

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** ("Agreement") is made as of this \_\_\_\_\_ day of December, 2021, between JAMES J. VOLPE, an individual having a mailing address at 162 Amann Road, Honeoye Falls, New York 14472 ("Seller") and EDGEMERE DEVELOPMENT, INC., a New York business corporation having a mailing address at 277 Alexander Street, Suite 400, Rochester, New York 14607, or its designee, successors and/or assigns ("Purchaser").

### RECITALS:

**WHEREAS**, Seller desires to sell and Purchaser desires to purchase, on the terms and conditions set forth in this Agreement, the real property and improvements located in the TOWN of CANANDAIGUA, County of ONTARIO, State of NEW YORK and commonly known as PARKSIDE DRIVE, CANANDAIGUA, NY 14424 (SBL# 70.11-1-30.000) (the "Property").

**NOW, THEREFORE**, for one dollar (\$1.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller and Purchaser agree as follows:

#### **1.0 DEFINITIONS.**

As used in this Agreement, the following terms shall have the meanings ascribed thereto:

1.1 Casualty Loss shall mean any damage to the Property caused by fire, storm or other casualty or any Taking.

1.2 Closing shall mean the closing of title to the Property to be held at the time and place set forth in Section 3 of this Agreement.

1.3 Closing Date shall mean the date set forth in Section 3.1.

1.4 Code shall mean the Internal Revenue Code of 1986, as amended.

1.5 Deed shall mean the statutory form of Warranty Deed to be executed and delivered by Seller pursuant to Section 14 of this Agreement.

1.6 Deposit shall mean the amount set forth in Section 4.

1.7 Documents shall mean: (a) all warranties, guarantees, indemnities and claims inuring to the benefit of Seller with respect to the Property; (b) all licenses, permits or similar documents affecting or relating to the Property; (c) all insurance policies relating to the property; and (d) all appraisals, plans, drawings, specifications, surveys, engineering reports, environmental studies, environmental impact statements and other written documentation affecting or relating to the Property which are in Seller's possession, custody or control.

1.8 Due Diligence Inspections shall mean Purchaser's inspections, surveys, engineering studies, drainage studies, appraisals, zoning and land use studies, impact studies,

surface and subsurface explorations, tests, excavations, borings and such other investigations and inspections as Purchaser may elect to make with respect to the Property during the Inspection Period.

1.9 Effective Date shall mean the date on which this Agreement has been signed by the Seller and the Purchaser.

1.10 Encumbrances shall mean all liens, security, interests, claims, encumbrances, easements, rights-of-way, encroachments, reservations, restrictions, covenants, conditions and any other matters affecting title to the Property.

1.11 Environment shall mean water or water vapor, land surface or subsurface, air, fish, wildlife, biota and all other natural resources.

1.12 Environmental Condition shall mean any condition requiring removal of any Hazardous Material, as defined herein, or correction or remediation under any Environmental Law as defined herein, including, without limitation, environmental contamination, hazardous waste or substance or materials in, upon, under, migrating to or emanating from the Property and/or any improvements thereon.

1.13 Environmental Law shall mean any applicable, or relevant statutes, ordinances, by-laws, directives or other written, published laws, any written, published rules or regulations, orders, and any licenses, permits, orders, judgments, notices or other requirements issued pursuant thereto, enacted, promulgated or issued by any Governmental Authority, in effect as of the Effective Date or at any time during the Term, relating to pollution or protection of public health or the Environment from Hazardous Materials (including, but not limited to, any air, surface water, groundwater, land surface or sub-surface strata, whether outside, inside or under any structure), or to the identification, reporting, generation, manufacture, processing, distribution, use, handling, treatment, storage, disposal, transporting, presence, Release or threatened Release, of any Hazardous Substances. Without limiting the generality of the foregoing, Environmental Laws shall include the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Toxic Substances Control Act, as amended, the Hazardous Materials Transportation Act, as amended, the Resource Conservation and Recovery Act, as amended, the Clean Water Act, as amended, the Safe Drinking Water Act, as amended, the Clean Air Act, as amended, and all analogous laws enacted, promulgated or lawfully issued by any Governmental Authority, but shall exclude the Occupational Safety and Health Act, as amended, and similar state laws.

1.14 Governmental Authority shall mean any federal, state or local governmental court, agency or other entity, body, organization or group exercising any executive, legislative, judicial, quasi-judicial, regulatory or administrative government function.

1.15 Hazardous Material shall mean any petroleum, PCBs, asbestos, chemical substance, waste, pollutant or contaminant, as defined in, or regulated by, any Environmental Law or as determined by any Governmental Authority.

1.16 Improvements shall mean all improvements, structures and fixtures situated on the Real Property, if any, including, but not limited to, those certain buildings,

structures, fixtures, built-in appliances and other improvements of every kind or nature (including all HVAC systems) presently situated on, in or under or hereafter erected, installed or used on the Real Property.

1.17 Inspection Date shall mean the Ninetieth (90) day following the Effective Date.

1.18 Inspection Period shall mean the period running from the Effective Date to the Inspection Date.

1.19 Parties means Purchaser and Seller.

1.20 Permitted Encumbrances shall mean the Encumbrances described in Exhibit B to this Agreement.

1.21 Project shall mean the new construction of a multifamily mixed-income housing project.

1.22 Property shall mean collectively the Real Property and the Improvements, if any.

1.23 Purchase Price shall mean the greater of [REDACTED] unit, subject to final design.

1.24 Real Property shall mean the real property situated at Parkside Drive, Town of Canandaigua, County of Ontario, State of New York, which Real Property is described with more particularity in Exhibit A to this Agreement, together with all rights, privileges, interests, easements, hereditaments and appurtenances thereunto in any way incident, appertaining or belonging, including, but not limited to: (a) all right, title and interest in and to adjacent streets, highways, open or proposed, alleys, rights of way and any adjacent strips or gores of real estate; (b) all right, title and interest in and to all oil, gas and other minerals in, on or that may be produced from the property, all mineral leases, royalty interests and bonuses relating thereto, and all agreements relating to the production, development, exploration or exploitation thereof; (c) all licenses and privileges, if any; (d) all water rights, if any; (e) all air rights, if any, and (f) all development rights.

1.25 Section shall mean a numbered section within this Agreement.

1.26 Survey shall mean a survey of the Property, dated subsequent to the Effective Date, prepared in accordance with local standards and certified to Purchaser and the Title Company.

1.27 Taking shall mean any taking or pending or threatened taking, in condemnation or under the right of eminent domain of the Property or any portion thereof.

1.28 Term shall mean the term of this Agreement, commencing upon the Effective Date and ending on the Closing Date or the date of termination in accordance with this Agreement.

1.29 Title Company shall mean the title insurance company selected by Purchaser.

1.30 Title Search shall mean a fully guaranteed tax and title search covering the Property only, the first set-out of which shall be the first recorded source of title in the Ontario County Clerk's Office, the last continuation of which shall be dated subsequent to the Effective Date and where not covered by the search, a local tax certificate.

## **2.0 PURCHASE AND SALE.**

Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell, convey, transfer and assign to Purchaser and Purchaser agrees to purchase from Seller, all of Seller's right, title and interest in and to the Property.

## **3.0 CLOSING.**

3.1 The Closing shall occur on the date that is Eighteen (18) months after the Effective Date, or on such date as is mutually agreed to by both Parties. The Seller hereby agrees that Purchaser may request one six (6) month extension, if required.

3.2 The Closing shall occur at the offices of Purchaser's attorney, or at such other location as the Parties may agree.

## **4.0 PURCHASE PRICE AND DEPOSIT.**

4.1 The Purchase Price shall be the greater [REDACTED] unit, subject to final design.

4.2 Upon execution of this Agreement by Purchaser, Purchaser shall deposit \$10,000.00 with the Escrow Agent to be held by the Escrow Agent in a non-interest bearing escrow account and secured with an escrow agreement. The Deposit shall become non-refundable to the Purchaser upon the expiration of the Inspection Period, except as set forth in Section 9 below.

In the event that Purchaser requests an extension as set forth in Section 3.1 above (the "Extension") of the Closing, Purchaser shall deposit \$5,000.00 ("Additional Deposit") with the Escrow Agent

4.3 The Deposit and any Additional Deposit shall be applied as a Purchaser credit toward the Purchase Price.

4.4 At Closing, Purchaser shall deliver the balance of the Purchase Price, subject to adjustments in accordance with this Agreement, in cash or by certified check, cashier's check or money order.

## **5.0 TITLE.**

5.1 Within Ten (10) days of the Effective Date, Seller shall deliver to Purchaser all title policies, title abstracts and surveys in Seller's possession that affect or relate to the Property.

5.2 Within Forty-five (45) days of the receipt of the items referred to in Section 5.1, Purchaser shall cause the Title Search and Survey to be prepared and delivered to Purchaser at Purchaser's expense.

5.3 Within Fifteen (15) days of the receipt of the items referred to in Section 5.2, Purchaser shall give Seller written notice of any encumbrances which, in Purchaser's opinion, render title to the Property unmarketable.

5.4 Within Ten (10) days of its receipt of written notice from Purchaser in accordance with Section 5.3, Seller shall cure such title defects identified by Purchaser, except for those consisting of liens to be discharged by the payment of money out of the Closing proceeds. If Seller shall fail to effect such cure within such Ten (10) day period, Purchaser may elect (a) to accept such title as Seller shall be able to convey, with an abatement of the Purchase Price equal to the reasonably estimated cost of curing such defects, (b) to accept such title as Seller shall be able to convey, without any abatement of the Purchase Price or (c) to terminate this Agreement by giving written notice to Seller.

5.5 If Purchaser elects to terminate this Agreement pursuant to this Section, this Agreement shall be deemed to be terminated as of the date of such notice and Purchaser shall be entitled to a prompt return of the Deposit.

## **6.0 RIGHT OF ENTRY**

6.1 During the Inspection Period, Seller grants to Purchaser and its agents, servants, employees, contractors and representatives a right of entry upon every portion of the Property from time to time at all reasonable times for the purpose of Purchaser's Due Diligence Inspections.

6.2 Due Diligence Inspections shall be at Purchaser's sole expense and shall be accomplished without unreasonably interfering with Seller's use and occupancy of the Property.

6.3 Following any Due Diligence Inspection, Purchaser shall restore the Property to substantially the same condition as it was prior to such Due Diligence Inspection.

6.4 Purchaser shall add Seller as an additional insured with respect to applicable insurance policies in connection with the Due Diligence Inspections and provide proof of same upon written request of the Seller.

6.5 Purchaser shall indemnify and hold the Seller harmless from any and all matters, actions, claims or proceedings asserted against the Seller arising in or out of injury to person or property in connection with any such Due Diligence Inspection of the Property.

## **7.0 INSPECTION PERIOD.**

7.1 The Inspection Period shall begin on the Effective Date and end on the Inspection Date.

7.2 Within three (3) business days of the Effective Date, Seller shall deliver to Purchaser the Documents, if any, and Purchaser shall have the right to review the Documents during the Inspection Period.

7.3 If Purchaser determines (in Purchaser's sole and absolute discretion) that the Documents or the Property are unsatisfactory to Purchaser for any reason, Purchaser may elect to terminate this Agreement by giving written notice to Seller on or before the Inspection Date, whereupon this Agreement shall be deemed to be terminated as of the date of such notice, Purchaser shall be entitled to the prompt return of the Deposit and neither Party shall have any further rights or claims against the other.

## **8.0 ENVIRONMENTAL CONDITION.**

8.1 If Purchaser's Due Diligence Inspection discloses the existence of any Environmental Condition, Purchaser shall provide Seller with notice of such Environmental Condition(s), which notice shall be accompanied by a true and complete copy of the environmental report or other document evidencing such Environmental Condition(s).

8.2 Within Fifteen (15) days after Purchaser's written notice describing the Environmental Condition(s), Seller shall notify Purchaser as to whether or not Seller elects to remove, correct and/or remediate the Environmental Condition(s).

8.3 If Seller so elects, Seller shall have Fifteen (15) days from the date of Purchaser's notice, subject to possible extension by agreement of the Parties, to remedy the Environmental Condition(s), at Seller's sole cost and expense, and shall use due diligence to do so.

8.4 If Seller does not comply with the preceding sentence to Purchaser's reasonable satisfaction within said period, Purchaser shall have the right to (i) terminate this Agreement, or (ii) accept title to the Property as it is, with an offset in the Purchase Price for the cost of curing such Environmental Condition(s), or (iii) enter upon the Property in order to remove, correct and/or remediate the Environmental Condition(s), in which event any and all costs associated with such action taken by Purchaser shall be an offset against the Purchase Price, at the election of the Purchaser.

## **9.0 PURCHASER'S CONTINGENCIES.**

Purchaser's obligation to purchase the Property is subject to the following contingencies (collectively, "Purchaser's Contingencies"):

9.1 Purchaser shall, promptly following the Effective Date, apply for financing for the acquisition of the Property on terms and conditions satisfactory to Purchaser. Purchaser shall use commercially reasonable efforts to obtain a written, unconditional

commitment for issuance of such financing in order to close on the Property. If Purchaser is unable to obtain financing as set forth above, Purchaser may elect to terminate this Agreement by giving written notice to Seller on or before the Closing, whereupon this Agreement shall be deemed to be terminated as of the date of such notice, and Purchaser shall be entitled to the prompt return of the Deposit and neither Party shall have any further rights or claims against the other except for those that expressly survive termination.

9.2 Prior to Closing, Purchaser shall commence work on all approvals for the Project, as chronologically appropriate. If Purchaser is unable to obtain all necessary municipal and/or governmental approvals, including, but not limited to, required subdivision, zoning changes or variances, site plan approvals, and utility approvals sufficient to develop the Project, Purchaser may elect to terminate this Agreement by giving written notice to Seller on or before the Closing Date, whereupon this Agreement shall be deemed to be terminated as of the date of such notice, and Purchaser shall be entitled to the prompt return of the Deposit and neither Party shall have any further rights or claims against the other except for those that expressly survive termination.

9.3 Prior to Closing, Purchaser shall commence efforts to secure construction and permanent financing commitments which may include, without limitation, financing approval from New York State Division of Housing and Community Renewal, equity financing through the sale of low-income housing tax credits, tax-exempt bonds, grants and below-market loans, as available and appropriate, sufficient to rehabilitate, construct and/or develop the Project in accordance with development and operating budgets prepared by the Purchaser (in its sole discretion). If Purchaser is unable to obtain all necessary construction and permanent financing commitments, Purchaser may elect to terminate this Agreement by giving written notice to Seller on or before the Closing Date, whereupon this Agreement shall be deemed to be terminated as of the date of such notice, and Purchaser shall be entitled to the prompt return of the Deposit and neither Party shall have any further rights or claims against the other except for those that expressly survive termination.

#### **10.0 REPRESENTATIONS AND WARRANTIES OF SELLER.**

As a material inducement to cause Purchaser to enter into this Agreement, Seller represents and warrants to Purchaser that:

10.1 Seller has full right, power and authority to execute, deliver and perform this Agreement and has duly obtained all consents or approvals required or necessary in connection with this Agreement. This Agreement when fully executed will constitute a valid and binding agreement of Seller, enforceable against Seller according to its terms.

10.2 Seller has good and indefeasible title in fee simple to the Property. No party has or shall have any right in, or to acquire the Property. At the Closing, the Property shall be free and clear of all Encumbrances except Permitted Encumbrances set forth in Exhibit B.

10.3 There is no action, suit, proceeding or investigation pending or, to the Seller's knowledge, threatened before any Governmental Authority which relates to the Seller or the Property nor does Seller know or have reasonable grounds to know of any basis therefor.

10.4 Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will directly or indirectly, with or without notice or lapse of time or both (1) violate any federal, state or local law, rule or regulation or any judgment, order or decree to which the Seller is subject or (2) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which any of the Seller is a party or by which it is bound or to which any of its assets is subject.

10.5 Seller is not in default in the payment of any taxes levied or assessed against it or its assets (including the Property).

10.6 Seller is not in default under any injunction or judgement which would have a material adverse effect on its ability to perform the obligations contemplated by this Agreement.

10.7 There is no Taking affecting the Property.

10.8 The Property is not situated in any area classified by any Governmental Authority as being a "wetland" or "flood-prone."

10.9 Seller has received no notice from any Governmental Authority of a violation of any requirement of such Governmental Authority with respect to the use or occupation of the Property, including, but not limited to, environmental, zoning, subdivision and other land use requirements, and Seller has received no notice and has no knowledge of any violations or investigations relating to any such requirement.

10.10 Seller has received no notice of any default or breach by Seller under any covenant, condition, restriction, right of way or easement affecting the Property or any portion thereof, and no such default or breach now exists.

10.11 Neither Seller nor the Property are subject to any agreement, restriction or other limitation which might affect the validity, effectiveness, enforceability or performance of this Agreement.

10.12 There are no service contracts or leases affecting all or any part of the Property and there are no oral or written promises, understandings, agreements or commitments between Seller and any third party with respect to the Property, other than those disclosed in Exhibit C.

10.13 The Property is in compliance with all Environmental Laws. Seller has not been charged with, received any notice of and is not under investigation for, failure to comply with any Environmental Law. Neither Seller nor to the best of Seller's knowledge any prior owner, occupant, user or other person have stored, treated, generated, transported, processed, handled, produced or disposed of any Hazardous Materials (except in compliance with applicable Environmental Laws) at the Property. There are no underground storage tanks at the Property.



10.14 Seller has not filed any voluntary petition in bankruptcy or been adjudicated a bankrupt or insolvent, or filed any petition or answer seeking any reorganization, liquidation, dissolution or similar relief under any federal bankruptcy or insolvency laws, or other relief for debtors, or sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator of all or any substantial part of its assets or its interest in the Property. No court of competent jurisdiction has entered an order, judgment, or decree approving reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any federal bankruptcy act, and no liquidator of Seller or of all or any substantial part of its assets or its interest in the Property has been appointed.

10.15 To the best of Seller's knowledge, the Property has the following services available at the property line: (1) natural gas, (2) electric service, (3) telephone, (4) water and sewer, (5) cable television, and (6) high speed internet.

10.16 Seller acknowledges that the Purchase Price represents the fair market value of the Property. The Seller agrees that the transaction is an arms-length transaction which the Parties have entered into without duress and with opportunity to seek independent legal advice. Seller has been informed that Purchaser has no right to acquire the Property by eminent domain.

#### **11.0 REPRESENTATIONS AND WARRANTIES OF PURCHASER.**

As a material inducement to cause Seller to enter into this Agreement, Purchaser represents and warrants to Seller that:

11.1 Purchaser has full right, power and authority to execute, deliver and perform this Agreement, and this Agreement when fully executed will constitute a valid and binding agreement of Purchaser, enforceable against Purchaser according to its terms.

11.2 There is no action, suit, proceeding or investigation pending or threatened before any Governmental Authority which relates to the Purchaser, which would adversely impact its ability to purchase the Property.

#### **12.0 CONDITIONS TO CLOSING.**

Notwithstanding anything in this Agreement to the contrary, Purchaser's obligation to complete the Closing under this Agreement is contingent upon satisfaction or waiver by Purchaser of the following conditions:

12.1 The representations and warranties of Seller contained in this Agreement shall be true on and as of the Closing Date with the same effect as if such representations and warranties had been made on and as of such date.

12.2 Purchaser shall not have discovered any material error, misstatement or omission in the representations and warranties made by Seller in this Agreement.

12.3 Seller shall have substantially complied with all of Seller's covenants pursuant to this Agreement.

12.4 Purchaser shall have deemed satisfied, or waived, all contingencies in Section 9 of this Agreement, if any.

12.5 Prior to or concurrent with Closing, Seller shall have discharged any encumbrances other than the Permitted Encumbrances.

12.6 Purchaser shall not have discovered any Environmental Condition related to the Property.

12.7 Purchaser's receipt of confirmation from the New York State Department of Taxation and Finance that no portion of the Purchase Price is required to be withheld by Purchaser pursuant to Section 1141(c) of the New York Tax Law (Bulk Sales Tax Act) for Seller's unpaid sales or use tax obligations.

### **13.0 SELLER'S COVENANTS.**

Seller covenants that between the Effective Date and the Closing Date:

13.1 It shall not encumber the Property, or enter into any lease or other occupancy agreement with respect thereto without the prior written consent of Purchaser.

13.2 Seller shall not make any improvements to the Property except as may be required by applicable law or Seller's insurer(s) or to remedy any unsafe condition. In such event, Seller shall promptly notify Purchaser in writing of such repairs or improvements.

13.3 Seller shall, at its sole cost and expense, comply with all notices, orders and requirements issued by any Governmental Authority against or affecting the Property.

13.4 Seller shall comply with all Environmental Laws with respect to the Property. Seller shall not store, treat, generate, transport, process, handle, produce or dispose of any Hazardous Materials at the Property.

13.5 Seller will use its best efforts to take all action and to do all things necessary and proper in order to consummate and make effective the transactions contemplated by this Agreement.

13.6 Seller shall be responsible for the maintenance of the Property and shall be responsible for the payment of real property taxes and other carrying costs with respect to the Property.

13.7 Seller shall maintain, at its own expense in full force and effect liability, casualty and other insurance appropriate for the Property.

13.8 Seller shall not withdraw, settle or otherwise compromise any protest or reduction proceeding affecting real estate taxes or assessments imposed with respect to the Property for any fiscal period in which the Closing is to occur or for any subsequent fiscal period without the prior written consent of Purchaser.

13.9 Seller shall immediately notify Purchaser of any material change with respect to the Property, or with respect to any information, representation or warranty heretofore or hereafter furnished by Seller to Purchaser concerning the Property. Seller shall promptly notify Purchaser of the occurrence of any breach of any covenant of Seller in this Section or of the occurrence of any event that may make the satisfaction of the Purchaser's contingencies in Section 9 of this Agreement impossible or unlikely.

13.10 In connection with Purchaser's development, construction, ownership and operation of the Project, Seller hereby consents, promises and assures Purchaser that the Seller will cooperate with and assist the Purchaser or its designee, as applicable, with obtaining, at Purchaser's cost, any and all necessary permits, approvals, PILOT Agreement or tax abatement agreement. Seller further agrees, if requested by Purchaser, to make application in Seller's name for any other zone change or other governmental approval necessary for the Project. Purchaser shall pay all third-party costs incurred related to such permits, approvals and abatements. Seller agrees that such cooperation shall be provided without seeking any compensation or additional consideration by reason of the cooperation required under this Section.

13.11 Seller will not market the Property or entertain other offers for the Property during the term of this Agreement.

#### **14.0 SELLER'S CLOSING OBLIGATIONS.**

At the Closing, Seller shall deliver to Purchaser:

14.1 The Deed, properly executed and in proper form for recording, conveying to Purchaser good and marketable title to the Property subject only to Permitted Encumbrances.

14.2 All other tangible and intangible property rights included in the Property, if any, and to the extent such rights are assignable. Conveyance of these items shall be made by commercially reasonable bills of sale and/or assignment and assumption agreements, and shall include the consent of third parties if required to effectuate the assignment.

14.3 Such affidavits as the Title Company shall reasonably require in order to omit from any title policies being obtained by Purchaser all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to Seller's name.

14.4 Evidence satisfactory to Purchaser and the Title Company that Seller has full right, power and authority to execute and deliver the documents contemplated hereby.

14.5 Checks to the order of the appropriate officers in payment of all real property transfer taxes due hereunder.

14.6 Exclusive possession of (a) the Property, free of all persons or parties in possession, and free of all debris, refuse, garbage, and other personal property not included in the sale to Purchaser and (b) the Improvements, if any, in broom clean condition.

14.7 Any other documents reasonably required by this Agreement or the Title Company.

**15.0 PURCHASER'S CLOSING OBLIGATIONS.**

At the Closing, Purchaser shall:

15.1 Notify Escrow Agent to deliver the Deposit to Seller.

15.2 Deliver the balance of the Purchase Price to Seller.

15.3 Deliver evidence satisfactory to the Title Company and Seller that the persons executing documents at the Closing on behalf of Purchaser have the full right, power and authority to do so.

15.4 Deliver any other documents reasonably required by this Agreement or the Title Company to be delivered by Purchaser.

15.5 Record the Deed.

**16.0 TAXES; ASSESSMENTS; CLOSING COSTS; FIRPTA.**

16.1 Non-delinquent real estate taxes, assessments, water charges and sewer rents, if any, shall be apportioned between Seller and Purchaser as of midnight on the day prior to the Closing Date based on fiscal period for which assessed, in accordance with local custom.

16.2 Seller shall pay any and all transfer, gains, sales or documentary stamp taxes and other taxes due in connection with conveyance of the Property.

16.3 Purchaser shall pay all recording and filing fees incurred in connection with recording the Deed.

16.4 Seller and Purchaser agree to comply in all respects with Section 1445 of the Code and its regulations, which pertain to Seller's status as a foreign or non-foreign person.

**17.0 CASUALTY LOSS.**

17.1 Seller and Purchaser acknowledge and agree that risk of loss to the Property between the Effective Date and the Closing Date shall remain with Seller.

17.2 Upon the occurrence of any Casualty Loss, Seller shall give Purchaser prompt written notice thereof. Within Fifteen (15) days of such notice, Purchaser may elect to terminate this Agreement by giving written notice to Seller, whereupon this Agreement shall be deemed to be terminated as of the date of such notice, Purchaser shall be entitled to the prompt return of the Deposit, and neither Party shall have any further rights or claims against the other.

17.3 If, however, Purchaser elects to proceed with Closing, (a) this Agreement shall continue in full force and effect, (b) Seller shall not voluntarily compromise, settle or adjust any amounts payable by reason of any Casualty Loss without Purchaser's prior written consent,

(c) Seller shall transfer to Purchaser at Closing all of its right to any unpaid insurance proceeds, claims, awards and other payments arising out of such Casualty Loss, (d) Seller shall pay to Purchaser at Closing all sums received by Seller as insurance proceeds, awards or other payments arising out of such Casualty Loss, and (e) Seller shall credit against the portion of the Purchase Price due at Closing the amount of any deductible paid or to be paid by Purchaser related to any insurance policy or insurance proceeds assigned or paid to Purchaser with respect to such Casualty Loss.

#### **18.0 BROKER.**

18.1 Seller and Purchaser represent to each other that neither party has dealt with any brokerage company or individual broker in connection with this Agreement or the transaction contemplated hereby.

18.2 Seller and Purchaser shall indemnify and defend each other against any costs, or expenses, including attorneys' fees, arising out of the breach on their respective parts of any representations, warranties or agreements contained in this Section.

18.3 The representations and obligations under this Section shall survive the Closing, or, if the Closing does not occur, the termination of this Agreement.

#### **19.0 NOTICES.**

19.1 All notices or other communications required hereunder shall be in writing and shall be either personally delivered (so long as the delivery service issues receipts of delivery), sent by certified mail, postage prepaid, return receipt requested, or delivered by any reputable courier service which issues receipts of delivery.

19.2 Notice shall be deemed effective upon receipt, defined as of the date of delivery (or refusal by the addressee to accept delivery). For any notice sent by certified mail or courier service that is not accepted or retrieved by addressee, notice shall be deemed received two (2) calendar days following the first delivery attempt.

19.3 All notices or other communications shall be addressed to the Parties at the addresses listed below with a copy to each Party's respective counsel at the address listed below, or at such other address as may be provided by such Party to the other Parties by notice complying with this Section.

To the Seller:

James J. Volpe  
162 Amann Road  
Honeoye Falls, New York 14472

With a copy to:

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

Attention:

To the Purchaser:

Edgemere Development, Inc.  
277 Alexander Street, Suite 400  
Rochester, NY 14607  
Attention: Christopher Stern

With a copy to:

Cannon Heyman & Weiss, LLP  
726 Exchange Street, Suite 500  
Buffalo, NY 14210  
Attention: Tim M. Favaro, Esq.

## **20.0 DEFAULT BY PURCHASER: REMEDIES OF SELLER.**

20.1 In the event Purchaser fails to comply with any or all of the obligations, covenants, warranties or agreements to be performed, honoured or observed by Purchaser under and pursuant to the terms and provisions of this Agreement and such default is not cured within thirty (30) days after written notice of such default by Seller or, if such default cannot be cured within such thirty (30) day period, such longer period of time as may be necessary to cure such default not to exceed ninety (90) days or such longer period of time as may be approved by Seller, then Seller may, as Seller's sole and exclusive remedy, terminate this Agreement.

20.2 In light of the difficulty of assessing proper damages to Seller, release of the Deposit to Seller shall be considered liquidated damages.

## **21.0 DEFAULT BY SELLER: REMEDIES OF PURCHASER.**

21.1 In the event Seller fails to comply with any or all of the obligations, covenants, warranties or agreements to be performed or honoured by Seller under and pursuant to the terms and provisions of this Agreement, and such default is not cured within thirty (30) days after written notice of such default by Purchaser or, if such default cannot be cured within such thirty (30) day period, such longer period of time as may be necessary to cure such default not to exceed ninety (90) days or such longer period of time as may be approved by Purchaser, then Purchaser may terminate this Agreement and pursue any and all remedies available at law or in equity.

21.2 The Parties acknowledge and agree that the Property is a unique parcel of real property, and therefore, Seller acknowledges, recognizes and agrees that Purchaser shall have the right to seek and obtain the remedy of specific performance.

## **22.0 MISCELLANEOUS PROVISIONS.**

22.1 Calendar Days, Effect of Holidays. All references to "days" herein shall mean calendar days. In the event the expiration of any time period identified herein falls on a

Saturday, Sunday or Federal holiday, the time period shall be deemed extended to the next business day.

22.2 Construction of Agreement. As used in this Agreement, 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.

22.3 Counterparts. This Agreement may be executed in a number of identical counterparts, each of which for all purposes is to be deemed as original, and all of which constitute, collectively, one agreement.

22.4 Enforcement. Should either Seller or Purchaser employ an attorney or attorneys to enforce any of the provisions hereof, or to protect its interest in any manner arising under this Agreement, or to recover damages for the breach of this Agreement, the prevailing Party shall be entitled to payment by the other Party of all reasonable costs, charges and expenses, including reasonable attorney's fees in the trial and appellate courts, expended or incurred in connection therewith.

22.5 Entire Agreement. This Agreement embodies and constitutes the entire understanding between the Parties with respect to the transaction contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this Agreement.

22.6 Execution by Both Parties. This Agreement is submitted to Seller on the understanding that it will not be considered an offer and will not bind Purchaser in any way until Seller has duly executed and delivered to Purchaser and Purchaser has duly executed and delivered to Seller.

22.7 Exhibits. All Exhibits referenced in this Agreement and attached hereto are incorporated and made a part hereof by this reference.

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

22.9 Modification or Amendment. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated unless such modification or amendment is set forth in writing and executed by both Seller and Purchaser.

22.10 Paragraph Headings. The headings at the beginning of each paragraph or Section in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

22.11 Purchaser's Right to Assign. Purchaser may assign all of its rights under this Agreement to any other entity or person, provided Purchaser notifies Seller of such assignment prior to or at the Closing.

22.12 Preparation of Agreement. This Agreement shall not be construed more strongly against either Party regardless of who is responsible for its preparation.

22.13 Severability. In the event that any one or more of the provisions contained in this Agreement should be found or held to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

22.14 Successors and Assigns. This Agreement shall apply to, inure to the benefit of and be binding upon and enforceable against the Parties hereto and their respective successors, assigns, heirs, executors, administrators and legal representatives.

22.15 Time. Time shall not be of the essence in relation to every provision of this Agreement unless otherwise directed by either Party in writing and notice is provided as set forth in Section 19 above.

22.16 Waiver. No waiver by either Party to this Agreement of any failure or refusal by the other Party hereto to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal by such Party to comply.

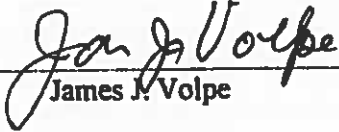
**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.**



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


**SELLER:**

JAMES J. VOLPE, an individual

  
James J. Volpe

**PURCHASER:**

EDGEMERE DEVELOPMENT, INC., a New York  
business corporation

By:   
Name: Christopher Stern  
Title: PRESIDENT

