



TOWN OF NORTH HEMPSTEAD
OFFICE OF THE TOWN ATTORNEY

Judi Bosworth
Town Supervisor

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Town Attorney

REQUEST FOR PROPOSALS

Purchase and Development of Real Property

Premises:
Sec. 6, Block 53, p/o Lot 1058
West Shore Road, Port Washington, NY

RFP# TNH143-2016

Issue Date: May 20, 2016

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I. INTRODUCTION AND GENERAL PROVISIONS

The Town of North Hempstead (the “Town”) is issuing this Request for Proposals (“RFP”) to interested persons for the purchase and development of vacant real property located on West Shore Road in Port Washington, County of Nassau, State of New York known and designated as Section 6, Block 53, Part of Lot 1058. The Town of North Hempstead is the current owner of record of the property.

II. PROPERTY DESCRIPTION

In 2007, the Town acquired approximately 26 acres of real property from the County of Nassau located on West Shore Road and designated as Section 6, Block 53, Lot 1058 on the Land and Tax Map of the County of Nassau. The property features varying slopes and grades, and a large portion of the property is wetlands. In examining the property, the Town has determined that an approximately 2.9 acre portion of the property, shown as Possible Construction Envelope B-1 on the map on the next page (the “Subject Property”), can be made available for sale and development. The Subject Property is currently vacant.

The Subject Property is bounded by vacant public property to the north, south and west (including wetlands to the south) and West Shore Road to the east. The following amenities are in the area:



North Hempstead Beach Park: Providing 34 acres of sandy beach and recreational activities, North Hempstead Beach Park includes a promenade for residents who want to walk along the waterfront. A fishing pier, boat ramp, bathhouse and concession area are also available. The park provides basketball and shuffleboard courts, horseshoe pits, picnic areas with barbecues and shelter pavilions, and a playground. The 60-acre park sits on a half-mile beachfront property. It also features court games like basketball, handball and paddleball.

Harbor Links Golf Course: Conveniently situated on the prestigious gold coast north shore of Long Island in Port Washington, Harbor Links is home to incomparable amenities, astounding surroundings and a consistent commitment to extraordinary service. Harbor Links has exceptional amenities including an award winning 18-hole Championship Course, a 9-hole executive course, a world class instructional program, miniature golf and banquet facilities.





Port Washington Downtown: Port Washington's Main Street includes a lively downtown district that has plenty of unique shops, dining establishments and a performing arts theater. The business district boasts new flowering planters, landscaping and attractive signage.

Port Washington Waterfront: The Port Washington waterfront, located on the northern peninsula of North Hempstead, is a beautiful place to visit. The Town Dock offers a lovely view of Manhasset Bay and provides residents with the opportunity to moor boats, to fish and to enjoy the scenic view. Visitors can also take a stroll down the Bay Walk which extends from the Town Dock to Manorhaven Beach Park.



The Subject Property lies within the jurisdiction of the Town of North Hempstead. The Property is also within the following special districts: Port Washington School District; Port Washington Water Pollution Control District; Port Washington Water District and the Port Washington Garbage District

The Subject Property is currently zoned Residence AAA. As the property cannot be used for residential purposes by deed restriction, it is envisioned that the property will be re-zoned Business B-A under the jurisdiction of the Town Board of the Town of North Hempstead. The proposed development must be consistent with plans for the development of North Hempstead Beach Park and with the uses already developed in the area. In addition, the proposer recommended by the RFP committee will be responsible for presenting the Subject Property's development plan to local community stakeholders, districts and elected officials in order to develop support and consensus for the project.



TOWN OF NORTH HEMPSTEAD
NASSAU COUNTY, NEW YORK



Legend	
	PROPERTY LINE FROM SURVEY
	FLAGGED WETLAND BOUNDARY
	100 FOOT WETLAND BUFFER
	POSSIBLE CONSTRUCTION ENVELOPE B1
	POSSIBLE CONSTRUCTION ENVELOPE
	EXISTING TOWN YARD
	EXISTING STORAGE AREA
	SLOPES 15% AND OVER
	2 FOOT CONTOURS



III. AERIAL PHOTO OF THE SUBJECT PROPERTY



IV. DUE DILIGENCE

The Town is making the Subject Property available to all proposers should they wish to inspect the Subject Property or conduct any reasonable and customary inspections, tests, studies and reviews of the Subject Property, commonly known as a due diligence review. The Town will afford potential proposers sixty (60) days' time to perform these reviews if so requested by the proposer.

If a proposer would like to access the property for this purpose, please contact Michael Kelly at kellym@northhempsteadny.gov prior to July 15, 2016. Prior to accessing the property, the proposer must complete and sign the due diligence letter attached to this RFP and provide the Town with certificates of insurance as described in the letter.



V. INSTRUCTIONS AND MANDATORY REQUIREMENTS

1. Any member of the public or any entity is entitled to submit a proposal for the purchase and development of the Subject Property, provided that such proposer complies with the instructions stated in this RFP.
2. This RFP is available at the Office of the Town Attorney, 220 Plandome Road, Manhasset, New York, on the Town's website at www.northhempsteadny.gov or may be obtained by emailing Michael Kelly at kellym@northhempsteadny.gov.
3. The deadline for proposals is September 15, 2016 at 4:00pm EST. Proposals may be submitted at any time up to such date and time. In addition, proposals submitted may be amended up until such date and time. **Proposals received after the above date and time will not be considered and will be returned unopened.**
4. The property is being sold in its "AS IS, WHERE IS, WITH ALL FAULTS" condition. All Proposals submitted must be submitted with this fact taken into consideration.
5. Proposals will not be opened until the deadline for proposals has passed.
6. All proposals must be submitted either in person, by mail, by courier or by overnight carrier. No facsimile or electronic mail proposals will be accepted.
7. All proposals must be submitted to the following authorized contact person on or before the proposal deadline stated above:

Michael Kelly
Senior Deputy Town Attorney
Town of North Hempstead
Office of the Town Attorney
220 Plandome Road
Manhasset, New York 11030

All proposals must be submitted in a sealed opaque envelope with the statement "Response to RFP No. TNH143-2016" typed or written on the envelope. Unsealed proposals will not be accepted.

8. Questions regarding this RFP must be made in writing and directed to the above authorized contact person by email at kellym@northhempsteadny.gov. The Town reserves the right not to answer any question or comment received and will not respond to any question not presented in writing.



VI. MANDATORY PROPOSAL CONTENTS

Proposals must include, at a minimum, the following information:

- Section 1 – The identity of the Proposer and, if a single purpose trust, such fact;
- Section 2 – The amount the proposer proposes to pay the County for fee title to the Subject Property;
- Section 3 – The Proposer’s development plan for the Subject Property
- Section 4 – Additional terms and conditions proposed for the transaction

A proposal must also include the following:

- The Non-Collusive Proposal Certification attached as Appendix A
- A certified or bank check in the amount of Five Thousand and 00/100 Dollars (\$5,000.00) made payable to “Town of North Hempstead” as a good faith deposit (the “Deposit”). Once a successful proposer has been identified, the Town and such proposer will proceed to execute a Contract of Sale, which must contain terms similar to those contained in the form attached hereto as Appendix B. Upon executing such Contract of Sale, the successful proposer must remit, as a down payment to be held by the Town in accordance with the terms of the Contract of Sale, the difference between the Deposit and ten percent (10%) of such proposer’s proposed purchase price for the Subject Property. In the event that a contract of sale is not entered into through the fault of the successful proposer (other than a good faith disagreement on terms between the Town and the successful proposer), such Deposit shall be forfeited by the successful proposer.
- A completed Proposer’s Qualifications Statement attached here as Appendix B
- An acknowledgement that the Subject Property, being a portion of a tax lot, must be subdivided from the remainder of Lot 1058 and that the Proposer, if selected by the Town, will commence a proceeding for a minor subdivision promptly following the execution of a contract of sale by such proposer and the Town. The successful proposer will be required to prepare, at the successful proposer’s sole cost and expense, such subdivision application and all related documentation, including preparation of all requisite surveys and notices, and must pay any related application or filing fees.
- An acknowledgement that the proposer will enter into an agreement for the purchase of the property in a form substantially similar to the form contract attached here as Appendix C. Proposers should include in Section 4 of their proposal those changes to the form contract that they request.



In the event that any of the above documents are not submitted with the Proposer's proposal for the purchase of the Subject Property, or the Non-Collusive Proposal Certification or Proposer's Qualifications Statement reveal a conflict of interest that would prohibit the County, in the sole discretion of the Office of the Town Attorney, from completing the transaction as described in this RFP with such proposer, such proposal will be rejected.

ALL PROPOSERS SHOULD NOTE THAT THE TOWN MAY NOT EXECUTE A CONTRACT UNTIL APPROVAL OF THE SALE OF THE SUBJECT PROPERTY IS OBTAINED FROM THE TOWN BOARD AND THE REQUIREMENTS OF TOWN LAW SECTIONS 90 AND 91 ARE SATISFIED. THE TOWN SHALL NOT BE BOUND TO SELL THE SUBJECT PROPERTY TO ANY PROPOSER UNLESS AND UNTIL THE SALE OF THE PROPERTY TO THE SUCCESSFUL PROPOSER IS APPROVED BY THE TOWN BOARD, THE CONTRACT OF SALE IS EXECUTED BY THE TOWN SUPERVISOR AND THE ABOVE LEGAL REQUIREMENTS HAVE BEEN SATISFIED.

The Town reserves the right to amend, cancel or rescind, in whole or in part, this RFP or to reject all proposals received in response to this RFP.

VII. PROPOSAL EVALUATION

The committee formed by the Town will review the proposals to determine which proposal provides the most value to the Town. Proposals will be evaluated based on:

- Proposal completeness (20 points)
- The proposed acquisition price (50 points)
- The Proposer's development plan for the subject property. The development plan must include the proposer's plan for presenting their development plan to local community stakeholders, districts and elected officials in order to develop support and consensus for the project (30 points)

The Town reserves the right to take into consideration any other factors the RFP evaluation committee deems necessary and appropriate. In addition, as stated earlier, the proposer recommended by the RFP committee will be responsible for presenting their development plan to local community stakeholders, districts and elected officials in order to develop support and consensus for the project.

All proposals must remain valid, and the Proposer must agree to be bound by its proposal, for a period of one hundred eighty (180) days. The Town is under no obligation to return proposals.

VIII. GENERAL INFORMATION AND CONDITIONS ON PROPOSERS

No Representations as to the Judgment or the Property:



The Town is proposing to sell the Subject Property on an “as is” basis. The Town does not and will not make any representations as to the Subject Property. Any sale of the Subject Property pursuant to this RFP shall be without recourse, in any event, to the Town.

Freedom of Information Law:

The New York State Freedom of Information Law (Article 6, §§ 84-90 of the Public Officers Law) mandates public access of government records. If a Proposer believes that specific information or data contained in its response is protected from disclosure under the Freedom of Information Law, the Proposer must specifically identify the pages of the response that contain such information or data by properly marking the applicable pages and including a separate written explanation of all of the Proposer’s reasons for believing that the information or data is exempt from disclosure. The following notice must be inserted in the front of the Proposer’s proposal:

NOTICE

The data on pages ___ of this proposal identified by an asterisk (*) or marked along the margin with a vertical line contain technical or financial information which the proposer believes is protected from disclosure under the New York State Freedom of Information Law. The Proposer requests that such information and data be used only for the evaluation of this response, but understands that disclosure will be limited to the extent that is determined proper under the Law.

The Proposer does not assume any responsibility or liability for disclosure of data that has not been properly identified as set forth above. The Proposer shall be permitted to disclose information or data properly marked with an asterisk or a vertical line if it has made a good faith legal determination that such information is legally subject to disclosure, or if disclosure is made pursuant to an order of a court or administrative agency having legal jurisdiction.

In the event a Proposer desires not to have its proposal or certain of its data contained therein released pursuant to the Freedom of Information Law, it may request the Town not to release certain parts or all of its response by notifying the Town in writing of the sections of its response that it chooses not to have disclosed and by agreeing to defend against and to indemnify and hold the Town and its officers, employees and agents harmless from any and all claims, actions, demands or proceedings and to pay and satisfy all damages, losses, expenses, judgments, costs, fees (including reasonable attorneys’ fees), and obligations and liabilities, resulting from the nondisclosure of the Proposer’s response or data.

Incurring Cost:

The Town shall not be liable for any costs incurred in the preparation and production of any document in response to this RFP or for any work performed prior to the issuance of a contract.

Addenda to Request for Proposals:



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Amendments to this RFP may be necessary prior to the closing date and will be furnished by email to all prospective Proposers who have requested these materials.

Award of Contract:

The Town shall notify the successful proposer of their award by means of a Notice of Award issued by the Office of the Town Attorney. Neither an award nor the issuance of a Notice of Award shall constitute the Town's acceptance of such proposal or a binding commitment on behalf of the Town to enter into a contract with the successful proposer, as any binding arrangement must be set forth in definitive documentation signed by both parties and shall be subject to all requisite approvals, including that of the Town Board and the Town Supervisor.

Negotiated Changes:

In the event that negotiated changes occur after the awarding of the contract, the same purchase price called for in the original proposal will remain in effect.

Rejection of Proposals:

This RFP does not commit the Town to award a contract for the sale of the Subject Property. The Town reserves the right to accept or reject any or all proposals received as a result of this request or to cancel in part or in its entirety this RFP if it is in the interests of the Town to so do.

Independent Price Determination:

By submission of its offer, the Proposers certify (and in the case of a joint offer, each party thereto certifies as to its own organization) that, in connection with its Proposal:

- 1) The prices in this offer have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matters relating to such prices with any other Proposer or competitor; and
- 2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the Proposer prior to award, directly or indirectly, to any other Proposer or competitor; and
- 3) No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition; and
- 4) No elected or appointed official or employee of the Town shall benefit financially or materially from the sale of the Subject Property. The Town may terminate this contract if gratuities were offered or given by the Proposer or his or her agency to any such official or employee.



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Ownership of Information:

All materials submitted in response to this Request for Proposals will become the property of the Town.

Examination of Records:

In submitting a proposal, the successful Proposer agrees that the Town shall have access to and the right to examine directly all pertinent documents, papers and records of the Proposer as related to any contract and/or subcontract resulting from this RFP until six years after final payment has been made pursuant to any contract awarded as a result of the Town's acceptance of a proposal.

Brokers:

The Town will not be responsible for the payment of any fees to brokers retained by a proposer in connection with this RFP or any transaction resulting therefrom.

Disclaimer:

The Town and its respective officers, directors, agents, members and employees make no representation or warranty and assume no responsibility for the accuracy of the information set forth in this RFP. Further, the Town does not warrant nor make any representations as to the quality, content, accuracy or completeness of the information, text, graphics, links or other facet of this RFP once it has been downloaded or printed from this or any server, and hereby disclaims any liability for technical errors or difficulties of any nature that may arise in connection with the Website on which this RFP is posted, or in connection with any other electronic medium utilized by respondents or potential respondents in connection with or otherwise related to the RFP.



APPENDIX A

NON COLLUSIVE PROPOSAL CERTIFICATION

By submission of this Proposal, each proposer and each person signing on behalf of any other proposer certifies, and in the case of a joint Proposal, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

1. The prices of this Proposal have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor; and
2. Unless otherwise required by law, the prices which have been quoted in this Proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly, to any other proposer or to any competitor; and
3. No attempt has been made or will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a Proposal for the purpose of restricting competition.
4. The undersigned has carefully examined the Proposal and if the County proposer enters into an agreement with the proposer, proposer agrees to perform the terms of the agreement and to provide all services, labor, material and equipment necessary for this service.

APPROVED AND SUBMITTED BY: _____
(Signature)

PRINT NAME: _____

DATE: _____



APPENDIX B

PROPOSER'S QUALIFICATION STATEMENT

INSTRUCTIONS:

The Proposer's Qualifications Statement consists of the following documents:

1. Statement of Understanding;
2. Disclosure Form;
3. Acknowledgement of Receipt of Addenda Form.

Please complete **ALL FIVE** forms and submit with the Proposal.

THE TOWN RETAINS THE ABSOLUTE RIGHT TO REJECT ANY PROPOSAL THAT FAILS TO INCLUDE COMPLETE AND ACCURATE ORIGINALS OF ALL FOUR FORMS INCLUDING ALL APPROPRIATE ACKNOWLEDGMENT(S) AND BEARING THE SIGNATURE OF A NOTARY PUBLIC.



STATEMENT OF UNDERSTANDING

By signing in the space provided below, the undersigned certifies, under penalty of perjury, as follows:

1. I am duly authorized to submit this Proposal on behalf of the below listed sole proprietorship/company/partnership/corporation.
2. That he/she has read and understands all terms and conditions pursuant to this RFP.
3. That he/she has the capacity to and will abide by all terms and conditions pursuant to this RFP.
4. That he/she agrees to accept payment in accordance with the requirements of the RFP; and
5. That he/she agrees that the proposed submitted to the Town shall be irrevocable and that he/she will, if his/her proposal is accepted, enter into a contract with the Town of North Hempstead pursuant to the terms and conditions set forth in the RFP.
6. That he/she certified that his/her sole proprietorship/company/partnership/corporation will carry all types of insurance specified in the contract.

The undersigned further stipulates that the information in this Proposal is, to the best of its knowledge, true and accurate.

Signature

Name of Proposer

Title of Person Signing

Sworn to and subscribed on
this _____ day of _____, 20__

(Notary Public)



DISCLOSURE FORM

The signatory of this questionnaire certifies under oath the truth and correctness of all Statements and of all answers to interrogatories hereinafter made.

Provide answers to each of the following and supporting documentation, where necessary:

1. **Adverse Equal Opportunity Determinations:** Identify all adverse determinations against your Company/Corporation/Partnership, or its employees or persons acting on its behalf, with respect to actions, proceedings, claims or complaints concerning violations of state, Federal or municipal equal opportunity laws or regulations.

2. **Convictions and Unscrupulous Practice:** Has your Company/Corporation/Partnership, or any of its employees present or past, or anyone acting on its behalf, ever been cited for unscrupulous practice, or been convicted of any crime or offense arising directly or indirectly from the conduct of your Company/Corporation/Partnership's business, or has any of your Company/Corporation/Partnership's officers, director or persons exercising substantial policy discretion ever been convicted of any crime or offense involving business/financial misconduct or fraud? If so, describe the convictions and surrounding circumstances in detail.

3. **Pending or Threatened Actions/Suits:** Describe any past or present action, suit, proceeding or investigation pending or threatened against your Company/Corporation/Partnership including, without limitation, any proceeding known to be contemplated by government authorities, private parties, or current or former clients.

4. **Criminal Misconduct:** Has your Company/Corporation/Partnership, or any of its employees, or anyone acting on its behalf, been indicted or otherwise charged in connection with any criminal matter arising directly or indirectly from the conduct of your Company/Corporation/Partnership's business which is still pending, or has any of the Company/Corporation/Partnership's officers, directors or persons exercising substantial policy discretion been indicted or otherwise charged in connection with any criminal matter involving business or financial misconduct or fraud which is still pending? If so, describe the indictments or charges and surrounding circumstances in detail.

5. **Conflicts of Interest:** disclose any of the following, and describe any procedures your Company/Corporation/Partnership has, or would adopt, to assure the Town that a conflict of interest would not exist in the future):



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- (a) Any material financial relationships that your Company/Corporation/Partnership or any Company/Corporation/Partnership employee has that may create a conflict of interest or the appearance of a conflict of interest in contracting with or representing the Town.

 - (b) Any family relationship that any employee of your Company/Corporation/Partnership has with a member, employee, or official of the Town or that may create a conflict of interest or the appearance of a conflict of interest in contracting with or representing the Town.

 - (c) Any other matter that your Company/Corporation/Partnership believes may create a conflict of interest or the appearance of a conflict of interest in contracting with or representing the Town.
6. **Financial Disclosure:** Submit with this Disclosure Statement Form, any one of the following three items:
- (a) a financial statement, prepared on an accrual basis, in a form which clearly indicates: Proposer's (1) assets, liabilities and net worth; (2) date of financial statement; and (3) name of firm preparing statement.
 - (b) a letter of credit reference from a recognized bank or financial institution; or
 - (c) a certified copy of a credit report from a recognized credit bureau, such as Dun and Bradstreet or TRW.

THE TOWN RETAINS THE ABSOLUTE RIGHT TO REJECT ANY PROPOSAL THAT FAILS TO INCLUDE COMPLETE DISCLOSURE STATEMENT FORM.

Dated at _____, this _____ day of _____, 20____.

(Signature, if Individual)

By: _____ (Seal, if corporation)
(Signature)

Print Name: _____
(Legal Business Name of Company/Partnership/Corporation)

Print Title: _____

[MANDATORY AFFIDAVIT(S) AND ACKNOWLEDGMENT APPEARS ON FOLLOWING PAGE]



-----**(Affidavit for Individual)**-----

_____ being duly sworn, deposes and says, under penalty of perjury, that: a) _____ he/she is an authorized representative of the Proposer; b) he/she has read all statements and answers to this DISCLOSURE STATEMENT FORM, including the attached letter of credit/certified copy of credit report or financial statement submitted pursuant to interrogatory number 7 Financial Disclosure; c) the attached letter of credit/certified copy of credit report or financial statement, taken from his/her books, is a true and accurate statement of his/her financial condition as of the date thereof; and b) all of the foregoing qualification information is true, complete, and accurate.

-----**(Affidavit for Partnership)**-----

_____ being duly sworn, deposes and says, under penalty of perjury, that: a) he/she is a member of the partnership of _____, b) he/she has read all statements and answers this DISCLOSURE STATEMENT FORM, including the attached letter of credit/certified copy of credit report or financial statement submitted pursuant to interrogatory number 7 Financial Disclosure; c) he/she is familiar with the books of said partnership showing its financial condition; c) the attached letter of credit/certified copy of credit report or financial statement, taken from the books of said partnership, is a true and accurate statement of the financial condition of the partnership as of the date thereof; and d) all of the foregoing qualification information is true, complete and accurate.

-----**(Affidavit for Corporation)**-----

_____ being duly sworn, deposes and says, under penalty of perjury, that: a) he/she is _____ of _____ (Full Legal Name of Corporation); b) he/she has read all statements and answers this DISCLOSURE STATEMENT FORM, including the attached letter of credit/certified copy of credit report or financial statement submitted pursuant to interrogatory number 7 Financial Disclosure; c) he/she is familiar with the books of said corporation showing its financial condition; c) the attached letter of credit/certified copy of credit report or financial statement, taken from the books of said corporation, is a true and accurate statement of the financial condition of said corporation as of the date thereof; and d) that all of the foregoing qualification information is true, complete and accurate.

-----**(Acknowledgement)**-----

_____ being duly sworn, deposes and says, under penalty of perjury, that he/she is _____ of _____ (Name of Proposer) that he/she is duly authorized to make the foregoing affidavit and that he/she makes it on behalf of () himself/herself: () said partnership; () said corporation.

Sworn to before me this _____ day of _____, 20_____, in the County of _____, State of _____.

(Notary Public)

My commissioner expires: _____



ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA FORM

The proposer hereby acknowledges that he/she has received and that he/she has considered in the preparation of his/her proposal, all requirements in the following Addenda to this RFP:

Note: This acknowledgement shall be signed by the person executing the Statement of Understanding. Insert additional pages, as necessary.

ADDENDUM NUMBER	DATE OF ADDENDUM	ACKNOWLEDGEMENT

NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS PROPOSAL.

ACKNOWLEDGEMENT:

IMPORTANT NOTICE:

THIS FORM MUST BE COMPLETED AND SUBMITTED BY ALL PROPOSERS. IF NO ADDENDA ARE RECEIVED, CHECK THE “NO ADDENDUM” BOX ABOVE AND SIGN THE ACKNOWLEDGMENT.

THE TOWN RETAINS THE ABSOLUTE RIGHT TO REJECT AND PROPOSAL THAT FAILS TO INCLUDE THIS ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA FORM



APPENDIX C

FORM OF CONTRACT OF SALE

This **AGREEMENT**, made as of the date on which this Agreement is executed by Nassau County, by and between the **TOWN OF NORTH HEMPSTEAD**, a municipal corporation located in the State of New York, having its principal office at 220 Plandome Road, Manhasset, New York 11030 (“**Seller**”), and _____, having its principal office at _____, _____, New York _____ (“**Purchaser**”).

WITNESSETH:

1. (a) Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, upon the terms and conditions hereinafter contained, (a) the parcel of land which is designated as Section 6, Block 53, Part of Lot 1058 on the Nassau County Land and Tax Map (the “**Land**”), (b) all buildings and improvements situated on the Land (collectively, the “**Buildings**”), (c) all right, title and interest, if any, of Seller in and to any land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof, and all right, title and interest of Seller in and to any award made or to be made in lieu thereof and in and to any unpaid award for damages to the Land by reason of change of grade of any street; (d) the appurtenances and all the estate and rights of Seller in and to the Land and the Building, and (e) all right, title and interest of Seller, if any, in and to the fixtures, equipment and other personal property attached or appurtenant to the Buildings (the foregoing are, collectively, the “**Premises**”). Should the Purchaser desire to obtain a survey of the Premises, the procurement and preparation of such survey shall be at the sole cost and expense of the Purchaser.

(b) The Premises is comprised of part of a tax lot. Seller hereby represents that proceedings for a waiver of subdivision (i.e. partitioning map application) will be commenced by Seller promptly following the execution of this Agreement by both parties. It shall be a condition of Closing that the Premises be approved to be subdivided so the portion of Lot 1058 comprising the Premises becomes a separate tax lot. Seller shall be the applicant in connection with the waiver of subdivision. Seller shall be required to prepare, at Seller’s sole cost and expense, the application and all related documentation, including preparation of all requisite surveys and notices, and shall pay any related application or filing fees. During the term of this Agreement, the Purchaser shall reasonably cooperate with Seller in Seller’s efforts to obtain the waiver of subdivision.

2. Seller shall convey and Purchaser shall accept fee simple title to the Premises in accordance with the terms of this Agreement, subject only to the following (collectively, the “**Permitted Encumbrances**”):

(a) Any state of facts an accurate survey of the Premises would show, provided that such state of facts does not render title unmarketable;



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(b) All covenants, restrictions, easements, reservations and agreements of record, provided that the same are not violated by the existing Buildings or prohibit the current use of the Premises;

(c) All licenses and easements, if any, for public utilities and the rights of any utility company to maintain and operate lines, poles, cables and distribution boxes in, over and upon the Premises;

(d) Encroachments, if any, upon and affixations, if any, to the Premises and/or the Buildings thereon, of walls, foundations or appurtenances of buildings located on adjoining property, as well as encroachments, if any, of building walls, foundations or appurtenances, belonging to the Premises upon adjoining property, provided that with respect to encroachments belonging to the Premises upon adjoining property, Purchaser's title insurance company shall insure that such encroachments may remain so long as the walls, foundations or appurtenances which so encroach may stand;

(e) Any laws, codes, regulations or ordinances, requirements and construction preconditions (including, but not limited to zoning, building and environmental matters) as to the use, occupancy, subdivision or improvement of the Premises adopted or imposed by any governmental agency having jurisdiction, and all amendments and additions thereto now or which at Closing will be in force and effect, and any violations of such laws, codes, regulations, ordinances, requirements and conditions other than those violations which Seller is obligated to cure under this Agreement..

(f) Revocability or lack of right to maintain vaults, coal chutes, excavations or sub-surface equipment beyond the line of the Premises;

(g) Consents by Seller or any former owner of the Premises for the erection of any structure or structures on, under or above any streets or roads in front of or adjoining the Premises;

(h) The lien of real estate taxes, assessments, water and sewer charges and other charges of any kind or nature which are not due and payable prior to the Closing, subject to apportionment as provided for in this Agreement; and

(i) The standard preprinted exceptions, stipulations and exclusions from coverage contained in any certificate of title or title policy issued to Purchaser by any title company authorized to issue title insurance in the State of New York, to the extent same are not modified herein.

3. (a) Purchaser shall pay to Seller for the Premises the sum of _____ AND ___/100 DOLLARS (\$_____.__) (hereinafter, the "Purchase Price"), to be paid as follows:

(i) The sum of _____ AND ___/100 DOLLARS (\$_____.__) (the "Deposit" or the "Down Payment") to be paid upon the execution of this Agreement by the Purchaser, to be held by the Town in a non-interest bearing account, in escrow until closing of title. The Deposit shall be paid by bank or certified check payable to "Town of North Hempstead." Any interest earned on the Deposit shall be paid to the same party entitled to the Deposit, and the party receiving such interest shall pay any income taxes thereon. In no event shall interest on the



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Down Payment be credited against the Purchase Price. If the Purchaser fails to perform their obligations hereunder for any reason other than the Seller's willful default or the failure of the Seller to obtain all requisite Seller approvals to this sale, the Seller may terminate this letter agreement by notice to the Purchasers and may retain the Deposit as liquidated damages. If the sale of the Premises to the Purchasers is not approved by the Seller or the Seller is otherwise unable to perform its obligations under this Agreement, the Seller's sole liability shall be to return the Deposit to the Purchasers, without interest, whereupon this letter shall be null and void and of no further force and effect and neither party shall have any further liability to the other hereunder. Seller hereby acknowledges receipt of Five Thousand and 00/100 Dollars (\$5,000.00) paid by Purchaser to Seller as a deposit pursuant to the terms of Seller's Request for Proposals, No. TNHxxx-2016, issued June 1, 2016 in connection with the sale of the Premises. Seller shall credit the \$5,000.00 deposit against the monies owed by Purchaser for the Down Payment; and

(ii) The sum of _____ **AND** ___/100 **DOLLARS** (\$_____.__), representing the balance of the Purchase Price to be paid upon the Closing (as such term is defined below), to be paid by bank or certified check payable to "Town of North Hempstead."

(b) The transfer of the Premises to the Purchasers shall be without cost or expense to the Seller. The Purchasers shall pay all recording fees, title premiums, transfer taxes and all other fees and expenses relating to the sale of the Premises.

4. If, at the Closing, the Premises are subject to any mortgage or mortgages, or lien or liens, other than that subject to which Purchaser has by this Agreement contracted to take title, the existence thereof shall not constitute a Title Objection (as defined in Paragraph 8 hereof) provided that such mortgage(s) or lien(s) are paid by Seller and instruments of satisfaction or discharge thereof are delivered at the Closing to be recorded at Seller's expense. At Seller's option, Purchaser shall advance from the cash balance of the Purchase Price an amount sufficient to pay said mortgage or mortgages, or lien or liens.

5. The closing of title hereunder (the "**Closing**") shall take place no later than the date which is sixty (60) days following the satisfaction of the condition to closing stated in Section 1(b) above at Seller's office at One West Street, Mineola, New York 11501, New York, TIME BEING OF THE ESSENCE. Upon receipt of the balance of the Purchase Price, as aforesaid, Seller shall deliver an executed and acknowledged quitclaim deed for the Premises in statutory form for recording, sufficient to convey the fee simple title to the Premises. The deed shall contain a covenant by Seller as required by Section 13(5) of the New York Lien Law. For convenience, Seller may omit from the deed the recital of any or all of the "subject to" clauses herein contained and/or any other title exceptions, defects or objections which have been waived or consented to by Purchaser pursuant to and in accordance with this Agreement. The date on which the Closing shall take place is hereinafter referred to as the "**Closing Date**".

6. The items hereinafter set forth, as well as all other items usually adjusted, shall be apportioned on a per diem basis as of 11:59 P.M. of the day immediately preceding the Closing Date, all adjustments to be made on the basis of thirty (30) days in a month.



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(a) Taxes. The Premises is presently exempt from the imposition of real estate taxes, but such real estate taxes may be re-imposed upon Closing. Vault charges and water and sewer rents, however, shall be apportioned all on the basis of the fiscal year for which assessed or imposed.

7. The Down Payment, together with all interest thereon, is hereby made a vendee's lien against the Premises but such lien shall not continue after any default hereunder by Purchaser.

8. (a) A matter which: (i) renders title to the Premises unmarketable, (ii) is not a Permitted Encumbrance, (iii) the Title Insurer (as hereinafter defined) refuses to insure, without additional premium, against collection out of or enforcement against the Premises, (iv) is not included in Paragraph 4 hereof, and (v) Purchaser does not waive in writing, is hereinafter referred to as a "**Title Objection.**"

(b) Purchaser shall, within twenty (20) days from the date this Agreement is fully-executed, deliver to Seller's attorney an examination of title in respect of the Premises from a title company licensed or authorized to issue title insurance by the New York State Insurance Department or any agent for such title insurance company (the "**Title Insurer**"). Seller shall be entitled to adjourn the Closing for a reasonable period in order to remove any such Title Objection. The failure of Purchaser to deliver timely written notice of a Title Objection shall constitute a waiver by Purchaser of the Title Objection.

(c) If Seller shall be unable to convey title to the Premises at the Closing in accordance with the provision of this Agreement or if Purchaser shall have any other grounds under this Agreement for refusing to consummate the purchase provided for herein, Purchaser, nevertheless, may elect to accept such title as Seller may be able to convey with a credit against the monies payable at the Closing equal to the reasonably estimated cost to cure the same (up to the Maximum Expense Amount described below), but without any other credit or liability on the part of Seller. If Purchaser shall not so elect, Purchaser, as its sole and exclusive remedy, may terminate this Agreement and the sole liability of Seller shall be to refund the Down Payment to Purchaser, together with any interest thereon. Upon such refund and reimbursement, this Agreement shall be null and void and the parties hereto shall be relieved of all further obligations and liability other than any arising under Paragraph 12 hereof. Seller shall not be required to bring any action or proceeding or to incur any expense in excess of the sum of \$5,000 (the "**Maximum Expense Amount**") to cure any title defect or to enable Seller otherwise to comply with the provisions of this Agreement, but the foregoing shall not permit Seller to refuse to pay off at the Closing, to the extent of the monies payable at the Closing, any mortgages or liens on the Premises of which Seller has actual knowledge.

(d) The amount of any unpaid taxes, assessments, water charges and sewer rents, together with interest and penalties thereon to a date not less than two (2) business days after the Closing, and any other liens and encumbrances which Seller is obligated to pay and discharge or which are against corporations, estates or other persons in the chain of title, together with the cost of recording or filing any instruments necessary to discharge such liens and encumbrances of record, may be paid out of the proceeds of the monies payable at Closing if Seller delivers to Purchaser on the Closing Date official bills for such taxes, assessments, water charges, sewer rents, interest and penalties and instruments in recordable form sufficient to discharge any other liens and encumbrances of record. Upon request made at a reasonable



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time before the Closing, Purchaser shall provide at the Closing separate checks for the foregoing payable to the order of the holder of any such lien, charge or encumbrance. If the Title Insurer is willing to insure Purchaser that such charges, liens and encumbrances will not be collected out of or enforced against the Premises, and omit from policy, then Seller shall have the right in lieu of payment and discharge to deposit with the Title Insurer such funds or assurances or to pay such special or additional premiums as the Title Insurer may require in order to so insure. In such case the charges, liens and encumbrances with respect to which the Title Insurer has agreed to insure shall not be considered Title Objections.

(e) Regardless of whether a violation has been noted or issued prior to or after the date of this Agreement, Seller's failure to remove or fully comply with any violation shall not constitute an objection to title. Purchaser shall accept the Premises subject to all violations without any liability of Seller with respect thereto or any abatement of or credit against the Purchase Price.

9. At the Closing, Purchaser shall deliver a check or checks to the Title Insurer payable to the order of the appropriate recording officer of the county in which the deed is to be recorded in payment of the amount of the documentary stamps to be affixed to such deed in accordance with Article 31 of the Tax Law of the State of New York. Seller shall deliver copies of any required tax returns therefor executed by Seller. The above-mentioned check shall be a certified or official bank check if required by the taxing authority. Purchaser shall sign and swear to any such true and complete tax returns and cause the Title Insurer to deliver the check or checks and the return or returns to the appropriate officer promptly after the Closing.

10. Franchise or other similar taxes against any owner or others in the chain of title shall not constitute a Title Objection and shall not give Purchaser the right to reject title by reason thereof if the Title Insurer shall agree to insure without additional premium that such taxes will not be collected out of or enforced against the Premises and omit from policy.

11. Purchaser acknowledges and represents to Seller that neither Seller nor any agent or representative of Seller has made any statements or representations regarding the physical condition of the Premises, its zoning, its compliance with any environmental or occupational protection, pollution, subdivision or land use laws, rules, regulations or requirements, the state of title, the uses which can be made of the same, or the rents, income, expenses, operation or any other matter or thing affecting or relating to the Premises, or to any buildings or improvements thereon erected, except as expressly set forth in this Agreement and the Schedules annexed hereto and/or the Request for Proposals issued in relation to the sale of the Premises. Purchaser is purchasing the Premises in its "AS IS" condition as of the date of this Agreement, subject to ordinary wear and tear and natural deterioration and obsolescence between the date of this Agreement and the Closing Date. All understandings and agreements heretofore had between the parties or their respective agents or representatives are merged in this Agreement and the Schedules annexed hereto which alone fully and completely express their agreement. This Agreement has been entered into after full investigation; neither party is relying upon any statement or representation by the other unless embodied in this Agreement and the Schedules annexed hereto. Without limiting the provisions of this Paragraph 11, and notwithstanding anything to the contrary contained in this Agreement, Purchaser hereby releases Seller and (as the case may be) Seller's officer, employees, and agents from any and all claims, demands, causes of actions, losses, damages, liabilities, costs and



expenses (including attorney's fees, whether the suit is instituted or not), whether known or unknown, liquidated or contingent, arising from or relating to (i) any defects (patent or latent), errors or omissions in the design or construction of the Premises, whether same are the result of negligence or otherwise, or (ii) the existence of any conditions, including environmental and other physical conditions, affecting the Premises, whether same are the result of negligence or otherwise.

12. Purchaser represents to Seller that Purchaser did not negotiate with any brokers in connection with this transaction. Purchaser hereby agrees to indemnify, defend and hold Seller free and harmless from and against any and all claims, losses, liabilities, costs and expenses (including reasonable attorneys' fees and disbursements) resulting from any claim that may be made against Seller by any broker, or any other person claiming a commission, fee or other compensation by reason of this transaction, if the same shall arise by, through or on account of any alleged act of Purchaser or Purchaser's representatives. Seller represents to Purchaser that Seller did not negotiate with any brokers in connection with this transaction. Seller hereby agrees to indemnify, defend and hold Purchaser free and harmless from and against any and all claims, losses, liabilities, costs and expenses (including reasonable attorneys' fees and disbursements) resulting from any claim that may be made against Purchaser by any other broker, or any other person claiming a commission, fee or other compensation by reason of this transaction, if the same shall arise by, through or on account of any alleged act of Seller or Seller's representatives. The provisions of this Paragraph 12 shall survive the Closing, or if the Closing does not occur, the termination of this Agreement.

13. Seller represents and warrants that at the time of the Closing all fixtures, equipment and personal property included in this sale, if any, will be owned by Seller. All fixtures, equipment and personal property attached or appurtenant to or used in connection with the Premises are included in this sale in their "AS IS" condition as of the date of this Agreement, subject to ordinary wear and tear, casualty and natural deterioration and obsolescence. Seller covenants and agrees that, between the date of this Agreement and the Closing, no fixtures, equipment or personal property included in this sale shall be removed from the Premises unless the same are replaced with similar items of at least equal quality prior to such time. Seller further covenants and agrees that the Premises and all buildings and improvements comprising a part thereof shall be delivered on the Closing Date free of all leases and tenancies.

14. In the event of a default by Purchaser hereunder, Seller's sole remedy shall be to retain the Down Payment, together with any interest thereon, as liquidated damages, it being agreed that Seller's damages in case of Purchaser's default might be impossible to ascertain and that the Down Payment constitutes a fair and reasonable amount of damages under the circumstances and its not a penalty, in which event this Agreement shall terminate and neither party shall have any further rights or obligations hereunder except as set forth in Paragraph 12 hereof.

15. (a) Any demand, request, consent or other notice given or required to be given under this Agreement shall be deemed to have been duly and sufficiently given only if in writing and sent as follows:

- (i) by personal delivery with proof of delivery (any notice so delivered shall be deemed to have been received at the time so delivered);



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- (ii) by Federal Express (or other similar overnight courier) designating priority delivery (any notice so delivered shall be deemed to have been received on the next business day following receipt by the courier);
- (iii) by United States registered or certified mail, return receipt requested, postage prepaid (any notice so delivered shall be deemed to have been received on the third (3rd) business day after the delivery of any such notice to the United States Postal Registry Clerk); or
- (iv) by telecopier or facsimile machine which automatically generates a transmission report that states the date and time of the transmission, the length of the document transmitted and the telephone number of the recipient's telecopier or facsimile machine (with a copy thereof sent in accordance with subparagraph (ii) or (iii) above) (any notice so delivered shall be deemed to have been received (1) on the date of transmission, if so transmitted before 5:30 p.m. (local time of the recipient) on a business day, or (2) on the next business day, if so transmitted on or after 5:30 p.m. (local time of the recipient) on a business day or if transmitted on a day other than a business day).

(b) All notices shall be addressed to the parties at the following addresses:

To Seller: Town of North Hempstead
Office of the Town Attorney
220 Plandome Road
Manhasset, New York 11021
Attention: Town Attorney

To Purchaser: _____

Attention: _____

with a copy to:

Attention: _____

(c) Either party may, by notice given pursuant to the provisions of this Paragraph 15, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its notices, but notice of a change of address shall only be effective upon receipt.

16. If a search of the title discloses judgments, bankruptcies or other returns against other



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persons having names the same as or similar to that of Seller, Seller shall on request deliver to Purchaser an affidavit in form acceptable to the Title Insurer showing that such judgments, bankruptcies or other returns are not against Seller so that the title company will omit said item.

17. Except as otherwise expressly provided to the contrary in this Agreement, no representations, warranties, covenants or other obligations of Seller set forth in this Agreement shall survive the Closing, and no action based thereon shall be commenced after the Closing.

18. The delivery and acceptance of the deed at the Closing, without the simultaneous execution and delivery of a specific agreement which by its terms shall survive the Closing, shall be deemed to constitute full compliance by Seller with all of the terms, conditions and covenants of this Agreement on Seller's part to be performed.

19. Seller represents to Purchaser that Seller is not a "foreign person", as that term is defined for purposes of the Foreign Investment in Real Property Tax Act, Internal Revenue Code ("**IRC**") Section 1445, as amended, and the regulations promulgated thereunder (collectively "**FIRPTA**"). At the Closing, Seller shall deliver to Purchaser a certification stating that Seller is not a foreign person, which certification shall be in the form then required by FIRPTA. If Seller fails to deliver the aforesaid certification or if Purchaser is not entitled under FIRPTA to rely on such certification, Purchaser shall deduct and withhold from the purchaser price a sum equal to 10% thereof (or any lesser amount permitted by law) and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.

20. (a) In addition to the other items referred to in this Agreement, Seller shall make the following deliveries to Purchaser on the Closing Date:

- (i) if requested by the Title Insurer or reasonably requested by Purchaser, an ordinance of the Town Board authorizing the sale and delivery of the deed; and
- (ii) such other documents, instruments and agreements which are reasonably necessary or appropriate in order to consummate the transactions contemplated hereby.

(b) In addition to the other items referred to in this Agreement, Purchaser shall make the following deliveries to Seller on the Closing Date:

- (i) if requested by the Title Insurer or reasonably requested by Seller, a resolution of Purchaser's Board authorizing the purchase of the Premises, together with a certificate by the secretary of Purchaser certifying such resolution;
- (ii) the Purchaser's Articles of Organization/Incorporation and a certificate of the New York State Department of State evidencing that the Purchaser is a limited liability company or corporation in good standing in the State of New York; and
- (iii) such other documents, instruments and agreements which are reasonably necessary



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or appropriate in order to consummate the transactions contemplated hereby.

21. Seller represents and warrants that Seller has no knowledge of pending or, to the best of its knowledge, contemplated condemnation proceedings affecting the Premises or any part thereof as of the date hereof.

22. Purchaser may not assign its rights and obligations hereunder without the prior written consent of Seller, except to an affiliated entity, and any purported assignment without such consent shall be null and void.

23. This Agreement embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, including, but not in any way limited to, any prior communications between the parties, are merged into this Agreement. This Agreement may not be modified or terminated orally or in any manner other than by an agreement in writing signed by duly-authorized representatives of all parties hereto or their respective successors in interest.

24. This Agreement and the Schedules annexed hereto (a) shall be governed by and construed in accordance with the laws of the State of New York and (b) shall be given a fair and reasonable construction in accordance with the intentions of the parties hereto. For purposes of construction of this Agreement, provisions which are deleted or crossed out shall be treated as if never included herein.

25. This document is not an offer by Seller, and under no circumstances shall this Agreement have any binding effect upon Purchaser or Seller unless and until (i) duly-authorized representatives of Purchaser and Seller shall each have executed the same and delivered executed counterparts hereof to each other and (ii) Seller has obtained all requisite approvals, including, without limitation, approval by the Nassau County Legislature.

26. If any provision of this Agreement is invalid or unenforceable as against any person or under certain circumstances, the remainder of this Agreement and the applicability of such provision to other persons or circumstances shall not be affected thereby. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

27. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, taken together, shall constitute but one and the same instrument.

28. The warranties, representations, agreements and undertakings contained herein shall not be deemed to have been made for the benefit of any person or entity other than the parties hereto.

29. Purchaser covenants and agrees that in no event will Purchaser record or cause to be recorded this Agreement or any memorandum hereof or affidavit, assignment or other document relating to this Agreement and that if Purchaser breaches the provisions of this Paragraph, Seller shall have the option of terminating this Agreement and retaining the Down Payment as Liquidated damages in addition to any other rights that Seller may have.



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30. If Seller is unable to transfer title to Purchaser in accordance with this Agreement, Seller's sole obligation shall be to refund to Purchaser the Down Payment together with any interest thereon, after which neither party shall have any rights or obligations to the other and this Agreement shall be null and void except with respect to the provisions of Paragraph 12 hereof.

31. No failure or delay of either party in the exercise of any right given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right, or satisfaction of such condition, has expired) shall constitute a waiver of any other or further right nor shall any single or partial exercise of any right preclude any other or further exercise thereof or any other right. The waiver of any breach hereunder shall not be deemed to be waiver or any other or any subsequent breach hereof.

32. In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all costs thereof, including, without limitation, reasonable attorneys' fees and disbursements for services rendered in connection with such litigation (including appellate proceedings and post judgment proceedings).

33. If the payment made on account of the Down Payment is by check, and if such check fails collection in due course, Seller, at its option, may declare this Agreement null, void and of no force and effect, and may pursue its remedies against Purchaser upon such check or in any other manner permitted by law, such remedies being cumulative.

34. This Agreement is binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

35. Purchaser and any permitted assignee of Purchaser are not in arrears to Seller upon any debt or contract and are not in default as surety, contractor, or otherwise upon any obligation to Seller, including any obligation to pay taxes to, or perform services for or on behalf of, Seller.

36. **BOTH PURCHASER AND SELLER HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date on which this Agreement is executed by Nassau County.

TOWN OF NORTH HEMPSTEAD

By: _____
Name:
Title:

(PURCHASER)

By: _____
Name:
Title:



APPENDIX D – DUE DILIGENCE LETTER

**TOWN OF NORTH HEMPSTEAD
OFFICE OF THE TOWN ATTORNEY**



ELIZABETH D. BOTWIN
Town Attorney

Supervisor
JUDI BOSWORTH

Town Board
**VIVIANA L. RUSSELL
PETER J. ZUCKERMAN
ANGELO P. FERRARA
ANNA M. KAPLAN
LEE SEEMAN
DINA M. DE GIORGIO**

Town Clerk
WAYNE H. WINK, JR.

Receiver of Taxes
CHARLES BERMAN

**TOWN HALL
220 PLANDOME ROAD
MANHASSET, NY 11030
(516) 869-7600**

FAX (516) 869-7605

(Date)

(Name and Address of Prospect)

Re: Vacant Land
West Shore Road, Pt. Washington, NY
Section 6, Block 53, Lot 1058
(the "Premises")

Gentlemen:

This letter shall set forth the terms and conditions pursuant to which the Town of North Hempstead (the "Town") shall allow _____ ("Prospect") to have access to the Premises for the sole purpose of conducting the Due Diligence Review (as defined below) in connection with Prospect's potential purchase of the Premises.

Terms and Conditions.

1. Commencing on the date Prospect executes and delivers this letter to the Town, together with the requisite evidence of insurance, and expiring sixty (60) days thereafter (the "Inspection Expiration Date"), Prospect and its authorized representatives and agents shall be entitled to enter upon the Premises at reasonable hours upon notice to the Town in order to conduct such reasonable and customary inspections, studies, tests and reviews with respect to the Premises which are necessary in connection with an assessment of (i) the structural integrity and physical condition of the Premises (the "Engineering Review"), and (ii) the environmental condition of the Premises, including, without limitation, a Phase I environmental assessment of the Premises (the "Environmental Review"; which, together with the Engineering Review, is hereinafter collectively referred to as the "Due Diligence Review"), at Prospect's sole cost and expense, provided that Prospect does not interfere with the normal business operation of the Premises. Prior to performing any sampling or testing that disturbs the Premises, any so-called "Phase II" environmental assessment, Prospect must obtain the Town's prior written consent based on the Town's review of



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Prospect's proposed plans. The Town shall cooperate with Prospect and its authorized representatives and agents in every reasonable way, at Prospect's sole cost and expense, in connection with the Due Diligence Review.

2. In the event that Prospect and/or its agents, employees or representatives shall cause any damage to the Premises by reason of work conducted during the Due Diligence Review, Prospect shall repair any such damage to the Premises and restore the Premises to the condition the same was in prior to such work being done.

3. As a condition precedent to Prospect commencing the Due Diligence Review, Prospect must take out and maintain General Commercial Liability and Workers' Compensation insurance policies issued by an insurer or insurers licensed to do business in the State of New York, which insurer(s) and form of insurance policies must be acceptable to the Town in all respects. The minimum coverage for the liability insurance shall be Two Million (\$2,000,000.00) Dollars per occurrence, personal and bodily injury and property damage combined, and said policy shall name the Town as an additional insured.

4. Prospect hereby agrees to conduct its activities upon the Premises and adjacent property so as not to endanger any person thereon and to indemnify, defend and hold the Town free and harmless from and against (i) all physical damage to the Premises caused by work done in connection with the Due Diligence Review, (ii) all loss, liability or damage suffered or incurred by the Town arising out of Prospect's breach of the terms and conditions of this letter agreement, or resulting from injury or death to individuals or damage to property sustained on the Premises and caused by the work in connection with the Due Diligence Review conducted by, or at the direction of, Prospect and/or its agents, employees and representatives, and (iii) all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the Town in connection with any action, suit, proceeding, demand, assessment or judgment incident to the foregoing. Prospect's indemnification obligations contained in this paragraph 4 shall survive the termination or expiration of this Agreement.

5. Prospect agrees to comply with all laws, regulations, codes, rules and other directives promulgated by any municipality or governmental authority, including the County of Nassau, the Town of North Hempstead, the State of New York, and the United States of America.

6. Prospect agrees to treat all information received with respect to the Premises and not otherwise in the public domain, whether such information is obtained from the Town or from Prospect's own due diligence investigations, in a confidential manner, unless otherwise required by law. Prospect shall not disclose any such information to any third parties other than such disclosure to Prospect's counsel, consultants, accountants and adviser as may be required in connection with Prospect's potential purchase of the Premises (any such disclosure to be made expressly subject to this confidentiality requirement). Prospect's confidentiality obligations contained in this paragraph 6 shall survive the termination or expiration of this Agreement.

7. Prospect acknowledges and agrees that the Town's willingness to grant access to the Premises to Prospect in accordance with the terms and conditions of this letter Agreement does not constitute and shall not be deemed to constitute a binding commitment by the Town to sell the



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Premises to Prospect, as any binding agreement must be set forth in a formal contract signed by both parties and subject to all requisite approvals, including the approval of the Town of North Hempstead.

Please indicate Prospect's acceptance of and agreement with the terms and conditions contained in this letter by having an authorized representative of Prospect sign the enclosed copy of this letter in the space indicated below and returning same to me, together with the requisite evidence of insurance.

Very truly yours,
ELIZABETH D. BOTWIN, Town Attorney

By: _____
Michael J. Kelly
Senior Deputy Town Attorney

ACCEPTED AND AGREED TO THIS
___ DAY OF _____, 2016:

(Name of Prospect)

By: _____

Name: _____

Title: _____