01. Deed:** A statutory form of bargain and sale deed (the "Deed") with covenant against grantor's acts, containing the covenant required by §13 of the Lien Law, and properly executed in proper form for recording so as to convey the title required by this Contract to Purchaser, subject to all of the Permitted Exceptions.

**§10.02. Title Affidavit:** Such affidavit as Purchaser's Title Company shall reasonably require (without obligation or liability to Seller, except as otherwise provided in this Contract), including, without limitation, in order to omit from its title insurance policy all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to Seller's name and for no other reason.

**§10.03. Form TP-584:** The New York State Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate (the "Form TP-584") executed by Seller and checks to the order of the appropriate officers in payment of any real property transfer taxes arising from this sale of the Premises as shown on such Form TP-584. Seller shall have the option of electing to have Purchaser pay any of such taxes and to credit Purchaser with the amount thereof against the Closing Cash Amount payable by Purchaser pursuant to §2.01.2, in which event such taxes shall be paid by Purchaser at Closing.

**§10.04. Form RP-5217:** The Real Property Transfer Report/State of New York State Board of Real Estate Services (the "Form 5217") duly executed by Seller.

**§10.05. Keys:** To the extent not previously delivered, and as applicable, the keys and security codes therefor. Seller shall have the option of not delivering the keys at Closing and leaving same at the Premises in care of Purchaser.

**§10.06. Non-Foreign Affidavit:** A Non-foreign affidavit with respect to Seller as required by IRC §1445(b)(2) and the regulations issued thereunder.

**§10.07. Intentionally Omitted**

**§10.08. Seller Resolutions:** All required resolutions and/or consents required by the Title

Company in order to properly authorize Seller to convey title as provided herein.

**§10.09. Closing Date Representations:** Subject to the terms and conditions of §4.03, at Closing, Seller shall deliver a certificate to Purchaser pursuant to which Seller shall remake those representations and warranties made by Seller which were not made solely as of the date of this Contract in and pursuant to §4.01 as of the Closing Date; provided, however, that Seller in such instrument, shall (i) update such representations and warranties to reflect events occurring between the date hereof and such Closing Date which affect the accuracy of such representations and warranties (as made as of such Closing Date) and (ii) correct such representations and warranties (as made as of the date hereof) to reflect any inaccuracy discovered therein after the date of this Contract. Notwithstanding the foregoing, if any update or correction referred to in (i) or (ii) has a Material Adverse Effect (subject to the provisions of §4.03.1 above), then Purchaser shall have the remedies available to it in §4.03.2 above; provided that when calculating whether any update or correction has a Material Adverse Effect, any change in the representations made in §4.01.4 above shall not be counted unless such change is a result a breach of a covenant of Seller contained in this Contract. In addition any change in the representations made in §4.01.1 and §4.01.8 above shall be controlled by Sections 8.03 and 18.01, respectively.

**§10.10. Miscellaneous:** Any other documents expressly required by this Contract to be delivered by Seller in order to effectuate the provisions of this Contract. The provisions of this §10.10 shall survive the Closing.

## **SECTION 11. PURCHASER'S CLOSING OBLIGATIONS**

At the Closing, Purchaser shall deliver the following to Seller or Purchaser's Title Company, as applicable:

**§11.01. Purchase Price:** Federal funds in payment of the Closing Cash Amount (subject to apportionment as provided herein) payable by Purchaser at Closing pursuant to §2.01.2 to Seller or Seller's designee, as directed by Seller.

**§11.02. Form TP-584:** Form TP-584 duly executed and acknowledged by Purchaser.

**§11.03. Form S217:** Form S217 duly executed by Purchaser.

**§11.04. License:** An original counterpart of the License Agreement executed by Purchaser.

**§11.05. Miscellaneous:** Any other documents required by this Contract to be delivered by Purchaser or reasonably requested by Purchaser's Title Company in order to effectuate the provisions of this Contract. The provisions of this §11.05 shall survive the Closing.

## **SECTION 12. APPORTIONMENTS AT THE CLOSING**

**§12.01. General Apportionments:** Seller and Purchaser agree that all matters involving prorations, credits, adjustments or apportionments to be made in connection with the Closing and this transaction and not specifically provided for in another section of this Agreement shall be adjusted in accordance with this §12. Except as otherwise set forth herein, all items to be prorated pursuant to such sections shall be prorated as of 11:59 P.M. on the day immediately preceding the Closing Date with Purchaser to be treated as the owner of the Premises for purposes of such adjustments and prorations of

income and expenses, on and after the Closing Date (such proration, credits, adjustments and apportionments are referred to herein, collectively, as the "General Apportionments");

**§12.01.1. Real Estate Taxes, etc.** Real estate taxes, water charges, sewer rents, assessments (special or otherwise), generator tax and vault charges (sometimes collectively referred to as "Real Estate Taxes"), if any, on the basis of the fiscal period for which assessed, except that if there are any water meters on the Premises, apportionment at the Closing shall be based on the last available invoice (therefore). In addition, if the Closing shall occur before a new tax rate is fixed, the apportionment of taxes at the Closing shall be based upon the tax rate for the immediately preceding period applied to the latest assessed valuation of the Premises for which real estate taxes are based for the tax year in which the Closing Date shall occur. Promptly after the new tax rate is fixed, the apportionment of taxes shall be recomputed. Any discrepancy resulting from such recomputation and any errors or omissions in computing any apportionments at the Closing shall be promptly corrected.

**§12.01.2. Fuel**: The value of fuel stored on the Premises by Seller, if any, at Seller's most recent cost, including any taxes, on the basis of a reading made within seven (7) days prior to the Closing by Seller's supplier, shall be paid for by Purchaser.

**§12.01.3. License and Permit Fees**: Fees and other amounts payable under the Licenses and Permits, consents, authorizations, approvals, registrations and certificates issued by any Governmental Authority which are held by the Seller with respect to the Premises, including, without limitation, the construction, use, occupancy or operation of the Premises, to the extent such items are transferred to Purchaser at the Closing.

**§12.01.4. Other Sums**: Any other sums required to be paid by either Party to the other at the Closing pursuant to the provisions of this Contract.

**§12.02. Miscellaneous Adjustments REBNY Custom**: Except as may otherwise be provided in this Contract or any further written agreement between Seller and Purchaser, all apportionments contemplated in this Contract shall be made in accordance with the Customs in Respect to Title Closings recommended by The Real Estate Board of New York.

**§12.03. Net Apportionments at Closing**: The Parties agree that the amount of the General Apportionments between Seller and Purchaser at the Closing shall be made on a net basis by the appropriate increase or decrease in the Closing Cash Amount to be paid by Purchaser to Seller at the Closing.

**§12.04. Seller and Purchaser Post-Closing Reconciliation**: From time to time after the Closing Date, at the request of either Seller or Purchaser, the Parties shall, consistent with the provisions of this §12, complete and finalize any of the General Apportionments which could not be made as of the Closing Date. Seller and Purchaser shall thereafter, as soon as reasonably practical, pay to the other the net amounts of such completed and finalized General Apportionments.

**§12.05. Survival**: Except in the extent otherwise stated in this §12 to the contrary, the provisions of this §12 shall survive the Closing for a period of one (1) year from the Closing Date.

## **SECTION 13. ADDITIONAL TITLE PROVISIONS**

### **§13.01. Intentionally Omitted.**



**§13.02. Seller Title Cure – Closing Adjournment:** Subject to the express provisions of §13.03 below, Seller shall have no duty to cure any defects, objections or exceptions to the title to the Premises which are disclosed by any title report obtained by Purchaser after the date of this Contract and are not Permitted Exceptions and to which Purchaser objects. Seller, in its sole discretion, may, but shall have no obligation to, adjourn the Closing Date for up to sixty (60) days in the aggregate beyond the date set forth in this Contract as the Closing Date in order to give Seller an opportunity to endeavor to eliminate any defects in or objections to title which Seller may elect to eliminate under this Contract.

**§13.03. Inability to Convey Title/Cancellation or Termination of Contract:** If Seller shall be unable to convey title to the Premises at the Closing in accordance with the provisions of this Contract, Purchaser shall have the right (as its sole and exclusive remedy with respect to such matters) to either (i) accept such title as Seller may be able to convey and waive, in writing, its objection thereto and consummate the Closing without any abatement of or credit against the Purchase Price or any liability on the part of Seller, in which event such objection(s) shall hereupon constitute a Permitted Exception for all purposes of this Contract or (ii) subject to the provisions of §13.02, to cancel this Contract and, in such event the sole liability of Seller shall be to return the Deposit Amount to Purchaser. Upon such return or refund, this Contract shall be null and void and neither Party shall have any further rights or liabilities hereunder, except that Seller and Purchaser shall continue to remain liable under any provision expressly set forth in this Contract as surviving the termination of this Contract. Seller shall not be required to bring any action or proceeding or to incur any expense to cure any title defect or to enable Seller otherwise to comply with the provisions of this Contract, but the foregoing shall not permit Seller to refuse to pay off, bond or discharge at the Closing, any lien or mortgage in a liquidated amount which is dischargeable upon payment of a readily ascertainable sum of money and which was (a) voluntarily placed on the Property by Seller or (b) other liens (other than Permitted Exceptions) encumbering the Property (including judgments, federal, state and municipal tax liens) (but excluding real estate taxes and water and sewer charges that are subject to adjustment in accordance with this Contract) which (c) are in liquidated amounts and which may be satisfied solely by the payment of money (including the preparation or filing of appropriate satisfaction instruments in connection therewith) and (d) do not exceed \$150,000.00 in the aggregate each of which Seller shall pay off, bond or discharge prior to Closing. Seller further agrees that Seller will not voluntarily encumber or place any lien on the Premises from and after the date hereof which would affect the Premises after the Closing, except as otherwise permitted under this Contract.

**§13.04. Taxes, Assessments & Liens:** Any unpaid taxes, assessments, water charges and sewer rents, together with the interest and penalties thereon to a date not less than two (2) days following the Closing Date, and any other liquidated liens and encumbrances which Seller is obligated to pay and discharge under the provisions of this Contract (specifically excluding the Permitted Exceptions) or which are against corporations, estates or other persons in the chain of title, together with the cost of recording or filing any instruments necessary to discharge such liquidated liens and encumbrances of record, may be paid out of the proceeds of the monies payable at the Closing if Seller delivers to Purchaser on the Closing Date official bills for such taxes, assessments, water charges, sewer rents, interest and penalties and instruments in recordable form sufficient to discharge any such liquidated liens and encumbrances of record. Upon request made within a reasonable time before the Closing, Purchaser shall provide at the Closing separate certified or bank checks, in either case drawn on a bank which is a member of the New York Clearinghouse Association, for the foregoing payable to the order of the holder of any lien, charge or encumbrance. If Purchaser's Title Company is willing to insure Purchaser that any such charge, lien or encumbrance will not be collected out of or enforced against the Premises, then Seller shall have the right, in lieu of payment and discharge, to deposit with Purchaser's Title Company such

funds or assurances or to pay such special or additional premiums as Purchaser's Title Company may require in order to so insure. In such case the charge, lien or encumbrance with respect to which Purchaser's Title Insurance Company has agreed so to insure shall not be considered an objection to title and shall be Permitted Exceptions.

#### **SECTION 14. BROKER**

§14.01. Each Party hereby represents and warrants to the other Party that (i) Premier Commercial Real Estate and Greiner-Maltz Co of LI, LLC (collectively, referred to herein as the "Broker") are the only brokers with whom it has dealt in connection with this Contract, (ii) no other person, firm or corporation has brought the Premises to the attention of Purchaser, and (iii) it does not know of any other broker who has claimed or may have the right to claim a commission in connection with this transaction. The commission or fee due, payable or claimed by such Broker shall be paid by Seller pursuant to a separate agreement between Seller and Broker. Each Party hereby indemnifies, defends and agrees to save the other Party harmless of and from all loss, cost, liability and expense, including reasonable attorneys' fees, arising out of any claim for brokerage commission, fee or other compensation by any person, firm or corporation through an indemnifying Party for bringing about or negotiating the within transaction, whether based on a claim of brokerage or based on contract, quasi-contract or tort, other than the Broker. The provisions of this §14.01 shall survive the Closing or, if the Closing does not occur for any reason, shall survive the termination or cancellation of this Contract.

#### **SECTION 15. NOTICES**

§15.01. All notices required or desired to be given under this Contract shall be in writing and shall be sent by prepaid registered or certified mail (return receipt optional) or by a nationally recognized overnight courier (such as Fed Ex) or by electronic mail or facsimile, with a hard copy delivered simultaneously via overnight delivery by a nationally recognized overnight courier, addressed to the other Party, as provided below, or at such other address as shall be designated by Seller or Purchaser by notice given in the manner herein provided. Any notice with respect to a change of address shall not be effective until ten (10) days after giving of such change of address notice.

##### **TO SELLER:**

At the address listed on page 1 of this Contract

##### **with a copy to:**

Goldfarb & Fleece LLP  
560 Lexington Avenue, 6<sup>th</sup> Floor  
New York, New York 10022  
Attn: Douglas Gladstone, Esq.

##### **TO PURCHASER:**

At the address listed on page 1 of this Agreement

##### **with a copy to:**

Lazer, Aptheker, Rosella & Yedid, P.C.

225 Old Country Road  
Melville, NY 11747  
Attn.: Matthew C. Lamstein, Esq.

Any notice executed or received by Goldfarb & Fiacco LLP, attorneys for Seller or Lazer, Apteker, Rosella & Yedid, P.C., attorneys for Purchaser, shall have the same force and effect as though signed or received by Seller or Purchaser, as applicable. Any such notice shall be deemed given (except for a change of address notice, which shall be deemed given as set forth above) on the date (a) three (3) business days following the date of such notice is mailed or (b) next business day following the date such notice is delivered to the nationally recognized overnight courier, or (c) upon confirmation of delivery of the electronic correspondence or facsimile.

#### **SECTION 16. PURCHASER ACKNOWLEDGEMENTS, INDEMNITIES INSURANCE.**

**§16.01. Purchaser's Acknowledgments.** Without limiting the provisions of §5.01 and supplementing the provisions thereof, Purchaser acknowledges and agrees that to the extent that Seller (or its agent or broker) has provided to Purchaser with information whether in an offering memorandum, through a website or through any inspection, engineering or environmental reports for the Premises, Seller makes no representations or warranties with respect to the accuracy or completeness, methodology of preparation or otherwise concerning the contents of such information and Purchaser agrees to take subject to any state of facts referred to therein. Purchaser acknowledges that Seller has requested that Purchaser fully inspect the Premises and investigate all matters relevant thereto and to rely solely upon the results of Purchaser's own inspections or other information obtained or otherwise available to Purchaser, rather than any information (other than that specifically embodied in this Contract) that may have been provided by Seller (or its agent or broker) to Purchaser. No person acting on behalf of Seller is authorized to make, and by execution hereof, Purchaser acknowledges that no person has made any representation, contract, statement, warranty, guarantee or promise regarding the Premises or the transaction contemplated herein or the zoning, construction, physical or environmental condition or other status of the Premises, except as may be expressly set forth in this Contract. No representation, warranty, contract, statement, guarantee or promise, if any, made by any person acting on behalf of Seller which is not expressly stated in this Contract, will be valid or binding on Seller.

#### **§16.02. Purchaser's Indemnity and Purchaser's Liability Insurance.**

**§16.02.1. Purchaser's Obligation to Indemnify.** The rights granted Purchaser under §6 of this Contract will be exercised by Purchaser at Purchaser's sole risk. Purchaser will indemnify, defend and hold harmless Seller and Seller's Principals and Representatives, of and from all loss, cost, liability, damage or expense, including reasonable counsel fees, personal injury, including death, to any person, or damage or loss of any kind to any property, including the Premises, Seller's Principals and Representatives, that may occur as a result of Purchaser's inspections and due diligence review of the Premises including, but not limited to, any environmental study or Purchaser's exercise of any of the rights granted under this Contract to conduct such inspections, etc. Notwithstanding the foregoing, in no event shall Purchaser be required to indemnify Seller for the negligence or willful misconduct of Seller or Seller's Principals and Representatives. For the purposes of this Contract, the term "Seller's Principals" shall mean any partner, principal, member, shareholder, officer, director, partner, shareholder, fiduciary, or any other person or entity having a direct or indirect interest in Seller, or any subsidiaries, affiliates of Seller, or any successors and assigns of Seller or any of the aforesaid. The provisions of this §16.02.1 shall survive the termination or cancellation of this Contract and the

Closing

**§16.02.7. Purchaser's Liability Insurance:** Prior to Closing, Purchaser will, at all times that Purchaser or any of Purchaser's employees, representatives or contractors may be on, at or inspecting the Premises, keep in force and effect, and cause any such representatives or contractors to keep in force, commercial general liability insurance naming Seller, Seller's Principals, Seller's Representatives and such other entities requested by Seller as additional insureds, (issued by insurance company or companies acceptable to Seller (such companies shall have a Best's rating of not less than "A" and financial size of not less than "X" with coverage on an occurrence basis of at least \$2,000,000 for bodily injury and property damage, combined single limit, including waiver of subrogation (to which Purchaser and Seller agree) and a contractual liability endorsement covering Purchaser's indemnity obligations under this Contract, which coverage may be through both primary and additional (umbrella) coverage. A certificate (on ACORD Form 25-S or equivalent) evidencing the existence of such insurance shall be delivered to Seller prior to such entry to the Premises. Such certificate shall provide that it may not be cancelled or modified unless Seller is given at least fifteen (15) days' prior written notice. Purchaser may maintain the coverage required under this §16.02.7 under a blanket insurance policy.

**SECTION 17. INTENTIONALLY OMITTED**

**SECTION 18. ASSESSMENTS**

**§18.01. Assessments:** If on or after the date of this Contract the Premises or any part thereof shall be or shall have been affected by any real estate tax assessment or assessments which are or may become payable in one or more installments, Purchaser agrees to take title to the Premises (without reduction in or adjustment to the Purchase Price) subject to all installments of such assessments which are not yet due and payable as of the Closing Date.

**SECTION 19. INTENTIONALLY OMITTED**

**SECTION 20. NO ASSIGNMENT OR TRANSFER**

**§20.01.** Purchaser shall not have the right to assign or transfer, either directly or indirectly, its interest in this Contract or its rights hereunder without the prior written consent of Seller in each instance, which consent may be withheld in Seller's sole and absolute discretion. A transfer of the stock, membership interest or ownership interest in any entity which is the Purchaser hereunder or any entity which controls (whether by equity interest or contract) the Purchaser hereunder shall be deemed an assignment of this Contract. Notwithstanding anything to the contrary stated above, Purchaser shall be permitted to assign its rights under this Contract without Seller's consent to an entity which is controlled by Purchaser. For the purpose of this Contract the term "controlled" when used with respect to any limited liability company, corporation, partnership or other business entity comprising Purchaser shall mean the possession of the power to direct or cause the direction of the management and policies of such limited liability company, corporation, partnership or other business entity, whether through the ownership of membership interest, voting securities or contract or at least a majority of the economic interest in which entity is owned directly or indirectly by Purchaser. Any such assignment or transfer shall only be effective if Purchaser gives Seller notice thereof at least three (3) business days prior to the Closing Date. No such assignment of Purchaser's interest in this Contract or transfer of membership interest, however, shall be valid or binding upon Seller unless and until (a) a duplicate original thereof in



form reasonably satisfactory to Seller, assigning to the assignee all of Purchaser's right, title and interest in this Contract, including the Deposit Amount and (b) an agreement, in form reasonably satisfactory to Seller, in which the assignee shall assume and agree to perform and be bound by all of the terms, covenants and conditions of this Contract shall be delivered to Seller. The aforesaid documents shall be delivered to Seller on or prior to the Closing. Notwithstanding the aforesaid assignment or transfer, the obligations of Purchaser named herein under this Contract shall not be discharged, released or impaired by such assignment.

#### **SECTION 21. TAX APPEAL PROCEEDINGS:**

**§21.01.** If any Tax Proceedings (as hereinafter defined) in respect of the Premises, relating to the 2015/2016 tax year and/or any tax year ending prior to the 2015/2016 tax year, are pending at the time of the Closing, Seller reserves and shall have the right to continue to prosecute and/or settle the same at no cost or expense to Purchaser and without Purchaser's consent, except that Seller shall not settle any pending Tax Proceedings for any tax year from and after the 2015/2016 tax year without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed.

**§21.02.** Any refunds or savings in the payment of taxes resulting from such Tax Proceedings applicable to the period prior to the date of the Closing shall belong to and be the sole property of Seller, and any refunds or savings in the payment of taxes applicable to the period from and after the date of the Closing shall belong to and be the property of Purchaser. All reasonable attorneys' fees and other expenses incurred in obtaining such refunds or savings shall be apportioned between Seller and Purchaser in proportion to the gross amount of such refunds or savings payable to Seller and Purchaser, respectively.

**§21.04.** The provisions of this §21 shall survive the Closing.

#### **SECTION 22. RIGHTS AND REMEDIES**

##### **§22.01. Purchaser's Rights and Remedies:**

**§22.01.1.** In the event that any of Seller's representations or warranties contained in this Contract are untrue or inaccurate or in the event of a §4.01 Warranty Breach, the provisions of §4 shall apply and control. Except as otherwise specifically provided in this Contract to the contrary, if Seller fails to perform any of the covenants and/or agreements expressly required under this Contract, or if any of the conditions precedent to Purchaser's obligation to consummate the transactions contemplated hereby shall fail to occur for any reason whatsoever, or if Purchaser shall have any other grounds under this Contract for refusing to consummate the purchase provided for herein (any such failure or grounds is referred to herein as a "Purchaser Termination Event"), then Purchaser, as its sole and complete remedy, may, at its option (a) subject to Seller's right to cure, terminate this Contract by giving written notice of termination to Seller; or (b) close title to the Property without any abatement of the Purchase Price, in which event Purchaser shall be deemed to have waived any rights it may have had on account of such Purchaser Termination Event. Notwithstanding the foregoing or anything to the contrary contained in this Contract: (i) Purchaser shall not have the right to terminate this Contract and Purchaser shall be required to close title pursuant to (b) above, unless Seller's failure to perform or any such failure of condition shall have a Material Adverse Effect and (ii) in the event Seller is in default under this Contract and Purchaser has not previously terminated this Contract pursuant to Subsection (a) above, then Purchaser may, as its sole and exclusive remedy, seek specific performance of this Contract.

within thirty (30) days after any rights of Purchaser arise due to such willful default by Seller; provided, however, Seller shall not be deemed in willful default under this Contract in the event it is unable to fulfill any of its covenants or agreements herein for reasons beyond the reasonable control of Seller. Promptly upon learning of any Purchaser Termination Event, Purchaser shall promptly notify Seller of such Purchaser Termination Event (such notice is referred to herein as "Purchaser's Termination Event Notice") and in such Purchaser's Termination Event Notice Purchaser shall specify the nature of the such claimed Purchaser Termination Event, the act or action on the part of Seller which would constitute a cure of such claimed Purchaser Termination Event, and whether or not Purchaser is exercising its right to terminate this Contract by reason of such Purchaser Termination Event. If Purchaser shall in such Purchaser's Termination Event Notice so terminate this Contract, such termination shall be effective ten (10) days next following the date of the giving of such Purchaser's Termination Event Notice; provided, however, that if within such ten (10) day period Seller shall give to Purchaser a notice that Seller intends to cure such Purchaser Termination Event, then Seller shall have the right during a period of sixty (60) days from the giving of such Purchaser's Termination Event Notice to cure such Purchaser Termination Event and during such cure period Purchaser's termination of this Contract and the Purchaser's Termination Event Notice shall be tolled. If such Purchaser Termination Event has been cured within such cure period, then Purchaser's termination of this Contract and such Purchaser's Termination Event Notice shall be of no further force and effect, this Contract and the respective obligations of Seller and Purchaser shall remain fully in effect, and the Closing Date shall occur on the date which is the later of (a) the originally scheduled Closing Date or (b) the date which is ten (10) days from the date of such Seller's notice of cure and reinstatement. If (x) Seller shall fail to give a notice within the aforesaid ten (10) day period that Seller intends to cure such Purchaser Termination Event, or (y) Seller shall fail to cure such Purchaser Termination Event within the aforesaid cure period or (z) at any time after Purchaser's Termination Event Notice Seller shall give Purchaser notice that Seller is unable, or elects not to cure such Purchaser Termination Event or otherwise acknowledges that Purchaser's termination of this Contract is effective, then Purchaser's Termination Event Notice will be effective, and this Contract will terminate effective as of the day next following the last day of such time periods or Seller's notification to Purchaser acknowledging the termination or that Seller will not cure such Purchaser Termination Event.

**§22.01.2.** In the event that Purchaser terminates this Contract in accordance with this §22.01, the sole liability of Seller shall be to return the Deposit Amount to Purchaser, plus interest earned thereon, if any; provided, however, in the event that Purchaser terminates this Contract in accordance with Section 22.02.1 above due to a willful default of Seller, Purchaser shall also be entitled to a reimbursement by Seller for Purchaser's actual out-of-pocket third party costs and expenses incurred in connection with the proposed acquisition of the Premises, but in no event more than \$25,000 in the aggregate. Upon such return and reimbursement (if applicable), this Contract shall be null and void and neither Party shall have any further rights or liabilities hereunder, except that Seller and Purchaser shall continue to be liable under any provision expressly set forth in this Contract as surviving the termination of this Contract. Seller shall not be required to bring any action or proceeding the cost of which would exceed \$25,000.00 or to incur any expense in excess of \$25,000.00 to enable Seller otherwise to comply with the provisions of this Contract.

**§22.02. Seller's Rights and Remedies:** Purchaser and Seller agree that in the event of a default or breach of this Contract by Purchaser, Seller will be damaged and will be entitled to compensation for those damages, but that such damages will be extremely difficult and impractical to ascertain and is subjective and both Purchaser and Seller wish to avoid the cost and lengthy delays which would result if Seller filed a lawsuit to collect damages for breach of this Contract. Finally, Purchaser desires to limit the amount of damages for which Purchaser might be liable to Seller should Purchaser breach this Contract. Therefore, Purchaser and Seller hereby agree that the Deposit Amount shall be

deemed to constitute a reasonable estimate of the Seller's damages. It is agreed that Seller's sole and exclusive remedy in the event of such default shall be to demand that the Escrow Agent release the Deposit Amount to Seller and the Escrow Agent is hereby authorized, in accordance with the Escrow Provisions, to so release the Deposit Amount to Seller and Seller shall have the right to retain the Deposit Amount as the agreed upon liquidated damages and thereafter neither Party shall have any further rights or liabilities hereunder, except that Seller and Purchaser shall continue to be liable under any provisions expressly set forth in this Contract as surviving the termination of this Contract. Seller hereby waives any rights to specific performance or damages other than as set forth herein.

## **SECTION 23. MISCELLANEOUS PROVISIONS**

**§23.01. Definitions:** Unless otherwise defined in the body of this Contract all of the defined terms in this Contract shall have the meaning ascribed to them in Attachment I to this Contract.

**§23.02. Entire Understanding; Modifications:** This Contract embodies and constitutes the entire understanding between the Parties with respect to the transaction contemplated herein, and all prior contracts, understandings, representations and statements, oral or written, are merged into this Contract. Without limiting the aforesaid, this Contract shall supersede any and all offering memoranda, set ups, web sites and similar types of material and information furnished to Purchaser or its representative. Neither this Contract nor any provisions hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the Party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

**§23.03. Governing Law:** The parties agree that this Contract shall be governed by the laws of the State of New York.

**§23.04. Effectiveness Counterparts/Electronic Signatures:** This Contract shall not be binding or effective until properly executed and unconditionally delivered by Seller and Purchaser. This Contract may be executed by electronic signatures and in one or more counterparts all of which shall be deemed an original and all of which shall constitute one and the same Contract.

**§23.05. Construction & Interpretation:** As used in this Contract, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context may require. This Contract shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that both Seller and Purchaser have contributed substantially and materially to the preparation of this Contract.

**§23.06. Inconsistencies; Schedules, Exhibits and Documents Control:** If the provisions of any Attachment, Schedule or Exhibit to this Contract or any document exhibited to Purchaser or Purchaser's representatives are inconsistent with the provisions of this Contract, the provisions of such Attachment, Schedule, Exhibit or document shall prevail and the applicable provisions of this Contract shall be deemed modified to the extent necessary to eliminate such inconsistency and to conform such provisions of this Contract to the provisions of such Attachment, Schedule, Exhibit or document.

**§23.07. Successor and Assigns:** This Contract shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and, subject to



the provisions of this §20.01, permitted assigns.

**§23.08. 1031 Exchange:** Each Party acknowledges that the other Party may effectuate an Internal Revenue Code Section 1031 Tax-Deferred Exchange (an "Exchange") in connection with the transaction contemplated in this Contract. Each Party shall reasonably cooperate with the other (at no additional cost to the other Party) to accomplish such Exchange, including to the extent necessary or appropriate, acknowledging notice of the assignment of this Contract to such Party's intermediary provided such assignment imposes no obligations, liabilities or costs on the non-requesting Party. The requesting Party shall indemnify and hold the non-requesting Party harmless from any liability, damage, cost, and expense, including reasonable attorney's fees, which may occur as a result of the non-requesting Party's participation in the Exchange.

**§23.09. No Survival** Except as otherwise specifically provided in this Contract, no representations, warranties, covenants or other obligations of Seller set forth in this Contract shall survive the Closing, and no action based thereon shall be commenced after the Closing.

**§23.10. Delivery of the Deed:** The delivery of the Deed by Seller, and the acceptance thereof by Purchaser, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed hereunder, except those obligations of Seller which are expressly stated in this Contract to survive the Closing.

**§23.11. No Personal Liability:** Each Party acknowledges and agrees with the other Party that in no event shall any of either Party's Principals, Representatives or any of the employees, agents, servants, attorneys, accountants, advisors, subsidiaries, successors and assigns of them or the aforesaid and any other person or entity acting on behalf of the aforesaid persons have any personal obligation or liability whatsoever with respect to this Contract, the transactions contemplated hereby, or otherwise (such obligation and liability being the sole responsibility of Seller and Purchaser hereunder). Each Party further acknowledges and agrees that all obligations and liabilities of the other Party under this Contract or in connection herewith are enforceable solely against the other Party and not against the assets of any person or entity having any interest, whether direct or indirect, in Seller, Purchaser or the Premises or Seller's or Purchaser's Representatives or Seller's or Purchaser's Principals. Supplementing the aforesaid, the Parties acknowledge and agree that this Contract is executed by the authorized representatives of the Parties, not individually, but solely on behalf of such Parties. All persons dealing with any Party must look solely to the assets of such Party for the enforcement of any claim against it. The obligations hereunder are not binding upon, nor shall resort be had to the private property of any of the directors, officers, partners, members, shareholders, advisors, employees or agents of Purchaser or Seller. The provisions of this §23.11 shall survive the Closing or termination of this Contract.

**§23.12. No Recording of Contract:** Purchaser agrees that it will not under any circumstances: (x) record this Contract or any memorandum thereof without the consent of Seller, (y) place or attempt to place a lis pendens on the Premises (except if required in connection with an action for specific performance which is permitted hereunder), and any violation of these covenants by Purchaser shall constitute a default under this Contract. The provisions of this §23.12 shall survive the termination of this Contract.

**§23.13. Waiver Trial by Jury:** EXCEPT AS PROHIBITED BY LAW, THE PARTIES SHALL, AND THEY HEREBY DO, EXPRESSLY WAIVE TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, OR CONNECTED WITH, OR RELATING TO, THIS CONTRACT, OR THE RELATIONSHIP CREATED THEREBY. WITH RESPECT TO ANY

MATTER FOR WHICH A JURY TRIAL CANNOT BE WAIVED, THE PARTIES AGREE NOT TO ASSERT ANY CLAIM RELATING TO SUCH MATTER AS A COUNTERCLAIM (UNLESS SUCH COUNTERCLAIM WOULD OTHERWISE BE DEEMED WAIVED IF NOT ASSERTED), IN, NOR MOVE TO CONSOLIDATE SUCH CLAIM WITH, ANY ACTION OR PROCEEDING IN WHICH A TRIAL IS WAIVED. THE PREVAILING PARTY IN ANY LITIGATION ARISING OUT OF, OR CONNECTED WITH, OR RELATING TO, THIS CONTRACT SHALL BE ENTITLED TO BE REIMBURSED FOR ALL REASONABLE LEGAL FEES AND DISBURSEMENTS IN CONNECTION THEREWITH FROM THE NON-PREVAILING PARTY.

**§23.14. No Other Parties:** This Contract is not intended, nor shall it be construed, to confer upon any person or entity, except the Parties hereto and their respective heirs, successors and permitted assigns, any rights or remedies under or by reason of this Contract.

**§23.15. Joint and Several Liability:** If two or more persons or entities constitute either the Seller or the Purchaser, the word "Seller" or the word "Purchaser," and pronouns referring thereto, shall be construed in the singular or plural usage whenever the sense of this Contract so requires and the obligations of such persons and entities hereunder shall be both joint and several.

**§23.16. Mortgage Recording Savings:** Any mortgage presently affecting the Property which the Seller must discharge in accordance with the provisions of this Contract shall, at Purchaser's option (a) without charge or cost to Purchaser, be satisfied, or (b) at the cost and expense of the Purchaser, and subject to the succeeding sentence, be assigned to Purchaser's designee. At Purchaser's request, in order to minimize mortgage recording tax to be paid by Purchaser, Seller agrees to request that its existing lender assign such mortgage to Purchaser's lending institution at Closing, provided Seller receives fifty (50%) percent of any mortgage tax savings, after deduction from such mortgage tax savings of any fees, costs and expenses in connection with such assignment. Seller and Purchaser agrees to cooperate to execute any and all normal and customary documents reasonably necessary to effectuate such mortgage tax savings, it being understood and agreed, however, that this Contract is not conditioned upon or contingent on either Seller or Purchaser being able to obtain the benefits of any mortgage tax savings.

**§23.17. IDA:** Seller acknowledges that Purchaser intends to seek full benefits from the Nassau County industrial development agency (an "IDA"). Seller shall reasonably cooperate (at no cost, expense or liability to Seller) with Purchaser to accomplish such IDA transaction.

[End of Text; Signature Page, Exhibits, Schedules and Attachments to Immediately Follow]



(Signature Page to Contract of Sale Re: 45 Seaview Boulevard, Port Washington, New York)

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

SELLER:

45 SEAVIEW, LLC

By: 345 Underhill L.L.C., its sole member

By: \_\_\_\_\_  
Name:  
Title:

PURCHASER:

CDC ESTATE, LLC

By: Boe Sung Min  
Name:  
Title: Boe, Sung Min  
President

To accept, confirm and agree to its obligations as Escrow Agent hereunder, including, but not limited to, under Exhibit 1:

GOLDFARB & FLEECE LLP

By: 

Name: *Douglas Gladstone*  
Title: *Partner*



**SCHEDULE A**  
**DESCRIPTION OF LAND**

All that certain plot, piece, or parcel of land situate, lying and being in the Unincorporated area of Port Washington, Town of North Hempstead, County of Nassau and State of New York, being known as and by Lots 16 and 17 on a certain map entitled, "Map of Seaview Industrial Park" prepared by Bohn & Bonacci, P.C., Consulting Engineers, 73 East Old Country Road, Mineola, New York, dated January 12, 1981 and filed in the Office of the Clerk of the County of Nassau on February 5, 1982 as Map No. 8940, said lots, when taken together as one parcel, are more particularly bounded and described according to said map as follows:

BEGINNING at a point on the northerly side of Seaview Boulevard distant 609.69 feet easterly as measured along the northerly side of Seaview Boulevard from the extreme easterly end of the arc of a curve connecting the northerly side of Seaview Boulevard with the easterly side of Osprey Court;

THENCE North 11 degrees 14 minutes West 307.11 feet;

THENCE North 80 degrees 18 minutes 32 seconds East 232.98 feet;

THENCE North 79 degrees 56 minutes 15 seconds East 29.63 feet;

THENCE South 13 degrees 14 minutes East 297.26 feet to the northerly side of Seaview Boulevard;

THENCE westerly along the northerly side of Seaview Boulevard the following 3 courses and distances:

1. South 76 degrees 46 minutes West, 42 feet;
2. Along the arc of a curve bearing to the right having a radius of 2770 feet & distance of 96.69 feet.
3. South 78 degrees 48 minutes West 139.25 feet to the point or place of BEGINNING.

## EXHIBIT 1

### ESCROW PROVISIONS

The proceeds of the Deposit Amount check or wire delivered by PURCHASER hereunder shall be held by ESCROW AGENT in an interest bearing account until the Closing or sooner termination of this Contract and ESCROW AGENT shall pay over the interest or income earned thereon, if any, to and the party entitled to the Escrow Deposit (as hereinafter defined) and the party receiving such interest or income shall pay any income taxes due thereon. The aforesaid escrowed proceeds are sometimes referred to herein as the "Escrowed Proceeds" and the Escrowed Proceeds, together with any interest or income earned thereon, are sometimes referred to herein as the "Escrow Deposit." In the event the Closing shall occur in accordance with the provisions of this Contract, then SELLER and PURCHASER shall deliver to ESCROW AGENT written instructions directing ESCROW AGENT to deliver the Escrow Deposit to SELLER. If for any reason the Closing does not occur pursuant to the provisions of this Agreement and either party makes a written demand upon ESCROW AGENT at any time, by certified mail (return receipt optional), or Federal Express (or other nationally recognized overnight courier service with a confirmed receipt of delivery), for payment of the Escrow Deposit, then ESCROW AGENT shall give written notice, in accordance with the provisions of the Agreement to the other party of such demand. If ESCROW AGENT does not receive a written objection from the other party to the proposed payment of the Escrow Deposit pursuant to the aforesaid demand within ten (10) business days after the delivery of such notice by ESCROW AGENT, ESCROW AGENT shall make such payment in accordance with the aforesaid demand. If ESCROW AGENT receives written objection from the other party to the proposed payment of the Escrow Deposit pursuant to the aforesaid demand within such ten (10) business day period or if for any other reason ESCROW AGENT in good faith shall elect not to make such payment, ESCROW AGENT shall continue to hold the Escrow Deposit until otherwise directed by written instructions from SELLER and PURCHASER or a final judgment of a court of competent jurisdiction. ESCROW AGENT however, shall have the right at any time to deposit the Escrow Deposit with the clerk of any court of competent jurisdiction in the State in which the Premises is situated, and ESCROW AGENT shall give written notice of such deposit to the SELLER and the PURCHASER, and upon such deposit being made, ESCROW AGENT shall be discharged from all obligations and responsibilities hereunder. The parties acknowledge that ESCROW AGENT is acting solely as a stakeholder at their request and for their convenience, that ESCROW AGENT may act upon any writing believed by it in good faith to be genuine and to be signed and presented by the proper person and the ESCROW AGENT shall not be deemed to be the agent of either of the parties, and that ESCROW AGENT shall not be liable to either of the parties for any act or omission on its part unless taken or suffered in bad faith, in willful disregard of this Agreement or involving gross negligence. ESCROW AGENT may act or refrain from acting in respect to any matter referred to herein in full compliance upon and by and with the advice of counsel which may be selected by ESCROW AGENT and shall be fully protected in so acting or refraining from acting upon the advice of such counsel. PURCHASER and SELLER hereby agree to indemnify and hold ESCROW AGENT harmless from and against any and all claims, liabilities, judgments, reasonable attorneys' fees and other expenses of every kind or nature arising out of ESCROW AGENT's duties hereunder, other than such claims resulting from the willful misconduct, gross negligence or breach of fiduciary duty of the ESCROW AGENT. ESCROW AGENT shall have no duties or responsibilities except as set forth herein. ESCROW AGENT shall not be bound by any modification of this Agreement unless the same is in writing and signed by PURCHASER and SELLER and if ESCROW AGENT's duties hereunder are affected, unless ESCROW AGENT shall have given prior written consent thereto. If the Escrow Deposit shall not earn any interest or income, or if no interest or income shall be paid thereon by reason of the withdrawal of the proceeds, or part thereof, under the provisions of this Contract or before interest shall be earned or credited, or during any period of

reasonable delay in opening an account, ESCROW AGENT shall not be liable by reason thereof. In the event ESCROW AGENT is the attorney for either party, ESCROW AGENT shall be entitled to continue to represent such party.