

AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY (“Agreement”) is made and entered into as of the ___ day of August, 2016 (the “Effective Date”), by and between the **ULSTER COUNTY ECONOMIC DEVELOPMENT ALLIANCE, INC.** a local development corporation formed under the laws of the State of New York, with offices at 244 Fair Street, Kingston New York 12401 (herein after referred to as the “Seller” or the “Corporation”), and **RUPCO, INC.**, a New York not-for-profit corporation, having its principal place of business at 289 Fair Street, Kingston, New York 12401, (the “Purchaser”).

RECITALS:

WHEREAS, pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York, the Corporation was established as a not-for-profit local development corporation pursuant to the filing of a Certificate of Incorporation with the New York Secretary of State; and

WHEREAS, pursuant to Resolution Number 221 of 2014, (herein, the “**County Authorizing Resolution**”), the Ulster County Legislature authorized (i) the undertaking of a certain Disposition, as defined within the County Authorizing Resolution and more particularly described herein (collectively, the “Disposition”) of a fee and/or leasehold interest to the Corporation of a certain parcel of land, along with the buildings and improvements located thereon, as defined herein; and

WHEREAS, after the Disposition, the Corporation became the owner of the land (the “Land”) and the improvements located thereon (the “Improvements”), commonly known as 300 Flatbush Avenue, located in the City of Kingston, Ulster County, State of New York, identified by tax identification number 48.74-3-14.100. The Land is more particularly described on Exhibit “A” attached hereto and made a part hereof. The Land and the Improvements are hereinafter collectively referred to as the “Premises”; and

WHEREAS, in accordance with the County Authorizing Resolution, the County and the Corporation entered into a certain month to month lease agreement, dated as of _____, 201_ (the “**Lease Agreement**”), wherein the Corporation leases back the Premises to the County; and

WHEREAS, it is the Purchaser’s intent to develop, rehabilitate and construct on the Premises affordable housing in the form of supportive housing and senior housing with a commercial component; and

WHEREAS, the Seller now desires to sell the Premises to the Purchaser; and the Purchaser desires to acquire the Premises from the Seller on the terms and conditions set forth 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 agree as follows:

ARTICLE 1

SALE AND PURCHASE

1.1 SALE AND PURCHASE. Seller agrees to sell and convey to Purchaser, and Purchaser agrees to buy and accept from Seller, subject to the terms, covenants, conditions and provisions hereinafter set forth, the following:

(a) the Premises, together with all right, title and interest of Seller in and to any land lying in the bed of any highway, open or proposed, abutting said parcel;

(b) all right, title, and interest, if any, of Seller, reversionary or otherwise, in and to all easements in or upon the Land and all other rights of way, licenses, privileges, appurtenances and water, mineral and air rights, if any;

(c) all right, title, and interest, if any, of Seller in and to any and all transferable licenses, permits, certificates, approvals, authorizations, variances, and consents issued or granted by government or quasi-government bodies, officers, or authorities with respect to the ownership of the Premises;

(d) Seller's interest in all plans, specifications, drawings, reports, studies, and other similar matters, relating to the Premises and in the possession of the Seller, but only to the extent assignable (the "Plans").

The items described in (a) through (d) of this Section 1.1 are hereinafter collectively referred to as the "Property".

1.2 PURCHASE PRICE. The purchase price to be paid by Purchaser to Seller for the sale and conveyance of the Premises and the Property is **Nine Hundred Fifty Thousand and Zero Dollars (\$950,000.00)**, which is payable to Seller at the closing of the transaction contemplated hereby (the "Closing") by wire transfer of immediately available funds.

1.3 EARNEST MONEY DEPOSIT. It is a condition precedent to the effectiveness of this Agreement that upon the execution of this Agreement by the Purchaser, Purchaser shall deposit with the Ulster County Commissioner of Finance (the "Escrow Agent"), by delivery of a cashier's check or wire transfer of immediately available federal funds in the amount of Twenty-Five Thousand and Zero Dollars (\$25,000.00) (the "Deposit"). If the transaction contemplated hereby is consummated in accordance with the terms and provisions hereof, the Deposit shall be credited against the Purchase Price at Closing.

1.4 REAL ESTATE AND OTHER TAXES. Purchaser acknowledges that the Premises is currently wholly exempt from real property taxes (Roll Section 8) and that upon transfer of title to the Purchaser at the Closing Date, the taxable status of the Premises conveyed shall be determined in accordance with Section 520 of the New York Real Property Tax Law ("**RPTL**"). Purchaser further acknowledges that a pro rata tax may be assessed by the applicable assessor as of the

Closing Date pursuant to RPTL Section 520 and that the Purchaser shall be responsible for all real estate taxes assessed against the Premises as of and after the Closing. Nothing herein shall be construed to limit the provisions of section 2.1(f) herein.

ARTICLE II

CONTEMPLATED USE OF THE PREMISES

2.1 CONTEMPLATED USE OF THE PREMISES. The Purchaser hereby acknowledges and represents the following regarding its intended use of the Premises:

(a) Purchaser shall undertake a project (the “Project”) whereby it shall develop, rehabilitate and construct on the Premises sixty-six (66) units of affordable housing of which thirty-four (34) units will be housed in the existing structure. Twenty-eight (28) of said thirty-four units will be designated as supportive housing. Purchaser will also construct and house in a new building on the Premises thirty-two (32) senior units, seven (7) of which will be supportive housing, with an additional commercial component, subject to modification and approval by the municipal boards with jurisdiction, if any, acceptable to Purchaser;

(b) Purchaser shall, to the extent permitted by law or regulation give preference to the completed Project to referrals from Ulster County municipal agencies and Ulster County residents, which populations may include seniors, veterans, and others with supportive housing needs;

(c) Purchaser agrees that to the extent permitted by law the Project will not permit or grant residency to persons registered for life as sex offenders nor will persons with prior convictions for producing methamphetamines be permitted residency in the units;

(d) Purchaser agrees that to the extent permitted by law the Project will not permit or grant residency to persons with past convictions for offenses involving physical violence to persons or property, or which adversely affected the health, safety and welfare of others;

(e) Purchaser is aware and Seller has communicated to Purchaser that the existing structure on the Premises is being considered for inclusion on the New York State and National Registers of Historic Places and as such Purchaser will preserve the historic nature of the existing primary structure;

(f) Purchaser may seek a tax agreement or valuation such as, but not necessarily limited to, valuation under 581-~~aofa-0f~~ the Real Property Tax Law (RPTL), but subject thereto, commits to pay municipal taxes including the County, City, and school.

ARTICLE III

TITLE, ENVIRONMENTAL REQUIREMENTS, ZONING

3.1 SURVEY. Seller has in its possession and shall deliver to Purchaser within ten (10) business days of the Effective Date of this Agreement a survey of the Land dated _____, 20__ prepared by a licensed surveyor showing the location of all easements or encroachments, if any, affecting the Land.

3.2 TITLE. Conveyance of the Premises shall be made by a good and sufficient form Bargain and Sale Deed, with covenants against grantor's acts ("Deed"), conveying good and marketable title subject to such encumbrances as may exist as of the Title Acceptance Date (hereinafter defined). 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, at standard rates and subject to standard conditions and exceptions, provided however that there shall be no exception concerning parties in possession, mechanic's liens and other improvement liens; provided, however, that Purchaser shall have received a survey acceptable to Purchaser and Purchaser's title insurance company, and which will allow development of the Project as contemplated by Purchaser. The Deed shall be prepared by Seller, duly signed by the Seller, signature(s) acknowledged and with any New York State transfer tax paid by the Seller. The cost of title insurance and a survey shall be borne by Purchaser. Acceptance of the Deed by Purchaser shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed on the part of the Seller except as otherwise provided in this Agreement.

All other tangible and intangible property rights, to the extent such rights are assignable, if any, constituting the Property shall be assigned to and assumed by Purchaser at the Closing (hereinafter defined). Conveyance of these items shall be made by commercially reasonable bills of sale and/or assignment and assumption agreements, and shall include the consent of third parties if required to effectuate the assignment.

3.3 ENVIRONMENTAL. Purchaser, at its sole expense, shall obtain not later than _____, 2016, a Phase II Report for the Premises as recommended by the Phase I Report from a licensed environmental engineer.

3.4 ZONING. [INTENTIONALLY LEFT BLANK]

ARTICLE IV

"AS-IS" CONDITION

4.1 PREMISES CONVEYED "AS-IS". Except for the express representations and warranties of Seller set forth ~~herein~~ ~~Section 9.2 hereof~~, Purchaser is acquiring the Premises

“AS-IS,” without any covenant, representation or warranty of any nature whatsoever, express or implied, and Purchaser is relying solely on Purchaser’s own investigation of the Premises.

ARTICLE V

INSPECTION

5.1 INSPECTION. Seller shall permit Purchaser and its authorized agents and representatives to enter upon the Premises at all reasonable times during normal business hours to inspect and conduct reasonable tests which are approved by Seller. Such entry and inspections may be conducted only during the period (the “Inspection Period”) commencing on the Effective Date and ending at 5:00 p.m., New York time on the date that is Ninety (90) days following the Effective Date. Purchaser shall notify Seller, in writing, of its intention, or the intention of its agents or representatives, to enter the Premises at least forty-eight (48) hours prior to such intended entry, and obtain Seller’s prior written request to any tests to be conducted thereon. At Seller’s option, Seller may be present for inspection or test. All testing shall be at Purchaser’s sole expense and shall be accomplished without unreasonably interfering with Seller’s use and occupancy of the Premises. After such access, Purchaser agrees to return the Premises to substantially the same condition as prior to said access. In connection therewith, 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 Premises as provided herein, including reasonable attorney’s fees.

5.2 DOCUMENT REVIEW. In addition to the documents listed above in, Section 3.1 and 3.2, Seller shall within ten (10) business days after the Effective Date, deliver to Purchaser the following, if in the possession of Seller (collectively, the "Documents"):

- (i) copies of any Plans;
- (ii) to the extent allowed by the author, copies of all existing soil, engineering, and architectural, and environmental reports covering the Premises in Seller’s possession;
- (iii) copies of all service contracts, if any; and
- (iv) copies of all permits in Seller's possession.

(vi) copies of all environmental reports, reviews, or analyses, or notices, including but not limited to the Phase I Environmental Assessment dated _____.

5.3 RETURN OF DOCUMENTS. Purchaser shall return all of the Documents, any and all copies Purchaser has made of the Documents, and all copies of any studies, reports, or test results obtained by Purchaser (and actually paid for by Seller) in connection with its inspection of the Premises (collectively, the "Purchaser’s Information") on the earlier to occur of (i) such

time as Purchaser determines that it shall not acquire the Premises, or (ii) such time as this Agreement is terminated for any reason.

5.4 NO REPRESENTATION OR WARRANTY BY SELLER. Purchaser hereby acknowledges that Seller has not made and does not make any warranty or representation regarding the truth, accuracy, or completeness of the Documents or the source(s) thereof, and that Seller has not undertaken any independent investigation as to the truth, accuracy, or completeness of the Documents and is providing the Documents solely as an accommodation to Purchaser. Seller expressly disclaims and Purchaser waives any and all liability for representations or warranties, express or implied, statements of fact, and other matters contained in the Documents, or for any omissions from the Documents, or in any other written or oral communications transmitted or made available to Purchaser. Purchaser shall rely solely upon its own investigation with respect to the Premises, including, without limitation, the Premises physical, environmental, or economic condition, compliance or lack of compliance with any ordinance, order, permit, or regulation or any other attribute or matter relating thereto.

5.5 INSPECTION OBLIGATIONS AND OBLIGATIONS AND RESPONSIBILITIES OF PURCHASER. In conducting any inspections, investigations, examinations, or tests of the Premises, Purchaser and its agents and representatives shall:

- (i) not damage any part of the Premises or any personal property;
- (ii) maintain commercial general liability (occurrence basis) insurance in terms and amounts reasonably satisfactory to Seller covering any accident arising in connection with the presence of Purchaser, its agents and its representatives on the Premises;
- (iii) promptly pay when due the costs of all tests, investigations, and examinations done with regard to the Premises;
- (iv) not permit any liens to attach to the **Premises**;
- (v) fully restore the Land and the Improvements to the condition in which the same was found before any such inspections or tests were undertaken;
- (vi) not reveal or disclose any information obtained during the Inspection Period concerning the Premises and the Documents to anyone outside Purchaser's organization, except with the confidentiality standards set forth in Section hereof; and
- (vii) deliver to Seller a copy of all Purchaser's information.

5.6 PURCHASER'S AGREEMENT TO INDEMNIFY. PURCHASER SHALL INDEMNIFY, DEFEND, AND HOLD SELLER HARMLESS FROM AND AGAINST ANY AND ALL LIENS, CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, AND EXPENSES (INCLUDING REASONABLE LEGAL FEES AND EXPENSES) ARISING OUT

OF PURCHASER'S INSPECTIONS OR TESTS OR ANY VIOLATION OF THE PROVISIONS OF THIS SECTION 5.6. THIS INDEMNITY SHALL SURVIVE THE CLOSING OR EARLIER TERMINATION OF THIS AGREEMENT.

5.7 RIGHT OF TERMINATION. If, during the Inspection Period, Purchaser shall, for any reason, in Purchaser's sole discretion, judgment, and opinion, be dissatisfied with any aspect of the Premises or any item examined by Purchaser pursuant to this Agreement, Purchaser shall be entitled, as its sole remedy, to terminate this Agreement by giving written notice to Seller on or before the Inspection Period Expiration Date, whereupon all of the provisions of this Agreement (except Sections 5.5 and 5.6 hereof) shall terminate. Upon such termination, neither Seller nor Purchaser shall have any further obligation or liability to the other hereunder, except as provided in Sections 5.5 and 5.6 of Article IV hereof, and upon Purchaser's delivery to Seller of the Documents and Purchaser's Information, the Deposit shall be returned to Purchaser.

5.8 COSTS. Other than as expressly set forth herein, the following third party costs relating to the sale and settlement of the Premises shall be the sole obligation of the Purchaser: recording the deed and/or assignments, any and all transfer tax associated with the transfer, all searches, survey updates, all title company settlement charges, closing expenses, legal expenses of the Purchaser, settlement fees, Purchaser's environmental investigations, title search fees, insurance fees, and any other and all other costs of Purchaser associated with the transaction contemplated by this Agreement. Seller shall be responsible for its own attorneys', and professional fees and expenses.

ARTICLE VI

CONDITIONS PRECEDENT, DEFAULT AND TERMINATION

6.1 PURCHASER'S CONDITIONS PRECEDENT TO CLOSING. The obligation of Purchaser to purchase the Premises, and close the transaction contemplated hereby is subject to satisfaction of each of the following conditions precedent, the satisfaction of which shall be determined solely by Purchaser in the exercise of its reasonable judgment (unless a different standard is stated). Any of these conditions precedent may be waived in Purchaser's sole discretion.

(i) **FINANCIAL CONTINGENCIES.** Purchaser's obligation to close shall be contingent upon Purchaser having~~shall have~~ obtained construction and the requisite permanent financing including without limitation, equity financing through the sale of low-income housing tax credits and/or tax-exempt bonds, subsidies, grants and below-market loans, as available and appropriate, sufficient to construct and develop the Project in accordance with development and operating budgets prepared by the Purchaser ("Financial Contingency") on or before the latter of October 3, 2016 or the date of the announcement of funding for the NYS Empire State Supportive Housing Initiative - Inter-agency Service & Operating Funding ("Financing Due Diligence Period").

(ii) PREMISES TAKEN OFF MARKET. Seller shall have removed the Premises from the market During the Financial Due Diligence Period and shall not market the Premises for sale nor entertain any offers for the Premises. Within five (5) business days of the end of the Financing Due Diligence Period, Purchaser shall have the right to terminate this Agreement with no further obligation. If Purchaser does not terminate the Agreement within five (5) business days of the end of the Financing Due Diligence Period then all financing contingencies shall be deemed waived, and Closing shall be subject only to receipt of zoning and planning approvals for the Project ("Zoning Contingency") and the Seller's ability to deliver clean title ~~and~~ satisfy its obligations under the Agreement. Once financing contingencies are waived, the Premises shall be taken off the market, not marketed for sale, nor shall offers be entertained.

(iii) APPROVAL CONTINGENCY. Purchaser agrees to commence pre-development due diligence and zoning and planning applications, and to prosecute same, as expeditiously as reasonably possible. Purchaser's obligation to close shall be contingent upon Purchaser having obtained all necessary municipal and/or governmental approvals ("Approval Contingency"), including required final subdivision, zoning changes or variances, site plan approval and other local, state, or federal land use permits, sufficient to construct the Project on the Premises ("Land Use Approvals"). The Seller agrees to cooperate with and publicly support such applications, to neither take nor fail to take, nor allow, any action detrimental to the receipt of Land Use Approvals or the Project. Purchaser shall be responsible for the costs necessary to obtain said approvals.

a) (iv) CLOSING DELIVERIES. Seller shall have delivered cjoh@co.ulster.ny.us at the Closing all documents required from Seller under this Agreement.

(v) REPRESENTATIONS AND WARRANTIES. All of the representations and warranties of Seller set forth herein shall be true in all material respects as of the Closing Date.

6.2 SELLER'S CONDITIONS PRECEDENT TO CLOSING. The obligation of Seller to sell the Premises and close the transaction contemplated hereby is subject to satisfaction of each of the following conditions precedent, the satisfaction of which shall be determined solely by Seller in the exercise of its reasonable judgment (unless a different standard is stated). Any of these conditions precedent may be waived by Seller in Seller's sole discretion.

(i) REPRESENTATIONS AND WARRANTIES. All of the representations and warranties of Purchaser set forth herein shall be true in all material respects as of the Closing Date.

(ii) CLOSING DELIVERIES. Purchaser shall have paid the Purchase Price as provided in Section 1.2 and shall have delivered at Closing all documents required from Purchaser under this Agreement.

6.3 PURCHASER'S RIGHTS AND REMEDIES IN EVENT OF NON-SATISFACTION OF CONDITIONS PRECEDENT. If Purchaser, in its reasonable

discretion, determines that any of the conditions precedent set forth in Section 6.1 shall be unsatisfied by the date stated or, if no date is stated, the Closing Date, Purchaser may, at its option, elect either (i) to terminate this Agreement by written notice to Seller, in which event the Deposit shall forthwith be returned to Purchaser and thereupon this Agreement shall be terminated and of no further force or effect, or (ii) to waive the condition precedent.

6.4 PURCHASER'S REMEDIES. The obligation of Purchaser to close the transaction contemplated hereby is, at Purchaser's option, further subject to all representations of Seller contained in this Agreement being true and correct in all material respects on and as of the Effective Date and the Closing Date and all obligations of Seller to have been performed on or before the Closing Date having been timely and duly performed. Upon default by Seller in its obligation to convey the Premises, Purchaser's may, by notice to Seller, elect either (i) to terminate this Agreement, or (ii) to seek specific performance of Seller's obligation to convey the Assets. If this Agreement is terminated by Purchaser pursuant to this Section 6.4, the Deposit shall be returned to Purchaser and thereupon this Agreement shall be terminated. The failure of a condition precedent caused by the action or inaction of a third party not in the control of Seller shall not be deemed a default by Seller in the fulfillment of an obligation. IN NO EVENT SHALL SELLER, ITS DIRECT OR INDIRECT PARTNERS, MEMBER OR MEMBERS OWNERS, OR AFFILIATES, ANY OFFICER, DIRECTOR, EMPLOYEE, ATTORNEY, OR AGENT OF THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY LIABILITY, BEYOND ITS INTEREST IN THE REAL PROPERTY, FOR ANY CLAIM, CAUSE OF ACTION, OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROPERTY, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY, OR OTHERWISE (COLLECTIVELY, THE "CLAIMS"), AND PURCHASER HEREBY WAIVES THE CLAIMS.

6.5 SELLER'S REMEDIES. Other than the matters provided in Sections 5.5, 5.6 and Section 8.1 hereof, in the event Purchaser fails to perform any of its obligations pursuant to this Agreement for any reason except failure by Seller to perform hereunder, Seller, as its sole and exclusive remedy, shall be entitled to terminate this Agreement and recover the Deposit as liquidated damages and not as penalty, in full satisfaction of claims against Purchaser hereunder. Seller and Purchaser agree that the Seller's damages resulting from Purchaser's default are difficult, if not impossible, to determine and the Deposit is a fair and reasonable estimate of those damages which has been agreed to in an effort to cause the amount of said damages to be certain.

ARTICLE VII

CLOSING

7.1 DATE AND PLACE. Closing of the transaction contemplated hereby for the Premises shall be held at 10:00 A.M. (local time) at the offices of the Seller, at such date, place and time as the parties may mutually agree ("Closing Date") but no later than one (1) year from the expiration or waiver of the Financing Contingency Period as contemplated under Section 6.1(i) of this Agreement.

7.2 EXTENSION OF CLOSING DATE AND EXTENSION PAYMENT. Provided Purchaser has not obtained its “Land Use Approvals” as defined herein despite diligently pursuing them, Purchaser may extend the Closing Date by six months (“Outside Closing Date”) by notifying the Seller of its inability to close on the Closing Date in accordance with the notice provisions herein. Purchaser shall give such notice to Seller within sixty (60) days prior to the original Closing Date and shall immediately, along with the notice, make a non-refundable payment of Twenty Three Thousand Seven Hundred Fifty Dollars (\$23,750.00) (“Extension Payment”) payable to the Ulster County Commissioner of Finance. The Extension payment shall be non-refundable if Closing does not occur, but shall be applied to the Purchase Price at Closing if Closing does occur.

7.3 SELLER’S DELIVERIES. At Closing and as a condition precedent to the obligation of the Purchaser hereunder, the Seller shall deliver to the Purchaser the following (unless expressly waived in writing by the Purchaser):

- (i) BILL OF SALE. A counterpart page, signed by Seller to a Bill of Sale in the form reasonably acceptable to the parties to convey the Premises in accordance with the terms of this Agreement;
- (ii) DEED. A good and sufficient Bargain and Sale Deed conveying good, marketable, and insurable title to the Premises free and clear of all liens, claims and encumbrances, except for Permitted Encumbrances. The Deed shall be duly executed and acknowledged by Seller along with required recording forms TP-584 and RP-5217, and a customary affidavit of title duly executed and acknowledged by Seller and reasonably acceptable to Purchaser’s title company;
- (iii) TERMINATION OF LEASE AGREEMENT. A Termination of the Lease Agreement duly executed and delivered by Seller and County.
- (iv) AUTHORIZING RESOLUTIONS. Resolution(s) of the Seller to the extent required and applicable authorizing the Seller to execute this Agreement and the closing documents, and the County Authorizing Resolution, each of which shall be certified to be true, complete and un-amended copies by the Seller that are in full force and effect as of Closing;
- b) (v) DOCUMENTATION AND MATERIAL REGARDING PREMISES. Any keys, existing plans, specifications, architectural and engineering drawings, utilities layout plan, manuals, service and maintenance logs, paid invoices and similar documents relating to the Premises, and other documentation used in the construction, alteration or repair of the Premises, to the extent within the Seller’s possession;
- c) (vi) SECTION 1445 CERTIFICATE. A certificate of Seller warranting that it is not a foreign person as defined under Section 1445 of the Internal Revenue Code;

- (vii) PHYSICAL POSSESSION. Actual physical possession of the Premises;
- (viii) CERTIFICATE OF REPRESENTATIONS AND WARRANTIES. A certificate, dated as of the Closing, signed by the Seller certifying that all of the representations and warranties made by the Seller in this Agreement are true, accurate and complete in all material respects as of the Closing;
- (ix) MANUALS. All instructions, manuals and warranties that relate to any equipment used at the Premises to the extent in Seller's possession;
- (x) OTHER DOCUMENTS. Such further documentation as the Purchaser or its attorneys may reasonably request.

7.4 At Closing and as a condition precedent to the obligation of the Seller hereunder, the Purchaser shall deliver to the Seller the following (unless expressly waived in writing by the Seller):

- (i) PURCHASE PRICE; DEPOSIT; CLOSING Payment. The Asset Purchaser shall deliver the remaining amounts due of the Purchase Price to the Seller;
- (ii) BILL OF SALE. A signed counterpart page to the Bill of Sale in the form acceptable to the parties hereto;
- (iii) CERTIFICATE OF REPRESENTATIONS AND WARRANTIES. A certificate, dated as of the Closing, signed by the Purchaser certifying that all of the representations and warranties made by the Purchaser herein are true, accurate and complete as of the Closing;
- (iv) AUTHORIZING RESOLUTIONS. Resolution(s) of the Purchaser to the extent required and applicable authorizing the Purchaser to execute this Agreement and the closing documents, which shall be certified to be true, complete and un-amended copies by the Purchaser that are in full force and effect as of Closing; and
- (v) OTHER DOCUMENTS. Such further documents as the Seller or its attorney may reasonably request.

ARTICLE VIII

BROKERAGE

8.1 BROKERAGE. Purchaser warrants and represents to Seller that Purchaser has not dealt with any broker, agent or other party who might be deemed to be entitled to a commission or finder's fee in connection with the transactions contemplated under this Agreement. Seller represents and warrants that it has engaged Sperry Van Ness Deegan Collins Commercial Associates ("**Broker**"), to serve as Broker to Seller, and Seller shall pay Broker's total commission or fee, which shall relate to the Purchase Price of the Premises which is the subject of this Agreement. The Seller represent and warrant that it has not dealt with any broker, agent or other party who might be deemed to be entitled to a commission or finder's fee in connection with the transactions contemplated under this Agreement other than the Broker. Purchaser will indemnify, defend and hold harmless Seller from and against any claim for a commission or finder's fee made by any other party by, through or under Purchaser, and Seller will indemnify, defend and hold harmless Purchaser from and against any claim for a commission or finder's fee made by any party by, through or under Seller, including Broker. This Article shall survive the Closing or other termination of this Agreement.

ARTICLE IX

REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 REPRESENTATIONS OF THE PURCHASER. The Purchaser hereby represents and warrants to the Seller as follows:

(i) **AUTHORIZATION.** The Purchaser is a domestic business corporation organized and existing under, and governed by, the laws of the State of New York, and it is duly qualified to transact business in each and every jurisdiction where such qualification is required to enable the Purchaser to perform its obligations under the terms of this Agreement. No Act of Bankruptcy has been commenced by or against the Purchaser. The execution of this Agreement, and the performance of all obligations under this Agreement, have been authorized by all required action of the Purchaser, all as required by the Certificate of Incorporation, By-laws and Applicable Laws that regulate the conduct of the Purchaser's affairs. The execution of this Agreement and the performance of all obligations set forth herein do not conflict with and do not constitute a breach of or event of default under any Certificate of Incorporation or By-laws of the Purchaser, or any agreement, indenture, mortgage, contract or instrument to which the Purchaser is a party or by which the Purchaser is bound so that, upon execution hereof and upon satisfaction of the conditions herein contained, this Agreement constitutes the valid, legally binding obligations of the Purchaser, enforceable against the Purchaser in accordance with its terms, except to the extent that enforcement thereof is limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditors' rights generally and the application of the general principles of equity.

(ii) AVAILABILITY OF PURCHASE PRICE AT CLOSING. Purchaser represents that it possesses or will possess at the Closing funds sufficient to pay the Purchase Price for the purchase of the Premises as set forth in this Agreement.

Nothing herein shall be construed to limit the rights of the Purchaser to terminate the Agreement or to rely upon the conditions precedent to closing under any other provision herein, including, but not limited to, the Financial Contingency set forth in section 6.1(i) of this Agreement.

(iii) LEGAL MATTERS. There is no action, suit or proceeding, at law or in equity, before or by any court or similar governmental body against the Purchaser wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Purchaser of its obligations hereunder or the other transactions contemplated hereby, or that, in any way would materially adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Purchaser in connection with the transaction contemplated hereby.

(iv) ABILITY TO OBTAIN FUNDS. Purchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of a combination of the sale of low-income housing tax credits and/or tax-exempt bonds, subsidies, grants and below-market loans or otherwise and will at the Closing have immediately available funds in cash which will be sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement. Nothing herein shall be construed to limit the rights of the Purchaser to terminate the Agreement or to rely upon the conditions precedent to closing under any other provision herein, including, but not limited to, the Financial Contingency set forth in section 6.1(i) of this Agreement.

9.2 REPRESENTATIONS OF THE SELLER. The Seller hereby represents and warrants to the Purchaser as follows:

(i) ORGANIZATION. The Seller is a domestic not-for-profit corporation organized and existing under, and governed by, the laws of the State of New York, and is duly qualified and has the power, authority, and legal right, to enter into and perform its obligations set forth in this Agreement.

(ii) AUTHORIZATION. The execution, delivery, and performance of this Agreement have been duly authorized by the governing body of the Seller and will not violate any applicable laws applicable to the Seller or any provisions of the County Authorizing Resolution.

(iii) LEGAL MATTERS. There is no action, suit or proceeding, at law or in equity, before or by any court or similar governmental body against the Seller wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Seller of its obligations hereunder or the other transactions contemplated hereby, or that, in any way would materially adversely affect the validity or enforceability of this Agreement or any

other agreement or instrument entered into by the Seller in connection with the transaction contemplated hereby.

(iv) **TITLE TO PREMISES.** The Seller represents that the Seller will transfer or cause to be transferred at the Closing, title to the Premises, free and clear of all liens, actions, claims, charges, conditions or restrictions of any nature whatsoever, except the Permitted Encumbrances.

ARTICLE X

CASUALTY AND CONDEMNATION

10.1 CASUALTY. If at any time prior to Closing there is a Material Issue that occurs with respect to the Premises as a result of fire or any other casualty (“**Casualty**”), Seller shall give written notice (“**Casualty Notice**”) thereof to the Purchaser. If the Premises is the subject of such a Casualty, Purchaser shall have the option to: (i) terminate this Agreement upon written notice to Seller, if Seller is unwilling or unable to repair the damage to Purchaser’s reasonable satisfaction within a reasonable period of time or provide funds or a credit to the Purchase Price to provide funds for Purchaser to repair the damage, in which event the Deposit paid by the Purchaser, shall be returned to Purchaser, and, thereafter, this Agreement shall be deemed to be null, void and of no further force and effect; or (ii) accept title to the Premises with no adjustment of the Purchase Price and upon the Closing, Seller shall assign, transfer and set over to Purchaser all of the right, title and interest of Seller and/or the County in and to the proceeds of any insurance with respect to the Premises paid between the date of this Agreement and Closing and any deductible payable by Seller (less amounts incurred by Seller in performing necessary repairs to protect the Premises), and all unpaid claims and rights in connection with losses to the Premises shall be assigned to Purchaser at Closing without in any manner affecting the Purchase Price. Risk of loss shall pass to Purchaser at Closing. For the purposes of this section, “**Material Issue**” means either any single issue, circumstance or fact or series of issues, circumstances or facts, with respect to the Premises discovered and documented in a third-party report or otherwise that creates a potential liability or expense to Purchaser for repair or remedial costs or other expense, liability or obligation equal to or greater than Five Hundred Thousand Dollars (\$500,000).

In the event an immaterial part of the Premises is damaged or destroyed as a result of a Casualty and it is not a Material Issue, Seller shall promptly contract for and commence repairs and complete such repairs as soon as practicable and the parties shall proceed with Closing as set forth herein without repair of the casualty damage and Purchaser shall receive a credit against the Purchase Price in the amount of the damage estimate, as reasonably determined by Seller and Purchaser.

10.2 CONDEMNATION. If either: (i) all of the Premises or (ii) a material portion of the Premises; is taken between the date of this Agreement and the date of Closing by the exercise of the power of eminent domain by any local, state, or federal body, Seller shall notify the Purchaser. The Purchaser shall have the option to: (i) terminate this Agreement upon written notice to Seller, in which event the Deposit shall be returned to Purchaser, and, thereafter, this Agreement shall be deemed to be null, void and of no further force or effect; or (ii) complete

Closing at the full Purchase Price, and Seller shall allow a credit to Purchaser at Closing equal to the amount of condemnation proceeds actually paid to Seller prior to Closing and shall assign to the Purchaser all of Seller's rights to any unpaid claims in connection with the eminent domain award or compensation. If there is an immaterial taking of the Property, the parties shall be obligated to close, and at Closing, Seller shall allow a credit to the Purchaser equal to the amount of condemnation proceeds actually paid to Seller prior to Closing, and Seller shall assign to the Purchaser all of Seller's rights to any unpaid claims in connection with the eminent domain award or compensation.

ARTICLE XI

BREACHES AND DEFAULTS

11.1 BREACH OF OBLIGATIONS, REPRESENTATIONS OR WARRANTIES BY PURCHASER. If at any time subsequent to the Effective Date and prior to the Closing, except for such covenants and conditions that expressly survive the Closing, which shall continue after the Closing, (a) the Purchaser shall breach any obligation, covenant or warranty made by it herein, or (b) any representation made by the Purchaser herein shall be (or prove to be) false in any material respect, then, upon the Seller providing written notice thereof to the Purchaser, the Purchaser shall proceed with due diligence and dispatch to take all such actions as shall reasonably be required to cure such breach, and the Purchaser shall continue to take all such action until such breach is cured.

11.2 EVENTS OF DEFAULT BY PURCHASER. Subject to the provisions of Section 11.1 hereof, anyone or more of the following shall constitute an Event of Default by the Purchaser hereunder:

- (i) Failure by the Purchaser (within ten (10) days of either the occurrence or notice of any event described in Section 11.1 above, whichever is later), to cure such breach, provided however, that if the Purchaser is diligently pursuing such cure, and if in the reasonable judgment of the Seller, there is a reasonable likelihood that such breach will be cured within such sixty (60) day period, then failure to cure such breach shall not be considered to be an Event of Default until the 60th day after such breach has occurred or such notice has been provided, whichever is later.; or
- (ii) Any Act of Bankruptcy on the part of the Purchaser has occurred prior to satisfaction of the terms and conditions of this Agreement; or
- (iii) In the event that Purchaser is unable to consummate the transactions contemplated in this Agreement because it is unable to pay the Purchase Price to the Seller as provided herein, unless such failure is due to an Event of Default by Seller.

11.3 REMEDIES OF THE CORPORATION. Except as otherwise expressly provided in this Agreement, the remedies for the occurrence of an Event of Default set forth under Section

11.2 hereof shall be, at the option of the Corporation, either (a) a suit seeking specific performance by the Purchaser of the provisions of this Agreement and injunctive relief, or (b) to pursue any other remedies that may be available to the at law or in equity. All rights and remedies under this Agreement are cumulative of and not exclusive of, any rights or remedies otherwise available, and the exercise of any such rights or remedies shall not bar the exercise of any other rights or remedies.

11.4 BREACH OF OBLIGATIONS, REPRESENTATIONS OR WARRANTIES BY SELLER. In the event that the Seller shall breach any material obligation, covenant or warranty made herein or if at any time any representation made by the Seller, as applicable, in this Agreement, shall be or prove to be false in any material respect then, upon the Purchaser's providing written notice thereof to the Seller, the Seller shall proceed with due diligence and dispatch to take all such actions as shall reasonably be required to cure such breach and the Seller shall continue to take all such actions until such breach is cured.

11.5 EVENTS OF DEFAULT BY CORPORATION. Subject to the provisions of Section 11.4 hereof, failure by the Seller (within thirty(30) days of either the occurrence or notice of any event described in Section 11.4 above, whichever is later), to cure such breach shall constitute an Event of Default by the Seller; provided however, that if the Seller is diligently pursuing such cure, and if in the reasonable judgment of the Purchaser, there is a reasonable likelihood that such breach will be cured within such sixty (60) day period, then failure to cure such breach shall not be considered to be an Event of Default until the 60th day after such breach has occurred or such notice has been provided, whichever is later.

11.6 REMEDIES OF PURCHASER FOR EVENT OF DEFAULT BY SELLER. The remedies for the occurrence of an Event of Default set forth under Section 11.5 hereof shall be, at the option of the Purchaser, either (a) a suit seeking specific performance by the Seller of the provisions of this Agreement and injunctive relief, or (b) to pursue any other remedies that may be available to the at law or in equity, including without limitation, rights under Section 11.9. All rights and remedies under this Agreement are cumulative of and not exclusive of, any rights or remedies (otherwise available, and the exercise of any such rights or remedies shall not bar the exercise of any other rights or remedies.

11.7 NON-WAIVER. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient by the non-breaching party in its sole discretion. No waiver of the occurrence of any Event of Default hereunder, whether by the Purchaser or the Seller, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereto.

11.8 PENDENT DISPUTES. Notwithstanding anything contained in this Agreement to the contrary, if there shall be a dispute concerning the right of a party to terminate this Agreement, the Parties shall continue to perform their respective obligations hereunder as if the Agreement were in effect until such dispute is resolved and any appeals permitted thereunder are

exhausted. Notwithstanding the foregoing, during such dispute, any time period related to Purchaser's right of termination under any provision herein, or to Purchaser's obligation to remit the Extension Payment, shall be tolled during the pendency of any such dispute.

11.9 INDEMNIFICATION.

(i) **INDEMNIFICATION BY PURCHASER.** Purchaser agrees to protect, indemnify, defend and hold the Seller and its officers, members, employees, and agents, successors and assigns, free and harmless from and against any and all claims, debts, liabilities, obligations, losses, fines, penalties, judgments, assessments, damages, costs and expenses (including but not limited to reasonable attorneys' fees and expenses), liens and encumbrances accruing, based upon, resulting from or directly or indirectly arising out of (i) any breach or violation of any representation, warranty, covenant, stipulation, agreement or certification by Purchaser set forth in this Agreement or in any document delivered hereunder, provided that such breach or violation has been determined to have occurred by a court of competent jurisdiction or (ii) the breach by Purchaser of any other term or provision of this Agreement, provided such breach has been determined to have occurred by a court of competent jurisdiction; (iii) any damages to the Premises caused by the negligence, gross negligence or intentional acts of Purchaser, its agents, employees, independent contractors, officers or directors (it being agreed that neither Seller, nor any of its employees or agents constitutes an agent, employee, independent contractor, officer or director of Purchaser), prior to Closing; or (iv) any facts or events occurring after the Closing and connected with the Premises or the activities of Purchaser; provided, however, the indemnity shall not apply to any liability arising from a breach of this Agreement by Seller provided that such breach has been determined to have occurred by a court of competent jurisdiction, or other act or omission by Seller occurring on or before the Closing.

(ii) **INDEMNIFICATION BY SELLER.** The Seller, agrees to protect, indemnify, defend, and hold Purchaser and its members, officers, trustees, affiliates, agents, legal representatives, successor and assigns, and each of them, free and harmless from and against any and all claims, debts, liabilities, obligations, losses, damages, fines, penalties, judgments, assessments, damages, costs and expenses (including but not limited to reasonable attorneys' fees and expenses), liens and encumbrances accruing based upon, resulting from or directly or indirectly arising out of (i) any breach or violation of any representation, warranty, covenant, stipulation, agreement or certification by the Seller set forth in this Agreement or in any document delivered hereunder, provided such breach or violation has been determined to have occurred by a court of competent jurisdiction; or (ii) the breach by Seller of any other term or provision of this Agreement, provided such breach has been determined to have occurred by a court of competent jurisdiction; or (iii) any facts or events occurring prior to the Closing and connected with the Premises; or (iv) any Material Issue, provided, however, that the indemnity shall not apply to any liability to the extent arising out of a breach of this Agreement by Purchaser, so long as such breach has been determined to have occurred by a court of competent jurisdiction, or other act or omission by Purchaser occurring on or before the Closing.

ARTICLE XII

MISCELLANEOUS

12.1 GOVERNING LAW; DISPUTE RESOLUTION. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. Notwithstanding anything herein to the contrary, the parties may resolve any disputes which may arise among them through any available legal or equitable procedure. In addition, the parties may, on a case-by-case basis, agree to submit any such dispute to a non-binding arbitration procedure in order to create a factual record which will be available for use by a court of competent jurisdiction in any subsequent action relating to such dispute. Unless otherwise agreed to in writing or as provided below, the parties shall continue to perform their respective obligations under this Agreement during any arbitration or other dispute resolution process.

12.2 FURTHER ASSURANCES. Each party shall execute and deliver any instruments and perform any acts that may be necessary or reasonably requested in order to give full effect to the terms of this Agreement. Each party shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such action as may be reasonably requested by the other party; provided however, that such actions are not inconsistent with the provisions of this Agreement and do not involve the assumption of obligations other than those which are provided for in this Agreement to carry out the intent of this Agreement.

12.3 RELATIONSHIP OF THE PARTIES. Except as otherwise explicitly provided herein, no party to this Agreement shall have any responsibility whatsoever with respect to services that are to be provided or contractual obligations that are to be assumed by any other party and nothing in this Agreement shall be deemed to constitute any party a partner, joint venture participant, agent or legal representative of any other party or to create any fiduciary relationship between or among the Parties.

12.4 WAIVER. The waiver by either party of a default or of a breach of any provision of this Agreement by the other party shall not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

12.5 MODIFICATION. Modifications, waivers or amendments of (or to the provision of) this Agreement shall be effective only if set forth in a written instrument signed by each party hereto after all corporate or other action regarding the authorization for such modification, waivers or amendments has been taken.

12.6 HEADINGS. The captions and headings in this Agreement are for convenience and ease of reference only and in no way define, limit or describe the scope or intent of this Agreement and such headings do not in any way constitute a part of this Agreement.

12.7 NOTICES. Any notice or other communication which is required to be given hereunder shall be in writing and shall be deemed to have been validly given if delivered in person or mailed by certified or registered mail, postage prepaid, addressed as follows:

To the Seller: Ulster County Economic Development Alliance, Inc.
 244 Fair Street
 Kingston, New York 12402
 Attn: Chief Executive Officer

With Copies to: Ulster County Attorney's Office
 244 Fair Street
 Kingston, New York 12402
 Attn: County Attorney.

If to the Purchaser: RUPCO, Inc.
 289 Fair Street
 Kingston, New York 12402
 Attn: Joseph P. Eriole, Vice President for RealReals Estate Development

With Copies to: _____

Attn: _____

Changes in the addresses to which such notices may be directed may be revised from time to time by any party by written notice to the other Parties. Attorneys may bind the parties with respect to any notice.

12.8 SUCCESSORS AND ASSIGNS. This Agreement may not be assigned without the written consent of either party.

12.9 SEVERABILITY. In the event that any provision of this Agreement shall be determined for any reason to be invalid, illegal or unenforceable in any respect by any court of competent jurisdiction, the parties shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Agreement or to such other appropriate actions as, to the maximum extent practicable in light of such determination, shall implement and give effect to the intentions of the parties as reflected herein. Notwithstanding such determination, such determination shall not invalidate or render any other provision hereof unenforceable.

~~12.10 **GOVERNING LAW.** The obligations of the Seller and the Purchaser under the terms of This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State.~~

~~12.11~~ **MERGER CLAUSE.** This Agreement (including the Schedules hereto) constitutes the entire agreement and understanding of the parties with respect to the conveyance of the Premises and all other matters addressed or referred to herein and supersedes all prior and contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating to such matter.

~~12.1112~~ **COUNTERPARTS.**

This Agreement may be executed in any number of counterparts and by delivery of facsimile or electronic copies with the same effect as if the signature and seals thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, the Seller and the Purchaser have executed this Agreement, intending to be legally bound hereby as of the day and year first above written.

SELLER:

ULSTER COUNTY ECONOMIC DEVELOPMENT ALLIANCE, INC.

By: _____
Name:

Title: _____

PURCHASER:

RUPCO, INC.

By: _____
Name:

Title: _____

EXHIBIT “A

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