

**Article II**  
**Purchase Price, Earnest Money**

2.1 **Purchase Price.** The "**Purchase Price**" (herein so called) for the Real Property shall be ~~Five Thousand and No/100 Dollars (\$5,000.00)~~ and No/100 Dollars (\$5,000.00), which shall be payable in immediately available funds at Closing.

2.2 **Earnest Money.**

2.2.1 Not later than three (3) business days following the Effective Date, Purchaser shall deliver to Bond Schoeneck & King PLLC, Attn: Paul Berndt, Esq., 350 Linden Oaks, Rochester, New York 14625 funds in the amount of Five Thousand and No/100 Dollars (\$5,000.00) as the earnest money deposit to be held in escrow and to be delivered in accordance with the provisions hereof (the "**Earnest Money**"). Unless this Agreement is terminated prior to Closing, the Earnest Money shall be applied to the Purchase Price at Closing.

**Article III**  
**Title Documents and Review Period**

3.1 **Title Commitment and Title Policy.** Within fifteen (15) business days after the Effective Date (as defined below), Seller shall deliver to Purchaser an abstract of title (the "**Abstract of Title**"), as well as a copy of January 2, 2018 instrument survey by Alfred I. LaRue of the Real Property (the "**Survey**"). Purchaser shall be responsible for obtaining a Title Commitment within ten (10) business days after receipt of the Abstract of Title and Survey. The Abstract of Title shall be dated subsequent to the Effective Date and in addition thereto there shall be provided legible copies of any recorded instruments set forth as exceptions to title in the Title Commitment (together with the Abstract of Title and the Survey, the "**Title Documents**"). Purchaser shall be responsible for obtaining and paying for any redated survey or new the survey if Purchaser chooses to obtain a new survey. Prior to Closing, Seller shall deliver such documents or take such action such that Purchaser's chosen title company is able to issue to Purchaser an Owner's Policy of Title Insurance in the amount of the Purchase Price on the standard ALTA form with any other additional endorsements required by Purchaser subject only to the Permitted Encumbrances (as defined in Section 3.4 below).

3.2 **Review Period.** Purchaser shall have the absolute right, after receipt of the Title Documents (the "**Review Period**"), to object in writing to any matters reflected by the Title Documents. All matters to which Purchaser objects are "**Non-Permitted Encumbrances.**" Within five (5) business days after receipt of Purchaser's objections, Seller may elect either: (a) not to remove one or more Non-Permitted Encumbrances; or (b) to cure or remove all Non-Permitted Encumbrances at or prior to Closing. Seller shall provide written notice of its election to Purchaser. If Seller fails to respond within such 5-business day period, Seller shall be deemed to have elected Subsection (b) above. If Seller elects Subsection (a), Purchaser shall have the right, after Purchaser's receipt of Seller's election, either to: (i) terminate this Agreement, in which case the Earnest Money shall be returned to Purchaser; or (ii) elect to purchase the Real Property subject to such Non-Permitted Encumbrance (which shall then be deemed to be a Permitted Encumbrance).

3.3 New Matters. In the event any updated Survey or title insurance commitment reflects matters materially different from or additional to those shown on the Title Documents, as applicable, and that Purchaser reasonably believes that they have a material and adverse effect on the Real Property, Purchaser shall have the right, after receipt of notice of such new matter, to notify Seller in writing of its objection thereto. Following Seller's receipt of Purchaser's objections to such new matter, Seller shall have five (5) business days to elect, by providing written notice of its election to Purchaser, to either: (a) not to cure or remove the new matter; or (b) at its sole cost and expense, to cure or remove the new matter at or prior to Closing. If Seller fails to provide such notice within such 5-day period, Seller shall be deemed to have elected Subsection (b) above. If Seller elects Subsection (a), then Purchaser shall have the right either to: (i) terminate this Agreement, in which case the Earnest Money shall be returned to Purchaser; or (ii) elect to purchase the Real Property subject to such new matter (which shall then be deemed to be a Permitted Encumbrance).

3.4 Permitted Encumbrances. Any items (other than those Seller covenants to remove pursuant to Sections 3.2 and 3.3) set forth on the commitment for title insurance obtained by Purchaser, or otherwise revealed by the Title Documents delivered to Purchaser and to which Purchaser does not object or which Purchaser waives in writing, shall be deemed to be "**Permitted Encumbrances.**"

#### **Article IV**

##### Property Documents, Inspection and Acceptance of Properties

4.1 Property Documents. On or before five (5) business days following the Effective Date, Seller shall deliver to Purchaser by electronic or hard copy, any and all maps, drawings, surveys, site, plot or other plans or drawings, environmental reports, geotechnical reports, appraisals; copies of all existing environmental, soils, structural and engineering studies, reports, or data relating to the Real Property, including, without limitation, copies of any and all of the following reports and notices relating to the Real Property: governmental or quasi-governmental reports and notices; environmental compliance audits; insurance investigation reports and notices; copies of any leases, contracts, and agreements concerning or affecting the Real Property in any respect that will survive Closing, including any attendant information and documentation (such as financial information or credit checks) in related to any tenants or other parties holding leasehold interests in and to the Real Property; copies of all licenses, permits, and approvals with respect to the Real Property; copies of any documents evidencing any liens, including, without limitation any restrictive easements and covenants, that affect or relate to the Real Property in any respect; copies of all zoning variances, zoning permits and related permissions, copies of any municipal or state violations, citations or orders noticed against the Real Property, and any other information related to the Real Property that Purchaser reasonably requests (each a "**Property Document**"), provided such items exist and are in Seller's possession or under Seller's control.

Due Diligence and Inspection Periods. Commencing on the Effective Date and continuing for thirty (30) days thereafter (the "**Due Diligence Period**"), Seller shall afford Purchaser and its representatives reasonable access, at all reasonable times during normal business hours, and upon appropriate prior notice to tenants as permitted or required under the Lease, to inspect all aspects of the Real Property and the Improvements, the Title Documents, the

Property Documents, and all other documents or data pertaining to the Real Property (collectively, the **"Due Diligence"**). During the Due Diligence Period, Purchaser shall be entitled to reasonable access to the Real Property for the purpose of conducting one or more inspections (collectively, the **"Inspections"**) of the Real Property (including but not limited to environmental, structural, and mechanical) by a qualified professional or consultant, all at the sole expense of Purchaser. The Inspections shall be conducted during normal business hours and in a good and workmanlike manner in compliance with all applicable laws. Seller shall be entitled to have a representative present during the Inspections. The Inspections will be at the Purchaser's expense and risk. In no event shall: (i) the Inspections unreasonably disrupt or disturb the on-going operation of the Real Property or the rights of any tenants, or (ii) Purchaser or its agents or representatives conduct any drilling or boring on or through the surface of the Real Property (or any part or portion thereof), without Seller's prior written consent, which consent may be withheld in Seller's sole discretion. Notwithstanding the expiration of the Due Diligence Period, if any inspections, including, without limitation, environmental inspections, are requested by Purchaser's lending institution in connection with Purchaser's financing (each a **"Lender Requested Inspection"**), Purchaser's rights hereunder shall be reinstated as if the Due Diligence Period was still in effect, but solely for purposes of conduction the Lender Requested Inspections. If for any reason Purchaser, in its sole and absolute discretion, is not satisfied with any of the Inspections, the Due Diligence or any matter concerning the Real Property, or for any other reason or for no reason, Purchaser may terminate this Agreement by delivering written notice to Seller that it is terminating this Agreement prior to 5:00 p.m. Eastern Standard Time on the last day of the Due Diligence Period and Purchaser will be refunded the Earnest Money (and neither party shall have any further rights or obligations, except for those that explicitly survive by their terms hereunder).

## **Article V**

### **Representations and Warranties**

5.1 **Representations and Warranties of Seller.** As a material inducement to Purchaser to enter into this Agreement and perform its obligations hereunder, Seller, jointly and severally, hereby makes to Purchaser, the representations and warranties contained in this **Article V** as of the Closing (except to the extent that any such representation and warranty refers specifically to an earlier date, in which case such representation and warranty will have been true and correct as of such earlier date).

5.1.1 Seller, if an entity, is duly organized, validly existing and in good standing under the laws of the state of its organization and qualified to do business in the state in which the Real Property is located. Seller has full power, authority and legal right to enter into and perform this Agreement and the agreements, documents and instruments contemplated hereby (collectively, the **"Transaction Documents"**) to which Seller is a party.

#### 5.1.2 Authorization and Non-Contravention.

(a) The Transaction Documents are valid and binding obligations of Seller, enforceable in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or similar laws, from time to time in effect, which affect enforcement of creditors' rights generally.

(b) The execution, delivery and performance of the Transaction Documents, have been duly authorized by all necessary corporate or other action of Seller, as applicable.

(c) The execution, delivery and performance of the Transaction Documents, and the performance of any transactions contemplated by the Transaction Documents will not (i) violate, conflict with or result in a default (whether after the giving of notice, lapse of time or both) under any contract or obligation to which Seller is a party or by which Seller's assets are bound, or any provision of the Articles of Incorporation or shareholders agreement (or similar company organizational document) of Seller, or cause the creation of any lien or encumbrance upon any of the assets of Seller; (ii) violate, conflict with or result in a default (whether after the giving of notice, lapse of time or both) under, any provision of any law, regulation or rule, or any order of, or any restriction imposed by any court or other governmental body applicable to Seller or the Real Property; (iii) require from Seller any notice to, declaration or filing with, or consent or approval of any governmental body or other third party; or (iv) accelerate any obligation under, or give rise to a right of termination of, any agreement, permit, license or authorization to which Seller is a party or by which it or the Real Property is bound or affected.

5.1.3 There is no litigation or governmental proceeding or investigation pending or, to the knowledge of Seller, threatened, by or against Seller or affecting the Real Property, or against any officer, key employee or equity holder of Seller in his or her capacity as such, nor, to the knowledge of Seller, has there occurred any event nor does there exist any condition on the basis of which any litigation, proceeding or investigation might properly be instituted.

5.1.4 Seller has received no notice of any condemnation or eminent domain proceedings, nor entered into negotiations for the sale of any of the Real Property in lieu of condemnation and no condemnation or eminent domain proceedings or negotiations have been commenced or threatened in connection with the Real Property or any part thereof.

5.1.5 Seller has paid all federal, state, local, foreign or other taxes, including, without limitation, income taxes, estimated taxes, excise taxes, sales taxes, use taxes, gross receipts taxes, franchise taxes, employment and payroll related taxes, withholding taxes, stamp taxes, transfer and property taxes, or other tax of any kind whatsoever, which may affect the Real Property or Seller's performance of this Agreement in any manner, including any interest, penalty, or addition thereto, whether disputed or not (collectively, "**Taxes**") required to be paid by it through the date of this Agreement. All Taxes and other assessments and levies which Seller is required to withhold or collect have been withheld and collected and have been paid over to the proper governmental authorities when due.

5.1.6 Seller has good and marketable title to the Real Property and all personal property used in or necessary to the Real Property, including, without limitation, all fixtures that are being conveyed pursuant to this Agreement. Seller is not in violation of any zoning, building or safety ordinance, regulation or requirement or other law or regulation applicable to the operation of its owned or leased properties, nor has Seller received written notice of any violation with which it has not complied in all material respects.

5.1.7 There are no lease or occupancy agreements, developer's agreements, service agreements, maintenance agreements or other written agreements with respect to the Real

Property entered into by Seller that will survive Closing. All sums payable by reason of any labor or services or materials heretofore furnished with respect to the Real Property have been, or prior to Closing will be, paid in full.

5.1.8 No consent, waiver, approval, or authorization of, or filing, registration, or qualification with, or notice to, any governmental authorities or any other entity or person is required to be made, obtained, or given by Seller in connection with the execution, delivery, and performance of this Agreement, except such consent, waiver, approval, authorization, filing, registration or qualification which has been made, obtained or given.

5.1.9 There is no bankruptcy, insolvency, rearrangement or similar action or proceeding, whether voluntary or involuntary, pending or threatened against Seller.

5.1.10 Neither Seller nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

5.1.11 Seller has not caused or permitted the Real Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process any Hazardous Materials, except in compliance with Environmental Laws; nor has Seller caused or permitted, nor does Seller have any knowledge of, any release, spill, leak, emittance, discharge, leaching, seeping, draining or dumping of any Hazardous Materials on the Real Property or off-site emanating from the Real Property. For purposes of this entire Agreement, "**Hazardous Materials**" means "**Hazardous Material**," "**Hazardous Substance**," "**Pollutant or Contaminant**," and "**Petroleum**" and "**Natural Gas Liquids**," as those terms are defined or used in Section 101 of CERCLA, any "solid waste" as defined in the SWDA and any other substances regulated because of their effect or potential effect on public health and the environment, including, without limitation, PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials.

5.1.12 Seller does not know of any underground or above-ground tanks at the Real Property; nor to the knowledge of Seller, are there Hazardous Substances at the Real Property in excess of amounts allowed by Environmental Laws.

5.1.13 Except as set forth in Section 11.9 of this Agreement, no person has or will have, as a result of the sale of the Real Property, any right, interest or claim against or upon Seller for any commission, fee or other compensation as a finder or broker.

5.1.14 Neither the Transaction Documents, nor any other agreement, document or written statement made by Seller and furnished by Seller in connection with the transactions contemplated by this Agreement, contains any untrue statement of a material fact or omits to

state any material fact necessary to make the statements contained in this Agreement or therein not misleading in the light of the circumstances in which they were made.

5.2 Representations and Warranties of Purchaser. Purchaser represents, warrants and covenants to Seller the following:

5.2.1 Purchaser, if an entity, has been duly organized and is validly existing in good standing under the laws of the state of its formation, and is qualified to do business in the state in which the Real Property is located.

5.2.2 The execution and delivery by Purchaser of, and Purchaser's performance under this Agreement, are within Purchaser's powers and, if applicable, have been duly authorized by all requisite parties, and that the person executing this Agreement on behalf of Purchaser has the authority to do so and this Agreement constitutes the legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms.

5.2.3 No consent, waiver, approval, or authorization of, or filing, registration, or qualification with, or notice to, any governmental authorities or any other entity or person is required to be made, obtained, or given by Purchaser in connection with the execution, delivery, and performance of this Agreement, except such consent, waiver, approval, authorization, filing, registration or qualification which has been made, obtained or given.

5.2.4 There is no bankruptcy, insolvency, rearrangement or similar action or proceeding, whether voluntary or involuntary, pending or, to Purchaser's knowledge, threatened against Purchaser.

5.2.5 Neither Purchaser nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of OFAC (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

## **Article VI**

### **Casualty and Condemnation**

6.1 Casualty. If prior to the Closing Date, all or any part of the Real Property is damaged by fire or other casualty, then promptly upon Seller obtaining actual knowledge of any casualty, Seller shall give Purchaser notice of such casualty events and Purchaser shall thereafter have the option to terminate this Agreement.

6.2 Condemnation. In the event of a taking by condemnation or similar proceedings or actions of a material portion of the Land, this Agreement shall at Purchaser's option either: (i) remain in full force and effect, and Seller shall assign or pay to Purchaser at Closing, Seller's interest in and to any condemnation awards or proceeds arising from any such proceedings or actions pertaining to the portion of the Land taken in lieu thereof, or (ii) terminate upon written

notice from Purchaser to Seller given following Purchaser's receipt of written notice from Seller regarding the taking. Promptly upon Seller obtaining actual knowledge thereof, Seller shall give Purchaser notice of any pending or threatened condemnation or similar proceedings or actions in lieu thereof which may arise in connection with all or any part of the Land.

6.3 Termination. In the event Purchaser elects to terminate this Agreement pursuant to the either above provision of this Article VI, the Earnest Money shall immediately thereafter be returned to Purchaser.

## **Article VII**

### **Obligations of Seller; Contingencies of Purchaser**

7.1 Pre-Closing Period. Except as otherwise stated below, between the date hereof and the Closing Date, Seller covenants as follows:

(a) Seller shall, subject only to conditions beyond Seller's reasonable control, continue to operate, manage and maintain the Real Property in its present condition, ordinary wear and tear excepted, consistent with its current operating practices.

(b) Seller shall not enter into any lease without Purchaser's prior written approval.

(c) Seller shall not: (i) enter into any agreement or take any action that is outside the normal scope of maintaining and operating the Real Property; or (ii) remove any fixtures from the Real Property except such as is replaced by Seller by an article of comparable suitability and value, free and clear of any lien or security interest.

7.2 Purchaser's Contingencies. Purchaser's obligation to perform under this Agreement shall be strictly conditioned upon the following, each of which may be waived by Purchaser, except that no such waiver shall be effective unless in writing and duly delivered to Seller:

7.2.1 Purchaser obtaining, at its sole cost and expense and within one hundred twenty (120) days of the Effective Date, all governmental approvals, if any, necessary for its intended use and operation of the Real Property, including as a Ziebart automotive retail outlet (collectively, the "**Government Approvals**"), including, without limitation, its desired zoning designation for the Real Property. Seller shall reasonably cooperate with Purchaser in the pursuit of the Government Approvals including executing any application necessary to obtain each and every Governmental Approval. "**Final Approval**" of the Government Approvals shall be the date when: (i) all Government Approvals have been reviewed and finally approved by the appropriate governmental agencies, (ii) any ordinances with respect thereto have taken effect, (iii) the time has passed for appeal of all Government Approvals, (iv) no notice of referendum or initiative with respect to any Government Approvals has been publicized or published, (v) any appeals or litigation with respect to (iii) and (iv) above have been prosecuted and resolved.

7.2.2 Purchaser accepting and executing a written commitment for financing (the "**Financing**") in amounts and from sources satisfactory to Purchaser, in Purchaser's sole discretion, within ninety (90) days of the Effective Date.

7.2.3 Purchaser performing, in a manner satisfactory to Purchaser's lender, all conditions of the written commitment for the Financing issued to Purchaser, including, without limitation, any and all environmental inspections requested by Purchaser's lender (which inspections, for avoidance of doubt, shall not be subject to the Inspection Period) such that Purchaser's lender authorizes the release of the Financing funds subject only to Purchaser's execution of the loan documents in connection with the Financing.

7.2.4 Seller performing and/or complying with all terms and conditions of this Agreement to be performed or complied with by Seller prior to Closing.

7.2.5 All warranties and representations of Seller contained herein or pursuant hereto being true at Closing as though they were made at Closing.

7.2.6 Seller acknowledges that Purchaser shall not be required to Close unless the contingencies set forth in this Section 7.2, which are for the sole benefit of Purchaser and may be unilaterally waived by Purchaser, are satisfied or waived by Purchaser. If Purchaser fails to meet any contingency at any time prior to the date specified therein or, in the absence of specificity, at any time prior to Closing, and does not waive such contingency in writing, Purchaser shall have the option, but not the obligation, to terminate this Agreement, by written notice to Seller, in which case this Agreement shall terminate as of the date of the notice, except for any Surviving Provisions, and the Earnest Money shall be immediately returned to Purchaser.

7.3 Attorney Approval Contingency. This Agreement is subject to the written approval of attorneys for Purchaser and Seller within five (5) days of the Effective Date (the "**Approval Period**"). The written approval shall be made in accordance with Section 11.1 of this Agreement. Either party's attorney may disapprove of this Agreement within the Approval Period and this Agreement shall be null and void ab initio. Failure to issue an approval or disapproval within the Approval Period shall mean that this Agreement is deemed approved by the party whose attorney failed to respond.

## **Article VIII**

### Closing

8.1 Date of Closing. The purchase and sale contemplated herein shall be consummated at a closing ("**Closing**") to take place at the office of Purchaser's attorney (or Purchaser's lender's attorney) or through the mutual exchange of original documents. Closing on the Real Property shall occur by the later of the date that is ten (10) business days after the written waiver or satisfaction of all contingencies of Purchaser set forth in Section 7.2, or the date that is ten (10) business days of clearance from Purchaser's lender to close on its financing, or such earlier date as mutually agreed upon by Seller and Purchaser (the "**Closing Date**").

8.2 Items to be Delivered by Seller at Closing. At Closing, Seller shall execute, deliver and/or provide to Purchaser, or shall cause to be executed, delivered and/or provided to Purchaser, the following (the "**Closing Documents**"), fully executed and acknowledged as appropriate:



(a) one (1) executed Warranty Deed for the Real Property, subject only to the Permitted Encumbrances, in the form acceptable to Purchaser and Purchaser's title company (the "**Deed**");

(b) one (1) executed Bill of Sale to convey all personal property conveyed pursuant to this Agreement, in the form acceptable to Purchase and Purchaser's title company (the "**Bill of Sale**");

(c) a FIRPTA certificate signed by Seller containing the following: (i) Seller's U.S. Taxpayer Identification Number, (ii) the business address of Seller and (iii) a statement that Seller is not a foreign person within the meaning of Sections 1445 and 7701 of the Internal Revenue Code;

(d) evidence reasonably satisfactory to Purchaser's title company and Purchaser authorizing the consummation by Seller of the transactions contemplated hereby and the execution and delivery of all documents and instruments in connection herewith, including an owner's affidavit reasonably required by the title company;

(e) all such other documents and instruments customarily executed and delivered by a seller of property similar to the Real Property in the jurisdiction in which the Real Property is located, consistent with the terms and provisions of this Agreement, including, without limitation, such as are necessary to remove all Title Objections contained in the title commitment other than the Permitted Encumbrances, in form and substance satisfactory to Purchaser and Purchaser's title company; and

(f) a settlement statement (executed by Seller if requested).

8.3 Items to be Delivered by Purchaser at Closing. At Closing, Purchaser shall execute, deliver and/or provide to Seller or cause to be executed, delivered and/or provided to Seller, the following:

(a) funds representing the balance of the Purchase Price in accordance with Section 2.1 hereof;

(b) evidence reasonably satisfactory to the Title Company and/or Seller authorizing the consummation by Purchaser of the transactions contemplated hereby and the execution and delivery of all documents and instruments in connection herewith;

(c) all such other documents and instruments customarily executed and delivered by a purchaser of property similar to the Real Property in the jurisdiction in which the Real Property is located, consistent with the terms and provisions of this Agreement; and

(d) a settlement statement (executed by Purchaser if requested).

8.4 Delivery of Possession. Possession of the Real Property shall be delivered to Purchaser at Closing. Such delivery of possession shall include, without limitation:

(a) to the extent same exist, the originals of all leases, marketing materials and all books and records of Seller relating to the Real Property and all other items included as part of the Real Property; and

(b) all keys, combinations and codes to all locks and security systems at the Real Property.

## **Article IX**

### **Closing Costs and Prorations**

#### **9.1 Closing Costs.**

9.1.1 Seller will pay: (i) the cost of the creation and delivery of the Title Documents; (ii) the costs of recording NYS Form TP-584 and the transfer tax owed pursuant thereto; (iii) any other costs, expenses and/or prorations to be paid by Seller as provided herein or otherwise customarily paid by the seller in a real property purchase and sale in Ontario County, New York; and (iv) any costs in connection with the releases of existing liens or any other actions or recording of documents necessary to remove all encumbrances upon the Real Property which are not the Permitted Encumbrances.

9.1.2 Purchaser will pay: (i) the premium for Purchaser's owner's policy of title insurance including the cost of any and all endorsements to the policy of title insurance and the cost of a mortgagee's policy, if any; (ii) the costs associated with Purchaser's due diligence and/or financing; (iii) the costs of recording the deed and associated revenue stamp charges and of recording NYS Form RP-5217; and (vii) any other costs, expenses and/or prorations to be paid by Purchaser as provided herein or otherwise customarily paid by the purchaser in a real property purchase and sale in Ontario County, New York.

9.1.3 Except as otherwise provided herein, all other costs shall be allocated in accordance with customary practices in sales of similar properties in Ontario County, New York; provided, however, each party shall pay its own attorneys' fees.

9.2 **Prorations.** At Closing, the following prorations shall be computed and apportioned between Purchaser and Seller as of the end of the day prior to Closing based on the ratio of the number of days in the period for which such charges are paid to the number of days in such period (i) before but not including the date of Closing and (ii) from and after the date of Closing: (a) real and personal property taxes for the Real Property shall be pro-rated as of the Closing Date, and Seller shall pay Seller's pro-rata portion thereof at Closing; and (b) rents and income of the Real Property shall be prorated as of the Closing Date.

## **Article X**

### **Remedies; Indemnities**

10.1 **Seller's Remedies.** In the event that Purchaser shall fail to purchase the Real Property in accordance with the terms and conditions of this Agreement, or otherwise default in the performance of Purchaser's obligations pursuant to this Agreement, for any reason whatsoever, Seller shall be paid and shall retain the Earnest Money as liquidated damages as

Seller's sole remedy hereunder (it being agreed that actual damages would be difficult to determine, vague and speculative in nature).

10.2 Purchaser's Remedies. In the event that Seller shall fail to sell the Real Property in accordance with the terms and conditions of this Agreement, or otherwise default in the performance of Seller's obligations pursuant to this Agreement, as Purchaser's sole remedies hereunder, Purchaser may, at Purchaser's option: (a) purchase the Real Property notwithstanding such default pursuant to the remaining terms and provisions of this Agreement, in which event such default shall be deemed waived; or (b) seek specific performance of the Agreement, provided such action is brought within ninety (90) days after the scheduled Closing Date, or (c) terminate this Agreement, in which event Purchaser shall be entitled to return of the Earnest Money and neither Seller nor Purchaser shall have any further obligation hereunder except those obligations hereunder that expressly survive termination of this Agreement. Purchaser hereby waives any and all other of its rights or remedies, at law or in equity, for breach of this Agreement by Seller, including, but not limited to, a suit for damages.

10.3 Survival of Warranties. All representations and warranties of the Seller contained in this Agreement and all agreements, documents and instruments executed and delivered herewith and therewith will be deemed to have been relied upon by the party or parties to whom they are made, and shall survive the Closing for a period of one (1) year. No action for indemnification pursuant hereto may be brought after the applicable expiration date of the representations, warranties and covenants of the parties contained in this Agreement in accordance with this Section, provided, however, that if before such date one party has notified the other party of a claim for indemnity under this Agreement (whether or not formal legal action will have been commenced based upon such claim), such claim will continue to be subject to indemnification in accordance herewith.

10.4 Indemnification by Seller. For the survival periods set forth in Section 10.3, Seller agrees, on a joint and several basis, to indemnify and hold Purchaser, and its assignee and its owners, officers, directors, agents, attorneys and employees, and Affiliates (collectively, the "**Purchaser Indemnified Parties**" and, individually, a "**Purchaser Indemnified Party**") harmless from and against any and all judgments, damages, liabilities, losses, Taxes, fines, penalties, reasonable costs and expenses (including, without limitation, reasonable legal fees of the Purchaser Indemnified Parties), as the same are incurred, of any kind or nature whatsoever (whether or not arising out of third party claims and including all amounts paid in investigation, defense or settlement of the foregoing) (collectively, the "**Losses**") which may be sustained or suffered by any such Purchaser Indemnified Party, based upon, arising out of, or by reason of (a) fraud or intentional misrepresentation by Seller; (b) any breach of any representation, warranty, agreement or covenant of Seller under this Agreement or in any certificate, schedule or exhibit delivered pursuant to this Agreement, or by reason of any claim, action or proceeding asserted or instituted growing out of any matter or thing constituting a breach of such representations or warranties; and (c) any liability of Seller for Taxes.

10.5 Indemnification by Purchaser. Subject to a survival period of one (1) year from the date of the Closing, Purchaser agrees to indemnify and hold Seller and their respective shareholders, members, officers, managers, agents, attorneys and employees, and Affiliates of each of the foregoing (collectively, the "**Seller Indemnified Parties**" and, individually, a

"**Seller Indemnified Party**") harmless from and against any and all Losses based upon, arising out of, or by reason of (a) fraud or intentional misrepresentation by Purchaser; (b) any breach of any representation, warranty, agreement or covenant of Purchaser under this Agreement or in any certificate, schedule or exhibit delivered pursuant to this Agreement, or by reason of any claim, action or proceeding asserted or instituted growing out of any matter or thing constituting a breach of such representations or warranties; and (c) any liability of Purchaser for Taxes.

10.6 Indemnification Procedures. An indemnified party may make claims for indemnification hereunder by giving written notice thereof to the indemnifying party within the period in which indemnification claims can be made hereunder. If indemnification is sought for a claim or liability asserted by a third party, the indemnified party shall also give written notice thereof to the indemnifying party promptly after it receives notice of the claim or liability being asserted, but the failure to do so shall not relieve the indemnifying party from any liability except to the extent that it is prejudiced by the failure or delay in giving such notice. Such notice shall summarize the bases for the claim for indemnification and any claim or liability being asserted by a third party. Within twenty (20) days after receiving such notice the indemnifying party shall give written notice to the indemnified party stating whether it disputes the claim for indemnification and whether it will defend against any third-party claim or liability at its own cost and expense. If the indemnifying party fails to give notice that it disputes an indemnification claim within twenty (20) days after receipt of notice thereof, it shall be deemed to have accepted and agreed to the claim, which shall become immediately due and payable. The indemnifying party shall be entitled to direct the defense against a third party claim or liability with counsel selected by it (subject to the consent of the indemnified party, which consent shall not be unreasonably withheld or delayed) as long as the indemnifying party is conducting a good faith and diligent defense. The indemnified party shall at all times have the right to fully participate in the defense of a third party claim or liability at its own expense directly or through counsel; provided, however, that if the named parties to the action or proceeding include both the indemnifying party and the indemnified party and the indemnified party is advised that representation of both parties by the same counsel would be inappropriate under applicable standards of professional conduct, the indemnified party may engage separate counsel at the expense of the indemnifying party. If no such notice of intent to dispute and defend a third party claim or liability is given by the indemnifying party, or if such good faith and diligent defense is not being or ceases to be conducted by the indemnifying party, the indemnified party shall have the right, at the expense of the indemnifying party, to undertake the defense of such claim or liability (with counsel selected by the indemnified party), and to compromise or settle it, exercising reasonable business judgment. If the third party claim or liability is one that by its nature cannot be defended solely by the indemnifying party, then the indemnified party shall make available such information and assistance as the indemnifying party may reasonably request and shall cooperate with the indemnifying party in such defense, at the expense of the indemnifying party.

10.7 Determination of Losses. For purposes of determining the amount of any Losses, the representations and warranties of the parties set forth in this Agreement will be considered, without regard to any materiality, material adverse effect or other similar qualifications set forth in this Agreement.

**Article XI**  
**Miscellaneous**

11.1 **Notices.** All notices and other communications under this Agreement shall be in writing, and shall be deemed to be sufficiently given (a) when delivered personally, or (b) one (1) business day after having been sent by Federal Express or other recognized overnight courier for which receipt is given, or (c) when delivered by electronic mail by the attorney for either party to the attorney for the other party or (d) three (3) days after having been mailed by certified mail return receipt requested, (in each case) to a party at its address set forth at the beginning of this Agreement, or to such other address as such party may designate to the other parties in writing.

11.1.1 The following email addresses must be used for a party to give effective notice under Section 11.1(c):

(a) If to Purchaser: [tonyz@bartny.com](mailto:tonyz@bartny.com); with a copy to Purchaser's attorney at: [ascaliala@dlfpc.com](mailto:ascaliala@dlfpc.com)

(b) If to Seller: [peveland@gmail.com](mailto:peveland@gmail.com); with a copy to Seller's attorney at: [pberndt@bsk.com](mailto:pberndt@bsk.com).

11.2 **Time for Performance.** TIME IS OF THE ESSENCE FOR ALL PROVISIONS CONTAINED HEREIN. If the final day of any period herein falls on a Saturday, Sunday, or United States legal holiday, then the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

11.3 **Effective Date.** The date that the last of Seller or Purchaser executes this Agreement and delivers such fully executed copy of this Agreement to the other respective party hereto, shall be the "**Effective Date.**"

11.4 **Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the parties hereto with respect to the specific matters agreed to herein and the parties hereto acknowledge that no oral or other agreements, understandings, representations or warranties exist with respect to this Agreement or with respect to the obligations of the parties hereto under this Agreement, except those specifically set forth in this Agreement, and any other agreement or instrument executed and delivered by any of the parties as of the date hereof and in connection with the transactions described herein.

11.5 **Construction.** Unless the context otherwise requires, singular nouns and pronouns, when used herein, shall be deemed to include the plurals of such nouns or pronouns and pronouns of one gender shall be deemed to include the equivalent pronouns of the other gender.

11.6 **Captions.** The captions and headings used herein are for convenience only and do not in any way limit or modify the provisions of this Agreement.

11.7 Enforceability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity and enforceability of the remaining provisions shall not be affected thereby.

11.8 Jurisdiction and Venue/Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Venue for any action arising under or in connection with this Agreement shall exclusively lie in any court of competent jurisdiction in Monroe County or Ontario County, New York. If any action is instituted between Seller and Purchaser in connection with the enforcement of this Agreement or any provision hereof, the party prevailing in such action shall be entitled to recover from the other party all of its reasonable costs in bringing such action, including reasonable attorney fees.

11.9 Brokers. It is acknowledged by Seller and Purchaser that there are no Real Estate Agents involved in connection with this transaction.

11.10 Assignment. Purchaser shall have the right to assign this Agreement at any time prior to Closing, to an affiliate entity or any entity owned, in whole or in part, by Purchaser,

11.11 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original hereof and all of which taken together shall constitute one and the same agreement.

11.12 Life of Offer. The offer from Purchaser as contained in this Agreement shall be deemed withdrawn at 5:00 pm EST on Friday, September 25, 2020, unless this Agreement is duly executed by Seller and delivered to Purchaser in accordance with Section 11.1 prior to such time.

*[Remainder of page intentionally left blank;  
Signature pages to follow]*

IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement to be effective as of the Effective Date.

**SELLER:**

**LYNN FARASH**  
an individual

Patricia Loveland, POA for  
Lynn Farash

**PURCHASER:**

**TONY MATTIACIO**  
an individual

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IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement to be effective as of the Effective Date.

**SELLER:**

**LYNN FARASH**  
an individual

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**PURCHASER:**

**TONY MATTIACIO**  
an individual

A handwritten signature in black ink, consisting of a large, stylized 'T' followed by a horizontal line and a loop.



**EXHIBIT "A"**

**Legal Description of the Land**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Canandaigua, County of Ontario and State of New York, being known as Lot R1B, as shown on Map No. 32180, filed in the Ontario County Clerk's Office.