

## RESOLUTION APPROVING OPTION AGREEMENTS

A regular meeting of the Troy Community Land Bank Corporation (the "TCLB") was convened pursuant to and was in all respects duly held pursuant to Governor's Executive Order 202.1 (2020) permits the board to consider the use of telephone conferencing, "to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed; and due notice of the time and place of said meeting was duly given in accordance with the Governor's Executive Order 202.1 (2020) on October 21, 2020 at 8:30 am o'clock local time, local time.

The meeting was called to order by the Chair of TCLB and, upon roll being called, the following members of the Agency were:

### PRESENT:

Heather King	Chair	<u>Present</u>
Suzanne Spellen	Vice-Chair	<u>Present</u>
Sharon Nichols	Treasurer	<u>Present</u>
Brian Barker	Secretary	<u>Present</u>
Andrew Cooper	Member	<u>Present</u>
Jeanette Nicholson	Member	<u>Present</u>
John Cubit	Member	<u>Present</u>
John Carmello	Member	<u>Present</u>
Krystina Marable	Member	<u>Present</u>
Patricia Reilly	Member	<u>Present</u>

## RESOLUTION APPROVING OPTION AGREEMENTS

**WHEREAS**, New York Not-For-Profit Corporation Law §1609(d) authorizes the Troy Community Land Bank Corporation, Inc. ("Land Bank") to convey, exchange, sell, or transfer any of its interests in, upon or to real property; and

**WHEREAS**, the Land Bank is the owner of the following parcels:

### PROPERTY

Tax ID Number	Address	Type
90.62-3-39	806 River Street	Lot
90.62 -3-41	810 River Street	Lot
90.62-3-42	812 River Street	Lot
90.54-1-15	879 River Street	Lot
90.54-1-14	881 River Street	Lot

90.54-1-18	102 West Glen Avenue	Lot
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**WHEREAS**, the Land Bank shall serve as contract vendee for the following parcels;

Tax ID Number	Address	Type
90.62-3-13	809 River Street	Building
90.62-3-43	814 River Street	Building
90.62-3-48	834 River Street	Building
90.62-5-6	3215 Sixth Avenue	Building

**WHEREAS**, the Troy Community Land Bank Corporation published a Request for Proposals to Development the aforementioned parcels; and

**WHEREAS**, BCREI NEW YORK, LLC has proposed a development plan which has been reviewed and approved by the Acquisition and Disposition Committee of the Land Bank; and

**WHEREAS**, BCREI NEW YORK, LLC and the Land Bank have agreed to an Option To Purchase Real Estate for the parcels set forth above; and

**WHEREAS**, for good and valuable consideration for the Option to Purchase Real Estate, BCREI NEW YORK, LLC shall enter into an Option Agreements with the Land Bank for the parcels that is attached as Appendix "A;"

**NOW, THEREFORE, BE IT RESOLVED** by the Troy Community Land Bank Corporation that:

1. The proposed Option To Purchase Real Estate Agreements as attached to this Resolution as Appendix "A" is hereby adopted.
2. This Resolution shall be effective immediately.



The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Heather King	Chair	VOTING	<u>YES</u>
Suzanne Spellen	Vice-Chair	VOTING	<u>YES</u>
Sharon Nichols	Treasurer	VOTING	<u>YES</u>
Brian Barker	Secretary	VOTING	<u>YES</u>
Andrew Cooper	Member	VOTING	<u>YES</u>
Jeanette Nicholson	Member	VOTING	<u>YES</u>
John Cubit	Member	VOTING	<u>YES</u>
John Carmello	Member	VOTING	<u>YES</u>
Krystina Marable	Member	VOTING	<u>YES</u>
Patricia Reilly	Member	VOTING	<u>YES</u>

The foregoing Resolution was thereupon declared duly adopted unanimously meeting the requirements of the Land Bank's bylaws requiring a majority of the Board approving this resolution.

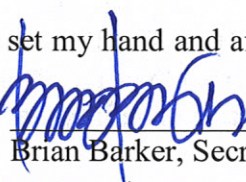
STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF RENSSELAER )

I, the undersigned Secretary of the TROY COMMUNITY LAND BANK CORPORATION DOES HEREBY CERTIFY, that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Land Bank, including the Resolution contained therein, held on October 21, 2020 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Land Bank had due notice of said meeting; (B) said meeting was in all respects duly held pursuant to Governor's Executive Order 202.1 (2020) permits the board to consider the use of telephone conferencing, "to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed; and due notice of the time and place of said meeting was duly given in accordance with the Governor's Executive Order 202.1 (2020); (D) there was a quorum of the members of the Land Bank present throughout said meeting; and (E) Pursuant to the Land Bank Bylaws, a majority of the Board has voted to approve this resolution.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed, or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Land Bank this 22<sup>nd</sup> day of October, 2020.

  
\_\_\_\_\_  
Brian Barker, Secretary

## **OPTION FOR THE PURCHASE OF REAL PROPERTY**

**THIS OPTION FOR THE PURCHASE OF REAL PROPERTY** ("Agreement"), made this \_\_\_\_ day of \_\_\_\_\_, 2020, is by and between **TROY COMMUNITY LAND BANK CORPORATION**, a New York State not-for-profit corporation, having its principal place of business at 200 Broadway, Suite 701, Troy, New York 12180 (the "Seller") and **BCREI NEW YORK LLC**, a New York limited liability company, having its principal place of business at c/o Beacon Communities LLC, Two Center Plaza, Suite 700, Boston, Massachusetts 02108 (the "Purchaser").

### **RECITALS:**

**WHEREAS**, the Seller is: (a) the owner of certain real property located at 806, 810, 812, 879 and 881 River Street and 102 W. Glen Avenue, City of Troy, County of Rensselaer, State of New York being designated as Tax Map Numbers 90.62-3-39, 90.62-3-41, 90.62-3-42, 90.54-1-15, 90.54-1-14 and 90.54-1-18, respectively, and more particularly described in Exhibit A, attached hereto and made a part hereof (the "TCLB Parcels"); and (b) the contract vendee of certain real property located at 809, 814 and 834 River Street and 3215 Sixth Avenue, City of Troy, County of Rensselaer, State of New York being designated as Tax Map Numbers 90.62-3-13, 43, 48 and 90.62-5-6, and more particularly described in that certain Purchase and Sale Agreement dated \_\_\_\_\_, 2020 by and between Vesta Community Housing Development Board, Inc. ("Vesta") and the Seller (the "Vesta PSA") attached hereto as Exhibit B and made a part hereof (the "Vesta Parcels", and together with the TCLB Parcels, the "Property"), which Property the Purchaser intends to develop into a multi-family residential apartment complex containing one hundred (100) dwelling units, or such lesser amount as shall be acceptable to the Purchaser in its sole and absolute discretion (the "Project"); and

**WHEREAS**, the Purchaser desires to obtain an option to purchase and acquire all of Seller's right, title and interest in and to the Property, and Seller is willing to grant such an option to the Purchaser, each upon and subject to the terms and conditions specified herein.

**NOW, THEREFORE**, in consideration of the mutual promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Grant of Option.** Seller hereby grants to Purchaser the exclusive right and option to purchase, upon the terms and conditions hereinafter set forth, all of Seller's right, title and interest in and to the Property, and to any land lying in the bed of any highway, open or proposed, abutting said parcel, all improvements thereon, all rights of way, licenses, privileges, appurtenances and water, mineral and air rights, if any.

2. **Consideration.** As consideration for Seller's grant of the Option, Purchaser shall pay Seller the sum of ONE THOUSAND AND 00/100 DOLLARS (\$1,000.00) (the "Option Fee" or sometimes hereinafter referred to as the "Deposit"), which Option Fee shall be credited against the Purchase Price (as such term is defined herein) in the event Purchaser exercises the Option to purchase the Property.

3. Option Term. The term of the Option (the “Option Term”) shall commence upon the date of this Agreement and shall expire one (1) year therefrom.

4. Exercise of Option. Purchaser may exercise the Option at any time during the Option Term by giving written notice to Seller. The date upon which said notice is given shall hereinafter be referred to as the “Option Exercise Date”. In the event Purchaser does not exercise the Option to purchase the Property, this Agreement shall expire and terminate, the Option Fee shall be disbursed in accordance with Section 6(a)(iii) below, and neither party shall have any liability to the other under or pursuant to this Agreement.

5. Contract for Purchase and Sale of Real Property. In the event Purchaser exercises the Option, this Agreement shall, on the Option Exercise Date, become a contract for the purchase and sale of the Property, on the terms and conditions set forth herein, and shall, subject to the same, bind Seller to sell and convey the Property and Purchaser to purchase and pay for the Property. As hereinafter used in this Agreement, the term “Agreement” shall refer to either the Option, or to the purchase and sale contract formed by the exercise of the Option, as the context may require.

6. Purchase Price. The purchase price for the Property (the “Purchase Price”) is SEVENTY FIVE THOUSAND NINE HUNDRED FIFTY AND 00/100 DOLLARS (\$75,950), to be paid as follows:

(a) (i) Within two (2) business days after the execution of this Agreement, Purchaser shall provide Seller with the Option Fee, said Option Fee to be held in escrow by Chicago Title Insurance Company (the “Escrow Agent”) pursuant to subsections (iii) and (iv) of this Section 6(a).

(ii) Intentionally Omitted.

(iii) The Escrow Agent shall hold the Deposit in an insured, interest bearing escrow account (any interest which is received by Escrowee with respect to the Deposit is referred to herein as the “Interest”) to be disbursed and/or delivered as follows:

(A) If title to the Property closes hereunder, the Escrow Agent will disburse the Deposit and the Interest to Seller, as credits against the Purchase Price, as directed in writing by Purchaser (with a copy to Seller).

(B) If Purchaser terminates this Agreement pursuant to the provisions hereof and without breaching this Agreement at any time prior to:

(1) the expiration of the Inspection Period, the Escrow Agent will disburse the Option Fee and the Interest to Purchaser as directed in writing by Purchaser to the Escrow Agent (with a copy to Seller). From and after the expiration of the Inspection Period, if

Purchaser terminates this Agreement pursuant to the provisions hereof and without breaching this Agreement, the Escrow Agent will disburse the Option Fee and the Interest to Seller as directed in writing by Seller to the Escrow Agent (with a copy to Purchaser).

(2) the expiration of the Approvals Period, the Escrow Agent will disburse the Additional Deposit and the Interest to Purchaser as directed in writing by Purchaser to the Escrow Agent (with a copy to Seller). From and after the expiration of the Approvals Period, if Purchaser terminates this Agreement pursuant to the provisions hereof and without breaching this Agreement, the Escrow Agent will disburse the Deposit and the Interest to Seller as directed in writing by Seller to the Escrow Agent (with a copy to Purchaser).

(C) If Purchaser breaches this Agreement and the Agreement is terminated, then subject to the provisions of Section 6(a)(iv) below, the Escrow Agent shall disburse the Deposit and the Interest to Seller as liquidated damages, constituting Seller's sole remedy for Purchaser's breach, as more particularly set forth in Section 14 below.

(D) If Seller breaches this Agreement, or is unable/unwilling to convey good and marketable title to the Property in accordance with the provisions of this Agreement, and the Agreement is terminated as a result, then subject to the provisions of Section 6(a)(iv) below, the Escrow Agent shall disburse the Deposit and Interest to Purchaser and with respect to any breach by the Seller, Purchaser shall have any and all remedies available to it at law or in equity, including without limitation, the right to specifically enforce this Agreement, as more particularly set forth in Section 14 below.

(iv) If either Seller or Purchaser claims that it is entitled to receive all or any portion of the Deposit and/or the Interest prior to the Closing (as defined in Section 7 below), then the claiming party shall notify the Escrow Agent in writing and shall simultaneously deliver written notice of its claim to the other party. If the Escrow Agent does not receive a written objection from or on behalf of the other party within five (5) business days after receipt of the claiming party's notice, then the Escrow Agent shall notify the parties in writing of its intention to deliver to the claiming party all or that portion of the Deposit and/or the Interest claimed by the claiming party if it does not receive a written objection from or on behalf of the other party within ten (10) business days of the date of the Escrow Agent's notice (the "Objection Period"). If no such written objection is received by the expiration of the Objection Period, the Escrow Agent shall deliver to the claiming party all or that portion of the Deposit and/or the Interest claimed and shall notify the other party of such action. If a written objection to the claim is received by the Escrow Agent at any time after the claim is made and before the expiration of the Objection Period, the Escrow Agent shall not deliver any portion of the Deposit or the Interest to the claiming party and the Escrow Agent shall have the right to transfer the Deposit and the Interest to an appropriate court registry without liability. The parties shall execute any Escrow Agreement reasonably required by the Escrow Agent.

(v) The Escrow Agent shall not be liable for any acts or omissions at any time unless caused by the gross negligence or willful malfeasance of the Escrow Agent with respect to the escrow established herein. If a dispute arises between the parties as to the disposition of the Deposit and/or the Interest, the Escrow Agent shall: (a) hold the Deposit and the Interest until the Escrow Agent has received releases signed by all parties to the transaction authorizing disposition of



the Deposit and the Interest, or (b) hold the Deposit and the Interest until such time as one of the parties to the transaction files suit and the court in which this suit is filed orders the disbursement of the Deposit and the Interest, or (c) deliver such Deposit and Interest into the court by filing an Interpleader Action. In the event of any litigation between Seller and Purchaser concerning the Deposit and/or the Interest, Escrow Agent's sole responsibility may be satisfied, at Escrow Agent's option, by delivering the Deposit and the Interest into the court in which such litigation is pending, and Purchaser and Seller agree that upon deliverance of such Deposit and Interest into court, neither Purchaser nor Seller shall have any further right, claim, demand, or action against the Escrow Agent. The parties acknowledge that Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that 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. Seller and Purchaser shall, jointly and severally, indemnify and hold Escrow Agent harmless from and against all costs, claims and expenses, including reasonable attorneys' fees, incurred in connection with the performance of Escrow Agent's duties hereunder, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith, in willful disregard of this Agreement or involving gross negligence on the part of Escrow Agent.

(b) The balance of the Purchase Price due Seller at Closing shall be paid to Seller by or on behalf of Purchaser at Closing by wire transfer, good certified check of Purchaser, or official check of a bank, trust company, or savings and loan association having a banking office in the State of New York, payable to the order of Seller.

7. Closing. Subject to the provisions of this Agreement, and unless this Agreement is canceled by one or both of the parties in a manner permitted hereunder, the closing and transfer of title (the "Closing") shall occur at the office of Cannon Heyman & Weiss, LLP, 54 State Street, 5<sup>th</sup> Floor, Albany, NY 12207 upon the closing on the financing sources identified in Section 13(a)(ii), but in no event later than December 31, 2021 (the "Outside Closing Date"), unless otherwise agreed to by the parties hereto.

8. Deliveries at Closing. (a) At the Closing, as a condition precedent to Purchaser's obligation to close title hereunder and otherwise consummate the transactions contemplated hereby, Seller's representations and warranties shall be true, complete and correct in all material respects and Seller shall deliver to Purchaser the following, in form reasonably acceptable to Purchaser:

(i) A Bargain and Sale Deed with Covenants Against Grantor's Acts (the "Deed") sufficient to convey to the Purchaser good and marketable title to the Property;

(ii) Such affidavits and/or certificates as the Title Company (hereinafter defined) shall reasonably require in order to determine the condition of title to the Property or 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;

(iii) To the extent reasonably deemed necessary by the Purchaser, and/or the Title Company, approval of the New York State Attorney General and/or the New York State

Supreme Court to the sale of the Property, on substantially the same terms and conditions set forth in this Agreement, in accordance with New York State Not-For-Profit Corporation Law §§510-511-a and Religious Corporations Law §12 (the "Order Granting Leave to Sell").

(iv) Properly completed and signed counterparts of those forms required to accompany the Deed. Purchaser agrees to sign and to direct the Title Company to deliver each such form to the appropriate recording office with the Deed promptly after the Closing;

(v) Authorizing resolutions or consents authorizing Seller to enter into the transaction contemplated by this Agreement and to perform its obligations hereunder;

(vii) Such other documents as may be reasonably required by the Purchaser or the Title Company to consummate the transaction contemplated by this Agreement; and

(viii) sole and exclusive use and possession of the Property to Purchaser or its nominee and/or assignee at the Closing, free and clear of all rights of all parties, including any tenancies or leases.

(b) At the Closing, as a condition precedent to Seller's obligation to close title hereunder, Purchaser's representations and warranties shall be true, complete and correct in all material respects and Purchaser shall, in addition to the documents listed in subsection (a) above which are to be countersigned by Purchaser, deliver to Seller the following:

(i) The Purchase Price, as adjusted for apportionments or as otherwise provided herein, and any other amounts payable by Purchaser to Seller at the Closing pursuant to this Agreement;

(ii) Authorizing resolutions or consents authorizing Purchaser to enter into the transaction contemplated by this Agreement and to perform its obligations hereunder; and

(iii) Such other documents as may be reasonably required by Seller or the Title Company to consummate the transaction contemplated by this Agreement.

9. Recording Fees and Costs of Closing. Purchaser acknowledges that Seller is exempt from all recording fees, taxes and user fees pursuant to N.Y. N-PCL Section 1608(a) and that the Purchaser shall bear the cost of recordation of the Deed. Purchaser shall also bear the cost of recording all documents contemplated by this Agreement. Seller shall pay any State or local transfer taxes, or other taxes due on account of this sale.

10. Reserved.

11. Representations, Warranties and Covenants.

(a) Seller represents, warrants and covenants to Purchaser as of the date hereof



and as of the date of Closing as follows (provided that, to the extent any such representations and warranties pertain to the Vesta Parcels, such representations and warranties shall be based solely on the corresponding representations and warranties of Vesta in Section 7(a) of the Vesta PSA and the actual knowledge of the Seller for all periods of time prior to Seller's acquisition of such Vesta Parcels):

(i) Seller has the legal power, right and authority to enter into this Agreement and, subject to receipt of the Order Granting Leave to Sell (as and to the extent required) and the acquisition of the Vesta Parcels from Vesta pursuant to the Vesta PSA, to consummate the transactions contemplated hereby, and the person(s) executing this Agreement on behalf of Seller is/are duly authorized and empowered to act for and to bind Seller;

(ii) This Agreement and all documents required hereby to be executed by Seller are and will be valid, legally binding obligations of and enforceable against Seller in accordance with their terms;

(iii) There are no zoning, moratorium or other land use regulation proceedings, special assessment proceedings, condemnation proceedings, public takings or eminent domain proceedings of any kind pending or, to Seller's actual knowledge, contemplated against the Property or any part thereof;

(iv) Seller has not received notice from any governmental entity having jurisdiction, and has no actual knowledge or reason to believe, that any federal, state or local environmental investigation is pending or overtly threatened with respect to the Property or that the Property fails to comply in all respects with all applicable federal, state and local statutes, laws, ordinances, orders, rules and regulations ("Laws"), including, without limitation, all environmental, health and safety statutes and regulations of every nature whatsoever ("Environmental Laws"), which Environmental Laws shall include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., the Toxic Substances Control Act 15 U.S.C. §§ 2601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j, the Federal Air Pollution Control Act, 42 U.S.C. §§ 7401 et seq., the Oil Pollution Act, 33 U.S.C. §§ 2701 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136-136y, the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq., New York State Environmental Conservation Law, including Article 13 of Title 27, the New York State Navigation Law, Article 12, and those other Laws regarding the presence and removal of Hazardous Materials (as hereinafter defined), each as amended, and any regulations promulgated thereunder or any equivalent state or local law or statute, as amended, and any regulations promulgated thereunder and all other applicable federal, state, local, tribal and territorial laws (including common law), constitutions, statutes, treaties, regulations, rules, ordinances and codes issued by governmental agencies and in the regulations adopted and publications promulgated pursuant thereto;

(v) Seller represents and covenants that, between the date of the Agreement and the Closing or the earlier termination of this Agreement: (A) it shall not permit the

use of the Property for the generation, manufacture, refinement, production, or processing of any gasoline, asbestos or asbestos-containing materials, hazardous substances, wastes or materials, petroleum and petroleum-related products, derivatives and constituents, explosives, radioactive materials, radon, polychlorinated biphenyls or related or similar materials, or any other substance or material as may be defined as a hazardous or toxic substance under Environmental Laws (collectively, "Hazardous Materials") or for the storage, handling, transfer or transportation of any Hazardous Material; and (B) it shall, promptly upon obtaining actual knowledge thereof, provide Purchaser with notice of: (1) any failure of the Property to comply with any Environmental Law in any manner whatsoever; (2) the issuance of any notice, complaint or order of violation or non-compliance of any nature whatsoever with regard to the Property or the use thereof with respect to Environmental Laws; or (3) any notice of a pending or threatened investigation that the Property is not in compliance with any Environmental Law;

(vi) Seller has not discharged any Hazardous Materials at, on, in, under, upon or adjacent to the Property;

(vii) Except for Seller's rights under the Vesta PSA, no person, firm or entity other than the Purchaser has any rights to acquire the Property or any part thereof or has any right of first refusal in connection with the sale of the Property;

(viii) Except for those certain residential leases set forth on the rent roll attached to the Vesta PSA as Exhibit B, there are no leases for all or any portion of the Property nor are there any tenants or parties in possession of the Property, either on a month to month basis or with or without permission of the Seller, other than those tenants occupying the Property (or portions thereof) pursuant to the Existing Leases. At the time of the Closing all Existing Leases shall have expired by their terms, and there will be no leases for all or any portion of the Property, nor any tenants or parties in possession of the Property (or any portion thereof);

(ix) Seller will not enter into any contract, lease, occupancy agreement or any other agreement whatsoever between the date of this Agreement and the Closing (or earlier termination of this Agreement) with respect to or affecting the Property, without the prior written consent of Purchaser, which consent shall be in Purchaser's sole discretion;

(x) Seller is not a "Foreign Person" within the meaning of Paragraph 1445 of the Internal Revenue Code of 1986, as amended;

(xi) There is no action, suit or proceeding pending or, to Seller's actual knowledge, threatened against or affecting Seller in any court, or by or before any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality which (A) individually or in the aggregate, would materially and adversely affect the financial position, business or operations of Seller, taken as a whole, or the performance by Seller of its obligations hereunder, (B) would affect in any material respect the consummation or

validity of this Agreement or the transactions contemplated hereby or (C) would affect the Property in any material respect;

(xii) Seller is not in default (A) in the payment of any taxes levied or assessed against it or its assets (including the Property), or (B) under any statute, rule, order, decree, writ, injunction or regulation of any governmental body (including any court), in either case which would have a material adverse effect on its ability to perform the obligations contemplated by this Agreement;

(xiii) Seller has not received any notice that any default or breach presently exists under any covenant, condition, restriction, right-of-way or easement affecting the Property or any portion thereof which is to be performed or complied with by the owner and which would have a material and adverse effect on the Property, and Seller has no actual knowledge of any fact or condition which would constitute such a default or breach (or event which with notice or lapse of time, or both, could constitute such a default) under any such agreement;

(xiv) 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 a 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. Seller has not given notice to any governmental body of insolvency or pending insolvency, or suspension or pending suspension of operations;

(xv) Neither this Agreement nor the conveyance of the Property to Purchaser will defraud any of Seller's creditors, or render Seller insolvent; and

(xvi) All information furnished to Purchaser by Seller in connection with the Property and this Agreement, including, without limitation, those items furnished by Seller under Section 12(c) below, is complete and correct and Seller has not failed to disclose any information of which it has knowledge and which is material to the Property, the physical condition of the Property or Purchaser's intended use thereof.

The representations and warranties contained in this Section 11(a) shall be true and correct as of the Closing and shall survive the Closing for a period of one (1) year only.

(b) Purchaser represents, warrants and covenants to Seller as of the date hereof and as of the date of Closing as follows:

(i) Purchaser has the legal power, right and authority to enter into this Agreement and to consummate the transactions contemplated hereby;

(ii) The individual executing this Agreement on behalf of Purchaser has the authority to execute this Agreement;

(iii) This Agreement and all documents required hereby to be executed by Purchaser are and will be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms;

(iv) There is no action, suit or proceeding pending or, to Purchaser's actual knowledge, threatened against or affecting Purchaser in any court, or by or before any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality which (A) individually or in the aggregate, would materially and adversely affect the financial position, business or operations of Purchaser, taken as a whole, or the performance by Purchaser of its obligations hereunder, or (B) would affect in any material respect the consummation or validity of this Agreement or the transactions contemplated hereby;

(v) Purchaser is not in default (A) in the payment of any taxes levied or assessed against it or its assets, or (B) under any statute, rule, order, decree, writ, injunction or regulation of any governmental body (including any court), in either case which would have a material adverse effect on its ability to perform the obligations contemplated by this Agreement; and

(vi) Purchaser 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. No court of competent jurisdiction has entered an order, judgment, or decree approving a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any federal bankruptcy act, and no liquidator of Purchaser or of all or any substantial part of its assets has been appointed. Purchaser has not given notice to any governmental body of insolvency or pending insolvency, or suspension or pending suspension of operations.

The representations and warranties contained in this Section 11(b) shall be true and correct as of the Closing and shall survive the Closing for a period of one (1) year only.

## 12. Title; Inspection Period; Right of Entry.

(a) (i) For purposes of this Agreement, "good and marketable title" shall be defined as: marketable title in fee simple, insurable by a title insurance company licensed to do



business in the State of New York and selected by Purchaser (“Title Company”), at standard rates and subject to standard conditions and exceptions; further provided that there shall be no exception concerning parties in possession, mechanic’s liens and other improvement liens, no exception for any mortgage or tax liens (which Seller shall be obligated to pay and discharge as of the Closing) and no exception for an encumbrance which would in Purchaser’s reasonable opinion, prevent or materially adversely affect the construction, development and/or operation of the Project on the Property; and provided further, that Purchaser shall have received a survey acceptable to Purchaser and Purchaser’s Title Company, and which will allow construction, development and operation of the Project as contemplated by Purchaser (the “Survey”), which Survey the Purchaser shall order at its own cost and expense and provide the Seller with a copy of. Seller shall not further encumber the Property commencing on the date of execution hereof. The accrual of additional property taxes and property tax enforcement procedures shall not be deemed a further encumbrance pursuant to the preceding sentence (although any such accruals shall be a liability of Seller to be discharged at Closing).

(ii) Purchaser shall, at its own cost and expense, order a commitment (the “Title Commitment”) for issuance to Purchaser of an ALTA Owner’s Title Insurance Policy, insuring fee simple interest to the Property, in such amount, and including such endorsements as shall be required by Purchaser or any prospective financier of the Project, and shall furnish a copy of such Title Commitment to the Seller. Prior to the expiration of the Inspection Period (as defined below), Purchaser shall notify Seller of any defect in title as of the date of title examination which Purchaser objects to. Purchaser shall be entitled to object to any encumbrance on title to the Property initially arising after the date of Purchaser’s title examination at any time up and until Closing.

(iii) Within ten (10) business days after its receipt of the notice from Purchaser of any objectionable title conditions, Seller shall notify Purchaser as to whether or not Seller shall remedy, or cause to be remedied (at or prior to Closing), at Seller’s and/or Vesta’s cost and expense (as applicable), each of the objectionable title conditions noted by Purchaser, it being agreed that Seller shall cure (or cause Vesta to cure) objectionable title conditions up to the Purchase Price but shall not have an obligation to cure objectionable title conditions (or cause Vesta to cure), the cumulative cost of which exceeds the Purchase Price. If Purchaser does not terminate this Agreement within ten (10) business days after receipt of Seller’s notice above, Purchaser shall be deemed to have accepted all exceptions to title noted in Schedule B of the Title Commitment other than: (i) the objectionable title conditions that Seller has expressly agreed to cure (or cause to be cured); (ii) any mortgage or tax liens; (iii) any exception for unfilled mechanics’ liens; (iv) any exception for defects, liens, encumbrances, adverse claims or other matters created after the date of the Title Commitment but prior to the Closing; and (v) any exception for rights of parties in possession other than tenants in possession under unrecorded leases. The parties agree to cooperate with each other to ensure that the Title Commitment shall be in form and substance acceptable to Purchaser’s lenders and tax credit equity investor as of the Closing.

(b) Purchaser shall have a period of ninety (90) days (the “Inspection Period”) commencing on the execution of this Agreement, to conduct its due diligence including conducting any and all studies, examinations, surveys, inspections and investigations of, or concerning, the Property, including, without limitation, title review, boundary and topographical surveys, traffic

studies, soil borings and tests; air and water studies; engineering and geotechnical studies; asbestos studies; evaluation of zoning and availability of utilities; evaluation of drainage and flood plains and wetlands, if any; evaluation of the integrity of underground storage facilities, if any; and inspection and testing for the presence of any and all hazardous substances and asbestos, to verify and satisfy to the Purchasers' sole discretion that the Property can be acquired, financed, and used for its intended purposes. In the event Purchaser is not satisfied with any aspect of the Property, in its sole and absolute discretion, the Purchaser may elect to cancel this Agreement upon written notice to the Seller at any time prior to the expiration of the Inspection Period or, if applicable, the Extended Inspection Period (as defined in Section 12(e) below) and neither Purchaser nor Seller will have any further liability to each other.

(c) To assist Purchaser in conducting its inspection of the Property, Seller shall provide Purchaser, within three (3) business days of the date of execution hereof, with true and correct copies of all of the following documents and materials pertaining to the Property which are in Seller's possession or control, or otherwise reasonably available to Seller:

(i) All existing leases, options, occupancy agreements, brokerage agreements, and other contracts or agreements, together with all amendments or assignments thereof or correspondence related thereto, which may affect the Property, if any;

(ii) Copies of any survey(s), subdivision plat(s) or other map(s) of the Property and/or any site plans, specifications, drawings or other documents or work product relating to any proposed new construction on the Property;

(iii) A true and complete copy of any existing title insurance policy insuring the Property, any title report(s) on the Property, accompanied by all documents referred to in the report(s), and any other back title information, if any;

(iv) Copies of all existing and proposed easements, covenants, restrictions, agreements, or other documents that affect title to the Property and that are not disclosed by the aforesaid title insurance policy or title report(s), or, if no such documents are known by Seller to exist, a certification of Seller that Seller has not entered into any such documents and, to the best of Seller's knowledge, no such documents exist;

(v) Any environmental reports and studies pertaining to the Property whether prepared for, on behalf of, or by Seller or another party;

(vi) Copies of all engineering, architectural or zoning documents, tests or reports, licenses, permits, warranties, soil reports that concern the Property;

(vii) Copies of decisions, approvals permits and other documents governing or relating to the zoning or subdivision of the Property, including but not limited to plats, variances, special permits, land development plans, comprehensive permits;

(viii) Documentation regarding real estate tax assessments and payments, abatements, payments in lieu of taxes or other agreements or arrangements relating to the payment

of taxes with respect to the Property; and

(x) Copies of any and all additional documents and information pertaining to the Property reasonably requested by Purchaser.

(d) To facilitate Purchaser's inspection of the Property, Seller grants Purchaser, and its duly authorized agents, representatives and employees, including potential lenders, investors and partners, from the date of execution of this Agreement, and at any time prior to the Closing or the earlier termination of this Agreement, the right, at Purchaser's expense and upon reasonable notice to Seller, access and entry in and upon the Property, to inspect the same and to make such surveys, tests and measurements thereof as Purchaser shall deem necessary, including, without limitation, any of the tests described in Section 12(b) above (provided, however, the Purchaser acknowledges that its right to perform such inspections, surveys, tests and measurements of the Vesta Parcels during any period prior to the Seller's acquisition of same emanates solely and exclusively from the rights afforded Purchaser under Section 8(d) of the Vesta PSA). All such testing shall be at Purchaser's sole expense. Purchaser agrees, following any tests performed pursuant to the provisions of this Section 12, to return the Property to substantially the same condition as existed prior to such testing. Furthermore, Purchaser shall indemnify and hold Seller harmless from any and all matters, actions, claims or proceedings asserted against Seller arising in or out of injury to person or property in connection with any such due diligence inspection of the Property as provided herein, including reasonable attorneys' fees. Upon request by Seller, Purchaser, or Purchaser's agents or representatives, shall provide Seller with evidence of liability insurance insuring any of Purchaser's agents or representatives prior to the entry onto the Property by any such agents or representatives.

(e) In the event that any Phase I or other environmental inspection, audit or test conducted or report generated by the Purchaser and/or its representatives during the Inspection Period reveals (i) any violation of any Environmental Law, (ii) any other environmental condition in, on, under or affecting the Property that the Purchaser determines to be objectionable, or (iii) any other conditions or information that the Purchaser determines requires further study and testing to determine whether such conditions involve Hazardous Materials or other objectionable environmental conditions (collectively, "Hazardous Conditions"), the Purchaser shall deliver written notice thereof to the Seller prior to the end of the Inspection Period (an "Environmental Objection Notice"). In such event, the Purchaser shall have the option, and the Environmental Objection Notice shall specify whether the Purchaser elects to exercise such option, to extend the Inspection Period for an additional sixty (60) days to undertake a Phase II environmental audit or such additional environmental testing as Purchaser shall reasonably deem necessary to study such Hazardous Conditions (the "Extended Inspection Period"), provided that the right given to Purchaser to extend the Inspection Period pursuant to this Section 12(e) shall be limited to the grounds set forth in clauses (i), (ii), and (iii) above, and shall not apply to any other situation. If the Purchaser elects not to invoke its termination rights during the Extended Inspection Period, it will have been deemed to have waived any objections to environmental conditions at the Property.

(f) If the Closing does not occur for any reason not the fault of Seller, Purchaser agrees to provide Seller, at no cost to Seller, with copies of any and all studies, reports, tests and other documents prepared in connection with the inspection of the Property pursuant to this Section

12, provided however, that any delivery of documentation to Seller pursuant to this Section 12(f) shall be done without any representation, warranty or assurance from Purchaser of any kind, including, without limitation, any assurance that the preparer(s) of such documentation will permit Seller to rely thereon.

### 13. Contingencies.

(a) Purchaser's obligation to purchase the Property is subject to the following contingencies:

(i) Purchaser shall have obtained all municipal and/or governmental approvals necessary to permit the Purchaser's contemplated construction, development and operation of the Project on the Property, including, without limitation: zoning changes; variances; special use permits; subdivision approval; site plan approval, sanitary sewer, drainage and other utility permits; environmental approval pursuant to 24 CFR Part 58; State Environmental Quality Review Act approval; and New York State Department of Transportation or other highway permits for access onto public highways. The contingency set forth in this Section 13(a)(i) shall not be deemed to have been satisfied unless and until all such approvals shall have been issued in final, non-appealable form and free of any moratorium. Purchaser shall commence work on all approvals for the Project, as chronologically appropriate, and shall diligently pursue the same. Seller agrees to cooperate with Purchaser in obtaining all permits and approvals provided that Seller shall not be required to incur any expense in connection with such cooperation, it being agreed that the Property must allow, by variance or otherwise, for the construction of the Project thereon. In furtherance of the foregoing, Seller shall, at no expense to Seller: (A) make an application in Seller's name for any governmental approvals referenced in this Section 13(a)(i), if requested by Purchaser, without seeking any compensation or additional consideration by reason of such cooperation; and (B) sign all such applications as are required by the respective reviewing agency in order to process Purchaser's applications for such approvals.

(ii) Purchaser shall have obtained construction and permanent financing including without limitation, equity financing by a low-income housing tax credit investor, grants and loans (including below-market subsidy loans), project-based rental assistance, as available and appropriate, sufficient to acquire, construct, develop and operate the Project in accordance with development and operating budgets prepared by the Purchaser (in its sole discretion).

(iii) Purchaser shall have obtained from Seller (and/or third parties) all easements necessary or appropriate to ensure that the Purchaser, upon closing of the Property, has ingress to and egress from the Property, all utilities are available to the Property's lot line, including without limitation, gas, electricity, water, sewer, cable, and other reasonable utilities, and such other rights over the land of Seller or others which are reasonably required or appropriate for the construction, development and operation of the Project on the Property.

(iv) There shall be no material adverse change in the condition of the Property after the expiration of the Inspection Period.



(b) Seller's obligation to sell the Property is subject to: (i) Seller having obtained the Order Granting Leave to Sell, to the extent reasonably deemed necessary by the Purchaser and/or the Title Company; and (ii) with respect to the Vesta Parcels only, Seller's acquisition of such Vesta Parcels from Vesta as contemplated in the Vesta PSA. Seller agrees to make commercially reasonable efforts to secure the Order Granting Leave to Sell and to acquire the Vesta Parcels from Vesta on or before the Outside Closing Date without seeking any compensation or additional consideration by reason of such efforts. In furtherance of the foregoing, Seller agrees to commence the process to obtain the Order Granting Leave to Sell, if and to the extent required, within ten (10) business days after the expiration of the Inspection Period. Purchaser shall, to the extent necessary, sign all such applications as are required by the respective entity in order to process Seller's petition for the Order Granting Leave to Sell.

(c) The contingencies set forth in Section 13(a)(i)-(iii) above shall expire six (6) months after the expiration of the Inspection Period (the "Approvals Period").

#### 14. Default.

(a) If the sale and purchase of the Property as contemplated by this Agreement is not consummated in accordance with the terms and conditions of this Agreement because of Purchaser's default or nonperformance, Seller shall be entitled, as its sole and exclusive remedy, to retain, as liquidated damages and not as a penalty, the Deposit and the Interest (the parties hereby agree that the amount of actual damages that would be incurred by Seller would be difficult to prove and that the amount of the Deposit and the Interest is a reasonable estimate thereof), and this Agreement shall be terminated upon the receipt of the Deposit and the Interest by Seller and neither party shall have any further liability to the other.

(b) If the sale and purchase of the Property as contemplated by this Agreement is not consummated in accordance with the terms and conditions of this Agreement because of Seller's default or nonperformance, the Purchaser may, at Purchaser's option, in its sole and absolute discretion: (i) terminate this Agreement by giving written notice of such termination to Seller, whereupon the Deposit and Interest shall be returned to Purchaser, and all rights, duties and obligations of all the parties hereunder shall expire and this Agreement shall in all respects become null and void; or (ii) exercise such rights and remedies as may be provided for or allowed by law or in equity, including, without limitation, the right to seek and obtain specific performance of this Agreement.

15. Broker. Seller and Purchaser each hereby represents and warrants to the other that it has not utilized the services of any real estate broker, agent, salesperson or finder in connection with this Agreement or the transaction contemplated hereby. Each party covenants and agrees to defend, indemnify and save the other harmless from and against any actions, damages, real estate commissions, fees, costs, and expenses (including reasonable attorney's fees), resulting or arising from any commissions, fees, costs and expenses payable to any other real estate broker or agent with which the indemnifying party has dealt, relating to the execution of this Agreement and/or the purchase and sale of the Property.

16. Effect of Agreement. This Agreement states the whole agreement of the parties hereto regarding the purchase and sale of the Property and all prior agreements, understandings, representations, covenants, agreements and warranties made by either party prior to the date of this Agreement are merged herein and this Agreement alone fully expresses the understanding and agreements of the parties hereto.

17. Amendments. The terms and conditions of this Agreement shall not be changed, altered, modified, or amended unless such change, alteration, modification or amendment is reduced to writing and signed by the party against whom the change, alteration, modification or amendment is to be enforced.

18. Duplicate Originals; Counterparts. This Agreement may be executed in duplicate, and each copy shall be treated for all purposes as an original. Further, this Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

19. Recording. Neither party hereto shall record this Agreement, in whole or in part, and if Purchaser records this Agreement, in whole or in part, such act shall be treated as a default under the terms of this Agreement.

20. Risk of Loss. The Risk of Loss shall remain with Seller until the delivery of the Deed at Closing.

21. Survival. The representations, warranties, agreements and covenants contained in Sections 11 and 15 of this Agreement shall survive the Closing and delivery of the Deed and shall be in full force and effect after the Closing (provided however, with respect to those representations set forth in Section 11, only for the time period set forth therein).

22. Misstatements or Omissions. Each of the parties hereby certifies that no representation or warranty contained herein contains any untrue statement of a material fact or omits to state a material fact necessary to make it not misleading.

23. Controlling Law. The provisions and effects of this Agreement shall be controlled by New York law.

24. Headings. The headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

25. Notice. Any notice, request, demand, statement, authorization, approval or consent made hereunder shall be in writing and shall be personally delivered, sent by Federal Express, or other reputable courier service, or by postage pre-paid registered or certified mail, return receipt

requested, and shall be deemed given when received or refused (as indicated on the receipt) and addressed as follows:

If to Seller: Troy Community Land Bank Corporation  
200 Broadway, Suite 701  
Troy, New York 12180  
Attention: Anthony Tozzi, Executive Director

With a copy to: The Hedgeman Law Firm,  
P.O. Box 177  
Slingerlands, New York 12159  
Attention: Catherine M. Hedgeman, Esq.

If to Purchaser: BCREI New York LLC  
c/o Beacon Communities LLC  
Two Center Plaza, Suite 700  
Boston, Massachusetts 02108  
Attention: Chief Executive Officer

With a copy to: Cannon Heyman & Weiss, LLP  
54 State Street, 5<sup>th</sup> Floor  
Albany, New York 12207  
Attention: Jeremy R. Root, Esq.

it being understood and agreed that each party will use reasonable efforts to send copies of any notices to the addresses marked "With a copy to" hereinabove set forth; provided, however, that failure to deliver such copy or copies shall have no consequence whatsoever to the effectiveness of any notice made to the Purchaser or the Seller. Each party may designate a change of address by notice given, as herein provided, to the other party, at least fifteen (15) days prior to the date such change of address is to become effective.

26. Time of Essence. With respect to all the terms of this Agreement, time is not of the essence, unless expressly stated otherwise herein.

27. Binding Effect. This Agreement shall inure to the benefit of and be binding upon each of the parties hereto and their respective heirs, executors, administrators, successors and assigns, of each.

28. Plurality and Gender. Wherever in this Agreement the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require.

29. Fees and Other Expenses. Each party will pay its own fees and expenses (including attorneys' fees) incurred in connection with the preparation and negotiation of this Agreement and the closing of the transaction contemplated hereunder.

30. Representation by Counsel. Each party represents and warrants that such party has read and reviewed this Agreement in its entirety, has sought and obtained the benefit of full, complete and competent legal advice in connection with this Agreement, and fully understands the meaning and intent of each and every provision hereof. The parties agree that drafting by counsel for any one party of any provision contained in this Agreement shall not be cause for the construction or interpretation of that provision against such party.

31. Assignment or Designation. The Purchaser may elect to assign this Agreement to another affiliated entity involved with the development of the Project and, in such event, Seller agrees to convey title to such entity on payment of the Purchase Price. Further, at or at any time prior to Closing, Purchaser may designate a housing development fund company formed pursuant to Article XI of the New York Private Housing Finance Law in connection with the Purchaser's acquisition, construction, development and operation of the Project, to take title to the Property, as nominee for the Purchaser.

***[Remainder of Page Intentionally Left Blank]***



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

**SELLER:**

**TROY COMMUNITY LAND BANK  
CORPORATION**

By:\_\_\_\_\_

Name: Anthony Tozzi

Title: Executive Director

**PURCHASER:**

**BCREI NEW YORK LLC**

By: Beacon Communities Corp., its Manager

By:\_\_\_\_\_

Name: Duncan Barrett

Title: Authorized Signatory

**ESCROW AGENT:**

**CHICAGO TITLE**

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

**EXHIBIT A**

**DESCRIPTION OF THE TCLB PARCELS**

**EXHIBIT A**  
**THE VESTA PSA**

## **OPTION FOR THE PURCHASE OF REAL PROPERTY**

**THIS OPTION FOR THE PURCHASE OF REAL PROPERTY** ("Agreement"), made this \_\_\_\_ day of \_\_\_\_\_, 2020, is by and between **VESTA COMMUNITY HOUSING DEVELOPMENT BOARD, INC.**, a New York State Not-for-Profit Corporation, having its principal place of business at 428 Duane Avenue, Schenectady, New York 12304 (the "Seller") and **BCREI NEW YORK LLC**, a New York limited liability company, having its principal place of business at c/o Beacon Communities LLC, Two Center Plaza, Suite 700, Boston, Massachusetts 02108 (the "Purchaser").

### **RECITALS:**

**WHEREAS**, the Seller is the owner of certain real property located at 820 River Street, City of Troy, County of Rensselaer, State of New York being designated as Tax Map Numbers 90.62-3-44, and more particularly described in Exhibit A, attached hereto and made a part hereof (the "Property"), which Property the Purchaser intends to develop (in concert with certain other real property situated adjacent, or in close proximity, to the Property) into a multi-family residential apartment complex containing one hundred (100) dwelling units, or such lesser amount as shall be acceptable to the Purchaser in its sole and absolute discretion (the "Project"); and

**WHEREAS**, the Purchaser desires to obtain an option to purchase and acquire all of Seller's right, title and interest in and to the Property, and Seller is willing to grant such an option to the Purchaser, each upon and subject to the terms and conditions specified herein.

**NOW, THEREFORE**, in consideration of the mutual promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

32. Grant of Option. Seller hereby grants to Purchaser the exclusive right and option to purchase, upon the terms and conditions hereinafter set forth, all of Seller's right, title and interest in and to the Property, and to any land lying in the bed of any highway, open or proposed, abutting said parcel, all improvements thereon, all rights of way, licenses, privileges, appurtenances and water, mineral and air rights, if any.

33. Consideration. As consideration for Seller's grant of the Option, Purchaser shall pay Seller the sum of NINE THOUSAND AND 00/100 DOLLARS (\$9,000.00) (the "Option Fee"), which Option Fee shall be credited against the Purchase Price (as such term is defined herein) in the event Purchaser exercises the Option to purchase the Property.

34. Option Term. The term of the Option (the "Option Term") shall commence upon the date of this Agreement and shall expire ten (10) months therefrom.

35. Exercise of Option. Purchaser may exercise the Option at any time during the Option Term by giving written notice to Seller. The date upon which said notice is given shall hereinafter be referred to as the "Option Exercise Date". In the event Purchaser does not exercise

the Option to purchase the Property, this Agreement shall expire and terminate, the Option Fee shall be disbursed in accordance with Section 6(a)(iii) below, and neither party shall have any liability to the other under or pursuant to this Agreement.

36. Contract for Purchase and Sale of Real Property. In the event Purchaser exercises the Option, this Agreement shall, on the Option Exercise Date, become a contract for the purchase and sale of the Property, on the terms and conditions set forth herein, and shall, subject to the same, bind Seller to sell and convey the Property and Purchaser to purchase and pay for the Property. As hereinafter used in this Agreement, the term "Agreement" shall refer to either the Option, or to the purchase and sale contract formed by the exercise of the Option, as the context may require.

37. Purchase Price. The purchase price for the Property (the "Purchase Price") is ONE HUNDRED SEVENTY THOUSAND AND 00/100 DOLLARS (\$170,000.00), to be paid as follows:

(a) (i) Within two (2) business days after the execution of this Agreement, Purchaser shall provide Seller with the Option Fee, said Option Fee to be held in escrow by Chicago Title Insurance Company (the "Escrow Agent") pursuant to subsections (iii) and (iv) of this Section 6(a).

(ii) Within two (2) business days after the expiration of the Inspection Period (as defined in Section 12(b) below), so long as Purchaser shall not have elected to terminate this Agreement pursuant to Section 12(b) below, Purchaser shall deposit with the Escrow Agent the additional sum of FIFTEEN THOUSAND AND 00/100 DOLLARS (\$15,000.00) (the "Additional Deposit") to be held in escrow pursuant to subsections (iii) and (iv) of this Section 6(a). The Additional Deposit, together with the Option Fee are sometimes hereinafter collectively referred to as the "Deposit".

(iii) The Escrow Agent shall hold the Deposit in an insured, interest bearing escrow account (any interest which is received by Escrowee with respect to the Deposit is referred to herein as the "Interest") to be disbursed and/or delivered as follows:

(A) If title to the Property closes hereunder, the Escrow Agent will disburse the Deposit and the Interest to Seller, as credits against the Purchase Price, as directed in writing by Purchaser (with a copy to Seller).

(B) If Purchaser terminates this Agreement pursuant to the provisions hereof and without breaching this Agreement at any time prior to:

(3) the expiration of the Inspection Period, the Escrow Agent will disburse the Option Fee and the Interest to Purchaser as directed in writing by Purchaser to the Escrow Agent (with a copy to Seller). From and after the expiration of the Inspection Period, if Purchaser terminates this Agreement pursuant to the provisions hereof and without breaching this Agreement, the Escrow Agent will disburse the Option Fee and the Interest to Seller as directed in writing by Seller to the Escrow Agent (with a copy to Purchaser).

(4) the expiration of the Approvals Period, the Escrow Agent will disburse the Additional Deposit and the Interest to Purchaser as directed in writing by Purchaser to the Escrow Agent (with a copy to Seller). From and after the expiration of the Approvals Period, if Purchaser terminates this Agreement pursuant to the provisions hereof and without breaching this Agreement, the Escrow Agent will disburse the Deposit and the Interest to Seller as directed in writing by Seller to the Escrow Agent (with a copy to Purchaser).

(C) If Purchaser breaches this Agreement and the Agreement is terminated, then subject to the provisions of Section 6(a)(iv) below, the Escrow Agent shall disburse the Deposit and the Interest to Seller as liquidated damages, constituting Seller's sole remedy for Purchaser's breach, as more particularly set forth in Section 14 below.

(D) If Seller breaches this Agreement, or is unable/unwilling to convey good and marketable title to the Property in accordance with the provisions of this Agreement, and the Agreement is terminated as a result, then subject to the provisions of Section 6(a)(iv) below, the Escrow Agent shall disburse the Deposit and Interest to Purchaser and with respect to any breach by the Seller, Purchaser shall have the right to specifically enforce this Agreement, as more particularly set forth in Section 14 below.

(iv) If either Seller or Purchaser claims that it is entitled to receive all or any portion of the Deposit and/or the Interest prior to the Closing (as defined in Section 7 below), then the claiming party shall notify the Escrow Agent in writing and shall simultaneously deliver written notice of its claim to the other party. If the Escrow Agent does not receive a written objection from or on behalf of the other party within five (5) business days after receipt of the claiming party's notice, then the Escrow Agent shall notify the parties in writing of its intention to deliver to the claiming party all or that portion of the Deposit and/or the Interest claimed by the claiming party if it does not receive a written objection from or on behalf of the other party within ten (10) business days of the date of the Escrow Agent's notice (the "Objection Period"). If no such written objection is received by the expiration of the Objection Period, the Escrow Agent shall deliver to the claiming party all or that portion of the Deposit and/or the Interest claimed and shall notify the other party of such action. If a written objection to the claim is received by the Escrow Agent at any time after the claim is made and before the expiration of the Objection Period, the Escrow Agent shall not deliver any portion of the Deposit or the Interest to the claiming party and the Escrow Agent shall have the right to transfer the Deposit and the Interest to an appropriate court registry without liability. The parties shall execute any Escrow Agreement reasonably required by the Escrow Agent.

(v) The Escrow Agent shall not be liable for any acts or omissions at any time unless caused by the gross negligence or willful malfeasance of the Escrow Agent with respect to the escrow established herein. If a dispute arises between the parties as to the disposition of the Deposit and/or the Interest, the Escrow Agent shall: (a) hold the Deposit and the Interest until the Escrow Agent has received releases signed by all parties to the transaction authorizing disposition of the Deposit and the Interest, or (b) hold the Deposit and the Interest until such time as one of the parties to the transaction files suit and the court in which this suit is filed orders the disbursement of the Deposit and the Interest, or (c) deliver such Deposit and Interest into the court by filing an Interpleader Action. In the event of any litigation between Seller and Purchaser concerning the

Deposit and/or the Interest, Escrow Agent's sole responsibility may be satisfied, at Escrow Agent's option, by delivering the Deposit and the Interest into the court in which such litigation is pending, and Purchaser and Seller agree that upon deliverance of such Deposit and Interest into court, neither Purchaser nor Seller shall have any further right, claim, demand, or action against the Escrow Agent. The parties acknowledge that Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that 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. Seller and Purchaser shall, jointly and severally, indemnify and hold Escrow Agent harmless from and against all costs, claims and expenses, including reasonable attorneys' fees, incurred in connection with the performance of Escrow Agent's duties hereunder, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith, in willful disregard of this Agreement or involving gross negligence on the part of Escrow Agent.

(b) The balance of the Purchase Price due Seller at Closing shall be paid to Seller by or on behalf of Purchaser at Closing by wire transfer, good certified check of Purchaser, or official check of a bank, trust company, or savings and loan association having a banking office in the State of New York, payable to the order of Seller.

38. Closing. Subject to the provisions of this Agreement, and unless this Agreement is canceled by one or both of the parties in a manner permitted hereunder, the closing and transfer of title (the "Closing") shall occur at the office of Cannon Heyman & Weiss, LLP, 54 State Street, 5<sup>th</sup> Floor, Albany, NY 12207 within sixty (60) days after the expiration of the Approvals Period (the "Outside Closing Date"), unless otherwise agreed to by the parties hereto.

39. Deliveries at Closing. (a) At the Closing, as a condition precedent to Purchaser's obligation to close title hereunder and otherwise consummate the transactions contemplated hereby, Seller's representations and warranties shall be true, complete and correct in all material respects and Seller shall deliver to Purchaser the following, in form reasonably acceptable to Purchaser:

(i) A Bargain and Sale Deed with Covenants Against Grantor's Acts (the "Deed") sufficient to convey to the Purchaser good and marketable title to the Property;

(ii) Such affidavits and/or certificates as the Title Company (hereinafter defined) shall reasonably require in order to determine the condition of title to the Property or 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;

(iii) If required under New York law, approval of the New York State Attorney General and/or the New York State Supreme Court to the sale of the Property, on substantially the same terms and conditions set forth in this Agreement, in accordance with New York State Not-For-Profit Corporation Law §§510-511-a and Religious Corporations Law §12 (the "Order Granting Leave to Sell").

(iv) Properly completed and signed counterparts of those forms required



to accompany the Deed, including but not limited to with respect to the payment of transfer taxes attributable to this transaction. Purchaser agrees to sign and to direct the Title Company to deliver each such form to the appropriate recording office with the Deed promptly after the Closing;

(v) Authorizing resolutions or consents authorizing Seller to enter into the transaction contemplated by this Agreement and to perform its obligations hereunder;

(vii) Such other documents as may be reasonably required by the Purchaser or the Title Company to consummate the transaction contemplated by this Agreement; and

(viii) sole and exclusive use and possession of the Property to Purchaser or its nominee and/or assignee at the Closing, free and clear of all rights of all parties, including any tenancies or leases.

(b) At the Closing, as a condition precedent to Seller's obligation to close title hereunder, Purchaser's representations and warranties shall be true, complete and correct in all material respects and Purchaser shall, in addition to the documents listed in subsection (a) above which are to be countersigned by Purchaser, deliver to Seller the following:

(i) The Purchase Price, as adjusted for apportionments or as otherwise provided herein, and any other amounts payable by Purchaser to Seller at the Closing pursuant to this Agreement;

(ii) Authorizing resolutions or consents authorizing Purchaser to enter into the transaction contemplated by this Agreement and to perform its obligations hereunder; and

(iii) Such other documents as may be reasonably required by Seller or the Title Company to consummate the transaction contemplated by this Agreement.

40. Recording Fees and Costs of Closing. Purchaser shall bear the cost of recordation of the Deed. Purchaser shall also bear the cost of recording all documents contemplated by this Agreement. Seller shall pay any State or local transfer taxes, or other taxes due on account of this sale.

41. Apportionments. The following items shall be prorated between Seller and Purchaser as of 12:01 a.m. on the Closing Date: any property taxes, assessments, water, sewer, or other municipal charges that are assessed against the Property, all rents and other amounts paid by a tenant or paid by a third party on account for a tenant, fuel and other such items as are customarily apportioned in accordance with real estate closings of commercial properties in Rensselaer County, New York.

42. Representations, Warranties and Covenants.

(a) Seller represents, warrants and covenants to Purchaser as of the date hereof and as of the date of Closing as follows:

(xvii) Seller has the legal power, right and authority to enter into this Agreement and, subject to receipt of the Order Granting Leave to Sell (if required under New York State law), to consummate the transactions contemplated hereby, and the person(s) executing this Agreement on behalf of Seller is/are duly authorized and empowered to act for and to bind Seller;

(xviii) This Agreement and all documents required hereby to be executed by Seller are and will be valid, legally binding obligations of and enforceable against Seller in accordance with their terms;

(xix) There are no zoning, moratorium or other land use regulation proceedings, special assessment proceedings, condemnation proceedings, public takings or eminent domain proceedings of any kind pending or, to Seller's actual knowledge, contemplated against the Property or any part thereof;

(xx) Seller has not received notice from any governmental entity having jurisdiction, and has no actual knowledge or reason to believe, that any federal, state or local environmental investigation is pending or overtly threatened with respect to the Property or that the Property fails to comply in all respects with all applicable federal, state and local statutes, laws, ordinances, orders, rules and regulations ("Laws"), including, without limitation, all environmental, health and safety statutes and regulations of every nature whatsoever ("Environmental Laws"), which Environmental Laws shall include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., the Toxic Substances Control Act 15 U.S.C. §§ 2601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j, the Federal Air Pollution Control Act, 42 U.S.C. §§ 7401 et seq., the Oil Pollution Act, 33 U.S.C. §§ 2701 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136-136y, the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq., New York State Environmental Conservation Law, including Article 13 of Title 27, the New York State Navigation Law, Article 12, and those other Laws regarding the presence and removal of Hazardous Materials (as hereinafter defined), each as amended, and any regulations promulgated thereunder or any equivalent state or local law or statute, as amended, and any regulations promulgated thereunder and all other applicable federal, state, local, tribal and territorial laws (including common law), constitutions, statutes, treaties, regulations, rules, ordinances and codes issued by governmental agencies and in the regulations adopted and publications promulgated pursuant thereto;

(xxi) Seller represents and covenants that, between the date of the Agreement and the Closing or the earlier termination of this Agreement: (A) it shall not permit the use of the Property for the generation, manufacture, refinement, production, or processing of any gasoline, asbestos or asbestos-containing materials, hazardous substances, wastes or materials, petroleum and petroleum-related products, derivatives and constituents, explosives, radioactive materials, radon, polychlorinated biphenyls or related or similar materials, or any other substance or material as may be defined as a hazardous or toxic substance under Environmental Laws (collectively, "Hazardous Materials") or for the storage, handling, transfer or transportation of any Hazardous Material; and (B) it shall, promptly upon obtaining actual knowledge thereof, provide

Purchaser with notice of: (1) any failure of the Property to comply with any Environmental Law in any manner whatsoever; (2) the issuance of any notice, complaint or order of violation or non-compliance of any nature whatsoever with regard to the Property or the use thereof with respect to Environmental Laws; or (3) any notice of a pending or threatened investigation that the Property is not in compliance with any Environmental Law;

(xxii) Seller has not discharged any Hazardous Materials at, on, in, under, upon or adjacent to the Property;

(xxiii) No person, firm or entity other than the Purchaser has any rights to acquire the Property or any part thereof or has any right of first refusal in connection with the sale of the Property;

(xxiv) Except for those certain residential leases set forth on the rent roll attached hereto as Exhibit B (the "Existing Leases"), there are no leases for all or any portion of the Property nor are there any tenants or parties in possession of the Property, either on a month to month basis or with or without permission of the Seller, other than those tenants occupying the Property (or portions thereof) pursuant to the Existing Leases. At the time of the Closing all Existing Leases shall have expired by their terms, and there will be no leases for all or any portion of the Property, nor any tenants or parties in possession of the Property (or any portion thereof);

(xxv) Seller will not enter into any contract, lease, occupancy agreement or any other agreement whatsoever between the date of this Agreement and the Closing (or earlier termination of this Agreement) with respect to or affecting the Property, except for those which expire at or prior to the Closing, without the prior written consent of Purchaser, which consent shall be in Purchaser's sole discretion;

(xxvi) Seller is not a "Foreign Person" within the meaning of Paragraph 1445 of the Internal Revenue Code of 1986, as amended;

(xxvii) There is no action, suit or proceeding pending or, to Seller's actual knowledge, threatened against or affecting Seller in any court, or by or before any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality which (A) individually or in the aggregate, would materially and adversely affect the financial position, business or operations of Seller, taken as a whole, or the performance by Seller of its obligations hereunder, (B) would affect in any material respect the consummation or validity of this Agreement or the transactions contemplated hereby or (C) would affect the Property in any material respect;

(xxviii) Seller is not in default (A) in the payment of any taxes levied or assessed against it or its assets (including the Property), or (B) under any statute, rule, order, decree, writ, injunction or regulation of any governmental body (including any court), in either

case which would have a material adverse effect on its ability to perform the obligations contemplated by this Agreement;

(xxix) Seller has not received any notice that any default or breach presently exists under any covenant, condition, restriction, right-of-way or easement affecting the Property or any portion thereof which is to be performed or complied with by the owner and which would have a material and adverse effect on the Property, and Seller has no actual knowledge of any fact or condition which would constitute such a default or breach (or event which with notice or lapse of time, or both, could constitute such a default) under any such agreement;

(xxx) 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 a 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. Seller has not given notice to any governmental body of insolvency or pending insolvency, or suspension or pending suspension of operations;

(xxxi) Neither this Agreement nor the conveyance of the Property to Purchaser will defraud any of Seller's creditors, or render Seller insolvent;

(xxxii) All information furnished to Purchaser by Seller in connection with the Property and this Agreement, including, without limitation, those items furnished by Seller under Section 12(c) below, is complete and correct and Seller has not failed to disclose any information of which it has knowledge and which is material to the Property and/or the physical condition of the Property; and

(xxxiii) Seller is a not-for-profit corporation organized in the State of New York. The sale of the Property hereunder does not constitute a sale of all or substantially all of the assets of the Seller.

The representations and warranties contained in this Section 11(a) shall be true and correct as of the Closing and shall survive the recordation of the Deed for a period of one (1) month only.

(b) Purchaser represents, warrants and covenants to Seller as of the date hereof and as of the date of Closing as follows:

(viii) Purchaser has the legal power, right and authority to enter into this Agreement and to consummate the transactions contemplated hereby;

(ix) The individual executing this Agreement on behalf of Purchaser has the authority to execute this Agreement;

(x) This Agreement and all documents required hereby to be executed by Purchaser are and will be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms;

(xi) There is no action, suit or proceeding pending or, to Purchaser's actual knowledge, threatened against or affecting Purchaser in any court, or by or before any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality which (A) individually or in the aggregate, would materially and adversely affect the financial position, business or operations of Purchaser, taken as a whole, or the performance by Purchaser of its obligations hereunder, or (B) would affect in any material respect the consummation or validity of this Agreement or the transactions contemplated hereby;

(xii) Purchaser is not in default (A) in the payment of any taxes levied or assessed against it or its assets, or (B) under any statute, rule, order, decree, writ, injunction or regulation of any governmental body (including any court), in either case which would have a material adverse effect on its ability to perform the obligations contemplated by this Agreement; and

(xiii) Purchaser 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. No court of competent jurisdiction has entered an order, judgment, or decree approving a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any federal bankruptcy act, and no liquidator of Purchaser or of all or any substantial part of its assets has been appointed. Purchaser has not given notice to any governmental body of insolvency or pending insolvency, or suspension or pending suspension of operations.

The representations and warranties contained in this Section 11(b) shall be true and correct as of the Closing and shall survive the recordation of the Deed for a period of one (1) month only.

**43. Title; Inspection Period; Right of Entry.**

(b) (i) For purposes of this Agreement, "good and marketable title" shall be defined as: marketable title in fee simple, insurable by a title insurance company licensed to do

business in the State of New York and selected by Purchaser ("Title Company"), at standard rates and subject to standard conditions and exceptions; further provided that there shall be no exception concerning parties in possession, mechanic's liens and other improvement liens, no exception for any mortgage or tax liens (which Seller shall be obligated to pay and discharge as of the Closing) and no exception for an encumbrance which would in Purchaser's reasonable opinion, prevent or materially adversely affect the construction, development and/or operation of the Project on the Property; and provided further, that Purchaser shall have received a survey acceptable to Purchaser and Purchaser's Title Company, and which will allow construction, development and operation of the Project as contemplated by Purchaser. Seller shall not further encumber the Property commencing on the date of execution hereof. The accrual of additional property taxes and property tax enforcement procedures shall not be deemed a further encumbrance pursuant to the preceding sentence (although any such accruals shall be a liability of Seller to be discharged at Closing).

(iv) Purchaser shall order a commitment (the "Title Commitment") for issuance to Purchaser of an ALTA Owner's Title Insurance Policy, insuring fee simple interest to the Property, in such amount, and including such endorsements as shall be required by Purchaser or any prospective financier of the Project. Prior to the expiration of the Inspection Period (as defined below), Purchaser shall notify Seller of any defect in title as of the date of title examination which Purchaser objects to. Purchaser shall be entitled to object to any encumbrance on title to the Property initially arising after the date of Purchaser's title examination at any time up and until Closing.

(v) Within ten (10) business days after its receipt of the notice from Purchaser of any objectionable title conditions, Seller shall notify Purchaser as to whether or not Seller shall remedy (at or prior to Closing), at Seller's cost and expense, each of the objectionable title conditions noted by Purchaser, it being agreed that Seller shall cure objectionable title conditions up to \$200,000 but shall not have an obligation to cure objectionable title conditions, the cumulative cost of which exceeds \$200,000. If Purchaser does not terminate this Agreement within ten (10) business days after receipt of Seller's notice above, Purchaser shall be deemed to have accepted all exceptions to title noted in Schedule B of the Title Commitment other than: (i) the objectionable title conditions that Seller has expressly agreed to cure; (ii) any mortgage or tax liens; (iii) any exception for unfiled mechanics' liens; (iv) any exception for defects, liens, encumbrances, adverse claims or other matters created after the date of the Title Commitment but prior to the Closing; and (v) any exception for rights of parties in possession other than tenants in possession under unrecorded leases. The parties agree to cooperate with each other to ensure that the Title Commitment shall be in form and substance acceptable to Purchaser's lenders and tax credit equity investor as of the Closing.

(b) Purchaser shall have a period of ninety (90) days (the "Inspection Period") commencing on the execution of this Agreement, to conduct its due diligence including conducting any and all studies, examinations, surveys, inspections and investigations of, or concerning, the Property, including, without limitation, title review, boundary and topographical surveys, traffic studies, soil borings and tests; air and water studies; engineering and geotechnical studies; asbestos studies; evaluation of zoning and availability of utilities; evaluation of drainage and flood plains and wetlands, if any; evaluation of the integrity of underground storage facilities, if any; and inspection and testing for the presence of any and all hazardous substances and asbestos, to verify

and satisfy to the Purchasers' sole discretion that the Property can be acquired, financed, and used for its intended purposes. In the event Purchaser is not satisfied with any aspect of the Property, in its sole and absolute discretion, the Purchaser may elect to cancel this Agreement upon written notice to the Seller at any time prior to the expiration of the Inspection Period or, if applicable, the Extended Inspection Period (as defined in Section 12(e) below) and neither Purchaser nor Seller will have any further liability to each other.

(c) To assist Purchaser in conducting its inspection of the Property, Seller shall provide Purchaser, within five (5) business days of the date of execution hereof, with true and correct copies of all of the following documents and materials pertaining to the Property which are in Seller's possession or control, or otherwise reasonably available to Seller:

(i) All existing leases, options, occupancy agreements, brokerage agreements, and other contracts or agreements, together with all amendments or assignments thereof or correspondence related thereto, which may affect the Property, if any;

(ii) Copies of any survey(s), subdivision plat(s) or other map(s) of the Property and/or any site plans, specifications, drawings or other documents or work product relating to any proposed new construction on the Property;

(iii) A true and complete copy of any existing title insurance policy insuring the Property, any title report(s) on the Property, accompanied by all documents referred to in the report(s), and any other back title information, if any;

(iv) Copies of all existing and proposed easements, covenants, restrictions, agreements, or other documents that affect title to the Property and that are not disclosed by the aforesaid title insurance policy or title report(s), or, if no such documents are known by Seller to exist, a certification of Seller that Seller has not entered into any such documents and, to the best of Seller's knowledge, no such documents exist;

(v) Any environmental reports and studies pertaining to the Property whether prepared for, on behalf of, or by Seller or another party;

(vi) Copies of all engineering, architectural or zoning documents, tests or reports, licenses, permits, warranties, soil reports that concern the Property;

(xiv) Copies of decisions, approvals permits and other documents governing or relating to the zoning or subdivision of the Property, including but not limited to plats, variances, special permits, land development plans, comprehensive permits;

(viii) Documentation regarding real estate tax assessments and payments, abatements, payments in lieu of taxes or other agreements or arrangements relating to the payment of taxes with respect to the Property; and

(x) Copies of any and all additional documents and information pertaining to the Property reasonably requested by Purchaser.



(d) To facilitate Purchaser's inspection of the Property, Seller grants Purchaser, and its duly authorized agents, representatives and employees, including potential lenders, investors and partners, from the date of execution of this Agreement, and at any time prior to the Closing or the earlier termination of this Agreement, the right, at Purchaser's expense and upon reasonable notice to Seller, access and entry in and upon the Property, to inspect the same and to make such surveys, tests and measurements thereof as Purchaser shall deem necessary, including, without limitation, any of the tests described in Section 12(b) above. All such testing shall be at Purchaser's sole expense. Purchaser agrees, following any tests performed pursuant to the provisions of this Section 12, to return the Property to substantially the same condition as existed prior to such testing. Furthermore, Purchaser shall indemnify and hold Seller harmless from any and all matters, actions, claims or proceedings asserted against Seller arising in or out of injury to person or property in connection with any such due diligence inspection of the Property as provided herein, including reasonable attorneys' fees. Upon request by Seller, Purchaser, or Purchaser's agents or representatives, shall provide Seller with evidence of liability insurance insuring any of Purchaser's agents or representatives prior to the entry onto the Property by any such agents or representatives.

(e) In the event that any Phase I or other environmental inspection, audit or test conducted or report generated by the Purchaser and/or its representatives during the Inspection Period reveals (i) any violation of any Environmental Law, (ii) any other environmental condition in, on, under or affecting the Property that the Purchaser determines to be objectionable, or (iii) any other conditions or information that the Purchaser determines requires further study and testing to determine whether such conditions involve Hazardous Materials or other objectionable environmental conditions (collectively, "Hazardous Conditions"), the Purchaser shall deliver written notice thereof to the Seller prior to the end of the Inspection Period (an "Environmental Objection Notice"). In such event, the Purchaser shall have the option, and the Environmental Objection Notice shall specify whether the Purchaser elects to exercise such option, to extend the Inspection Period for an additional thirty (30) days to undertake a Phase II environmental audit or such additional environmental testing as Purchaser shall reasonably deem necessary to study such Hazardous Conditions (the "Extended Inspection Period"), provided that the right given to Purchaser to extend the Inspection Period pursuant to this Section 12(e) shall be limited to the grounds set forth in clauses (i), (ii), and (iii) above, and shall not apply to any other situation. If the Purchaser elects not to invoke its termination rights during the Extended Inspection Period, it will have been deemed to have waived any objections to environmental conditions at the Property.

(f) If the Closing does not occur for any reason not the fault of Seller, Purchaser agrees to provide Seller, at no cost to Seller, with copies of any and all studies, reports, tests and other documents prepared in connection with the inspection of the Property pursuant to this Section 12, provided however, that any delivery of documentation to Seller pursuant to this Section 12(f) shall be done without any representation, warranty or assurance from Purchaser of any kind, including, without limitation, any assurance that the preparer(s) of such documentation will permit Seller to rely thereon.

#### 44. Contingencies.

(d) Purchaser's obligation to purchase the Property is subject to the following contingencies:

(v) Purchaser shall have obtained all municipal and/or governmental approvals necessary to permit the Purchaser's contemplated construction, development and operation of the Project on the Property, including, without limitation: zoning changes; variances; special use permits; subdivision approval; site plan approval, sanitary sewer, drainage and other utility permits; environmental approval pursuant to 24 CFR Part 58; State Environmental Quality Review Act approval; and New York State Department of Transportation or other highway permits for access onto public highways. The contingency set forth in this Section 13(a)(i) shall not be deemed to have been satisfied unless and until all such approvals shall have been issued in final, non-appealable form and free of any moratorium. Purchaser shall commence work on all approvals for the Project, as chronologically appropriate, and shall diligently pursue the same. Seller agrees to cooperate with Purchaser in obtaining all permits and approvals provided that Seller shall not be required to incur any expense in connection with such cooperation, it being agreed that the Property must allow, by variance or otherwise, for the construction of the Project thereon. In furtherance of the foregoing, Seller shall, at no expense to Seller: (A) make an application in Seller's name for any governmental approvals referenced in this Section 13(a)(i), if requested by Purchaser, without seeking any compensation or additional consideration by reason of such cooperation; and (B) sign all such applications as are required by the respective reviewing agency in order to process Purchaser's applications for such approvals.

(vi) Purchaser shall have obtained from Seller (and/or third parties) all easements necessary or appropriate to ensure that the Purchaser, upon closing of the Property, has ingress to and egress from the Property, all utilities are available to the Property's lot line, including without limitation, gas, electricity, water, sewer, cable, and other reasonable utilities, and such other rights over the land of Seller or others which are reasonably required or appropriate for the construction, development and operation of the Project on the Property.

(vii) There shall be no material adverse change in the condition of the Property after the expiration of the Inspection Period.

(e) Seller's obligation to sell the Property is subject to Seller having obtained the Order Granting Leave to Sell, if required under New York law. Seller agrees to make commercially reasonable efforts to secure the Order Granting Leave to Sell on or before the Outside Closing Date without seeking any compensation or additional consideration by reason of such efforts. In furtherance of the foregoing, Seller agrees to commence the process to obtain the Order Granting Leave to Sell within ten (10) business days after the expiration of the Inspection Period. Purchaser shall, to the extent necessary, sign all such applications as are required by the respective entity in order to process Seller's petition for the Order Granting Leave to Sell.

(f) The contingencies set forth in Section 13(a)(i),(ii) above shall expire six (6) months after the expiration of the Inspection Period (the "Approvals Period").

#### 45. Default.

(c) If the sale and purchase of the Property as contemplated by this Agreement is not consummated in accordance with the terms and conditions of this Agreement because of Purchaser's default or nonperformance, Seller shall be entitled, as its sole and exclusive remedy, to retain, as liquidated damages and not as a penalty, the Deposit and the Interest (the parties hereby agree that the amount of actual damages that would be incurred by Seller would be difficult to prove and that the amount of the Deposit and the Interest is a reasonable estimate thereof), and this Agreement shall be terminated upon the receipt of the Deposit and the Interest by Seller and neither party shall have any further liability to the other.

(d) If the sale and purchase of the Property as contemplated by this Agreement is not consummated in accordance with the terms and conditions of this Agreement because of Seller's default or nonperformance, the Purchaser may, at Purchaser's option, in its sole and absolute discretion: (i) terminate this Agreement by giving written notice of such termination to Seller, whereupon the Deposit and Interest shall be returned to Purchaser, and all rights, duties and obligations of all the parties hereunder shall expire and this Agreement shall in all respects become null and void; or (ii) the right to seek and obtain specific performance of this Agreement.

46. Broker. Seller and Purchaser each hereby represents and warrants to the other that it has not utilized the services of any real estate broker, agent, salesperson or finder in connection with this Agreement or the transaction contemplated hereby. Each party covenants and agrees to defend, indemnify and save the other harmless from and against any actions, damages, real estate commissions, fees, costs, and expenses (including reasonable attorney's fees), resulting or arising from any commissions, fees, costs and expenses payable to any other real estate broker or agent with which the indemnifying party has dealt, relating to the execution of this Agreement and/or the purchase and sale of the Property.

47. Effect of Agreement. This Agreement states the whole agreement of the parties hereto regarding the purchase and sale of the Property and all prior agreements, understandings, representations, covenants, agreements and warranties made by either party prior to the date of this Agreement are merged herein and this Agreement alone fully expresses the understanding and agreements of the parties hereto.

48. Amendments. The terms and conditions of this Agreement shall not be changed, altered, modified, or amended unless such change, alteration, modification or amendment is reduced to writing and signed by the party against whom the change, alteration, modification or amendment is to be enforced.

49. Duplicate Originals; Counterparts. This Agreement may be executed in duplicate, and each copy shall be treated for all purposes as an original. Further, this Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

50. Recording. Neither party hereto shall record this Agreement, in whole or in part, and if Purchaser records this Agreement, in whole or in part, such act shall be treated as a default under the terms of this Agreement.

51. Risk of Loss. The Risk of Loss shall remain with Seller until the delivery of the Deed at Closing.

52. Survival. The representations, warranties, agreements and covenants contained in Sections 11 and 15 of this Agreement shall survive the Closing and recordation of the Deed and shall be in full force and effect after the Closing (provided however, with respect to those representations set forth in Section 11, only for the time period set forth therein).

53. Misstatements or Omissions. Each of the parties hereby certifies that no representation or warranty contained herein contains any untrue statement of a material fact or omits to state a material fact necessary to make it not misleading.

54. Controlling Law. The provisions and effects of this Agreement shall be controlled by New York law.

55. Headings. The headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

56. Notice. Any notice, request, demand, statement, authorization, approval or consent made hereunder shall be in writing and shall be personally delivered, sent by Federal Express, or other reputable courier service, or by postage pre-paid registered or certified mail, return receipt requested, and shall be deemed given when received or refused (as indicated on the receipt) and addressed as follows:

If to Seller:                      Vesta Community Housing  
Development Board, Inc.  
428 Duane Avenue  
Schenectady, New York 12304  
Attention: Peter Newkirk, Chief Executive Officer

With a copy to:                Stephanie A. White Law, PLLC  
2360 Nott Street East  
Niskayuna, New York 12309  
Attention Stephanie A. White, Esq.

If to Purchaser:                BCREI New York LLC  
c/o Beacon Communities LLC  
Two Center Plaza, Suite 700  
Boston, Massachusetts 02108

Attention: Chief Executive Officer

With a copy to: Cannon Heyman & Weiss, LLP  
54 State Street, 5<sup>th</sup> Floor  
Albany, New York 12207  
Attention: Jeremy R. Root, Esq.

it being understood and agreed that each party will use reasonable efforts to send copies of any notices to the addresses marked "With a copy to" hereinabove set forth; provided, however, that failure to deliver such copy or copies shall have no consequence whatsoever to the effectiveness of any notice made to the Purchaser or the Seller. Each party may designate a change of address by notice given, as herein provided, to the other party, at least fifteen (15) days prior to the date such change of address is to become effective.

57. Time of Essence. With respect to all the terms of this Agreement, time is not of the essence, unless expressly stated otherwise herein.

58. Binding Effect. This Agreement shall inure to the benefit of and be binding upon each of the parties hereto and their respective heirs, executors, administrators, successors and assigns, of each.

59. Plurality and Gender. Wherever in this Agreement the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require.

60. Fees and Other Expenses. Each party will pay its own fees and expenses (including attorneys' fees) incurred in connection with the preparation and negotiation of this Agreement and the closing of the transaction contemplated hereunder.

61. Representation by Counsel. Each party represents and warrants that such party has read and reviewed this Agreement in its entirety, has sought and obtained the benefit of full, complete and competent legal advice in connection with this Agreement, and fully understands the meaning and intent of each and every provision hereof. The parties agree that drafting by counsel for any one party of any provision contained in this Agreement shall not be cause for the construction or interpretation of that provision against such party.

62. Assignment or Designation. The Purchaser may elect to assign this Agreement to another affiliated entity involved with the development of the Project and, in such event, Seller agrees to convey title to such entity on payment of the Purchase Price. Further, at or at any time prior to Closing, Purchaser may designate a housing development fund company formed pursuant to Article XI of the New York Private Housing Finance Law in connection with the Purchaser's acquisition, construction, development and operation of the Project, to take title to the Property, as nominee for the Purchaser.

***[Remainder of Page Intentionally Left Blank]***

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

**SELLER:**

**VESTA COMMUNITY HOUSING  
DEVELOPMENT BOARD, INC.**

By:\_\_\_\_\_

Name: Peter Newkirk

Title: Chief Executive Officer

**PURCHASER:**

**BCREI NEW YORK LLC**

By: Beacon Communities Corp., its Manager

By:\_\_\_\_\_

Name: Duncan Barrett

Title: Authorized Signatory

**ESCROW AGENT:**

**CHICAGO TITLE**

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

**EXHIBIT A**

**DESCRIPTION OF THE PROPERTY**



**EXHIBIT B**  
**RENT ROLL**