

AGREEMENT OF PURCHASE & SALE

This Agreement of Purchase & Sale ("**Agreement**") is made as of the 27th day of September 2023 by **Baldwinsville Towne Center LLC** a New York limited liability company, 45 Oswego Street, Baldwinsville New York ("**Seller**"), and **AC Hammer LLC** a New York limited liability company, 148 Berwyn Ave, Syracuse, New York 13210 ("**Purchaser**").

WITNESSETH:

WHEREAS, Seller is the owner of a certain parcels of real property located in Village of Baldwinsville, County of Onondaga and State of New York, together ("**Seller's Parcels**");

1. 80 E. Genesee Street Tax Parcel No. 007.-03-39.1
2. 88 E. Genesee Street Tax Parcel No. 007.-03-03.0
3. 90 E. Genesee Street Tax Parcel No. 007.-03-04.0
4. 92 E. Genesee Street Tax Parcel No. 007.-03-05.0
5. 96 E. Genesee Street Tax Parcel No. 007.-03-07.0
6. 98 E. Genesee Street Tax Parcel No. 007.-03-08.0
7. 14 Curtis Ave. Tax Parcel No. 007.-03-15.1
8. 56 Curtis Ave. Rear Tax Parcel No. 007.-03-32.3
9. 53 Salina Street Tax Parcel No. 007.-03-35.0
10. 53 Salina Street Rear Tax Parcel No. 007.-03-32.1
11. 55 Salina Street Tax Parcel No. 007.-03-34.0
12. 51 Salina Street Tax Parcel No. 007.-03-36.0

Purchaser desires to purchase Seller's Parcels and other improvements located thereon, including parking areas, together with all existing easements and rights-of-way, if any, or any other real property interests benefiting, affecting or appurtenant to Seller's Parcels, and all right, title and interest of Seller in and to any land lying in the bed of any highway, street, road or avenue, opened or proposed, in front of or abutting or adjoining said real property (the Seller's Parcel, easements, rights-of-way, and rights, title and interests are referred to herein, collectively referred to as the "**Property**"); and

WHEREAS, Seller desires to sell, and Purchaser desires to purchase the Property in accordance with the terms and conditions hereinafter set forth; and

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

1. **SALE** Seller hereby agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the Property, subject to the terms set forth below.

2. **PURCHASE PRICE**

A. The Purchase Price shall be the aggregate sum of [REDACTED] ("**Purchase Price**"). The Purchase Price shall be payable as follows:

(i) A deposit of [REDACTED] ("**Deposit**") to be provided to Purchaser's attorney's (Lynn, D'Elia Temes & Stanczyk LLC) IOLA account within five (5) days of the full execution hereof (such full execution date and deliverables in Section 3(f) being referred to as the

“**Effective Date**”), which check shall be deposited in the Purchaser’s attorney’s IOLA account. The Deposit shall either be (i) applied against the Purchase Price at Closing (hereafter defined), (ii) delivered to Seller as liquidated damages in the event Purchaser defaults under any of its obligations under this Agreement and Seller terminates the Agreement in accordance with the terms hereof or (iii) returned to Purchaser in the event Seller defaults under any of its obligations under this Agreement and Purchaser terminates the Agreement in accordance with the terms hereof; or (iv) returned to Purchaser upon the occurrence of the events more particularly set forth in this Agreement;

(ii) The balance of the Purchase Price, subject to the pro-rations and adjustments as hereinafter provided, shall be due and payable at the Closing by bank cashier’s check, certified check, or wire transfer pursuant to instructions to be furnished by Seller.

B. If at the date of Closing there are liens or encumbrances on the Property that Seller is obligated to pay and discharge, Seller may use any portion of the balance of the Purchase Price to satisfy the same, provided Seller shall simultaneously either (i) deliver to Purchaser at the Closing instruments in recordable form and sufficient to satisfy such liens and encumbrances of record together with the cost of recording or filing said instruments, which costs may be paid by the Purchaser and deducted from the Purchase Price accordingly; or (ii) provided that Seller has made arrangements with the Purchaser’s title insurance company in advance of the Closing, deposit with said title insurance company sufficient monies acceptable to and required by it to insure the obtaining and recording of such satisfactions and the issuance of title insurance to Purchaser, at Closing, either free of any such liens and encumbrances, or with insurance against enforcement of same out of the Property or against the Purchaser. If a request is made within a reasonable time prior to the date of Closing, Purchaser agrees to provide at the Closing separate certified checks or bank drafts as so requested, aggregating the amount of the balance of the Purchase Price then payable, to facilitate the satisfaction of any such liens or encumbrances.

3. CONTINGENCIES

Purchaser’s obligation to purchase the Property is subject to and contingent on:

(a) Financing Contingency - Purchaser securing financing through traditional bank financing, or elsewhere which financing shall be secured within 180 days from the Effective Date (“**Due Diligence Period**”), at Purchaser’s sole expense and upon terms reasonably acceptable to Purchaser.

(b) Environmental Due Diligence – Purchaser confirmation that there are no recognized environmental conditions present at the Property which would impede or impair Purchaser’s intended use of the Property. Seller authorizes Purchaser to conduct, within the Due Diligence Period and at Purchaser’s sole expense, due diligence with respect to the environmental condition of the Property, with the results of such due diligence being acceptable to Purchaser in its sole discretion. Seller grants Purchaser, including all duly authorized agents, consultants, contractors, and employees, permission to enter the Property, without delay, to conduct environmental assessments, surveys, tests, sampling, and measurements, as Purchaser or its representatives deems necessary, provided such persons provide appropriate liability insurance naming Seller as an additional insured prior to entering the Property.

(c) Structural, Architectural & Engineering Due Diligence - Purchaser confirmation that there are no structural, Architectural, Engineering or geotechnical conditions at the Property which will impede or impair Purchaser’s intended use of the Property. Seller authorizes Purchaser to conduct, within the Due Diligence Period and at Purchaser’s sole expense, any assessment necessary to ensure the overall safety of the Property and any buildings or

structures located on the Property, and its structural suitability for redevelopment purposes, with the results of such assessment being acceptable to Purchaser in its sole discretion, provided such persons provide appropriate liability insurance naming Seller as an additional insured prior to entering the Property. Any structural issues discovered during the assessment will be promptly brought to the attention of Seller.

(d) Zoning Approvals - within the Due Diligence Period and at Purchaser's sole expense, Purchaser obtaining any and all municipal, governmental and regulatory authorizations and approvals as may be necessary for Purchaser's intended use of the Property (collectively, "**Approvals**"). Approvals shall include, if needed, receipt of approval from the Village and/or Town for a Planned Unit Development needed to allow the Purchaser's intended use and development of the Property. Purchaser shall apply and seek Approvals as a conditional contract vendee. The Seller shall cooperate with all such applications by signing same as the consenting owner. At no cost or expense to Seller, the Seller shall join in any applications for Approvals if required and otherwise reasonably cooperate with Purchaser to facilitate Purchaser's due diligence and obtaining of all Approvals for Purchaser's contemplated development and use of the Property. Without limiting the foregoing, Seller shall not contest, object to or in any way impede future approval and development of the Property while this Agreement remains in effect. In the event Purchaser has not obtained all Approvals within the Due Diligence Period, Purchaser may, upon written notice to Seller prior to expiration of the Due Diligence Period, extend the Due Diligence Period for the Extended Due Diligence Period to provide additional time for Purchaser to obtain all Approvals.

(f) Records Review – No later than fifteen (15) days after the Effective Date, Seller shall deliver to Purchaser copies of the following documents, solely to the extent that such documents exist and are in Seller's possession (collectively, the "**Seller's Deliveries**") The Due Diligence Period referred in 3A above shall not commence until Seller's Deliveries are sent to Purchaser:

A. all environmental documents, including but not limited to Phase I or II, asbestos, engineering, physical condition, wetlands, soil, or other tests reports, audits or investigation results relating to the Property:

B. the most recent real estate tax bills (with paid receipts if available), assessment notices, tax protests and challenges, and similar matters pending, or filed or affecting the Property;

C. any agreements, notices, licenses, permits, and applications for the Property, that have been entered, received, given, filed or pending with, to or from any municipal or governmental authority that materially affect or pertain to the Property;

D. any instrument survey maps relating to the Property including but not limited to the survey identified in Section 6 herein;

E. all plans, permits, certificates of occupancy or any other material pertaining to the Property.

In the event any of the Contingencies has not been satisfied within the initial Due Diligence Period, Purchaser may, (i) prior to expiration of the initial Due Diligence Period, extend the Due Diligence Period for 180 days ("**First Extended Due Diligence Period**") and (ii) prior to expiration of the First Extended Due Diligence Period, extend the First Extended Due Diligence Period for 60 days ("**Second Extended Due Diligence Period**"), together with the First and Second Extended Due Diligence Periods, collectively "**Extended Due Diligence Periods**" or individually each an "**Extended Due Diligence Period**") to provide additional time for the Contingencies to be satisfied. Within five (5) business days of the written notice to Seller provided pursuant to this section, Purchaser shall pay to Seller by wire transfer to an account designated by Seller (and **not in escrow**) an additional deposit of [REDACTED] for each Extended Due Diligence Period (each an "**Additional Deposit**"), which Additional Deposit(s) shall be **non-refundable** unless Closing fails to occur due to either a Seller default or due to a defect in title, in which case all Deposit and Additional Deposit shall be refunded to Purchaser. Otherwise, the Additional Deposit shall not be refundable but shall be applied as a credit against the Purchase Price at Closing or released to the Seller.

In the event any one or more of the contingencies are not satisfied within the Due Diligence Period or Extended Due Diligence Periods, as the same may be extended, then either party may by written notice to the other terminate this Agreement, Escrow Agent shall refund to Purchaser the initial Deposit only and Seller shall retain any Additional Deposit previously paid to Seller in accordance with Section 3(i), and neither party shall have any further obligation to the other hereunder except as otherwise provided herein.

4. REPRESENTATIONS & WARRANTIES OF SELLER

Seller, to induce Purchaser to enter into this Agreement, represents and warrants to Purchaser as follows:

A. At the Closing, Seller will have, and will convey and transfer to the Purchaser, good and marketable title to the Property, free and clear of any liens, clawback agreements, encumbrances, licenses, security interests, covenants, conditions, restrictions, judgments, rights-of-way, easements, encroachments and any other matters affecting title, except for those matters expressly set forth herein, and except for utility easements and other easements or rights-of-way of record, provided such easements or rights-of-way do not restrict the present use of the Property.

B. No person, firm, corporation or entity other than Purchaser has, or as of the time of Closing will have, any right or option to acquire the Property, or any portion thereof or any interest therein, or to lease the Property or any portion thereof.

C. To the best of Seller's knowledge, information and belief, no default or breach exists, or as of the Closing, will exist, under any of the covenants, conditions, restrictions, rights-of-way, or easements affecting the Property or any portion thereof which are to be performed or complied with by the Seller.

D. The Seller has the requisite power and authority to enter into and consummate the transactions contemplated by this Agreement and the person signing this Agreement on behalf of Seller is authorized to do so.

E. After the execution of this Agreement and until the Closing or earlier termination of this Agreement, (a) Seller will continue to operate the Property and will continue to make all necessary repairs to the Property; and (b) Seller will not: (i) grant or consent to any new easements, leases, or other agreements for occupancy of the Property or any part thereof, without the prior written consent of Purchaser, not to be unreasonably withheld or delayed; (ii) enter into or agree to any modification or amendment of any

existing easement, license, grant or any other interest or estate affecting the Property or any part thereof without the prior written consent of Purchaser, not to be unreasonably withheld or delayed; or (iii) further encumber or permit any liens against the Property or any part thereof that will not be satisfied or discharged at or before the Closing.

F. Seller shall disclose any-and-all notices received from any municipality or governmental agency of any violation of building, fire, zoning or health codes, rules or regulations applicable to the Property (a "**Violation**") that has not been remedied. In the event Seller receives any such notice between the date hereof and the Closing Date, Seller will either (i) remedy the Violation or (ii) if the Violation is incapable of being remedied or will cost in excess of [REDACTED] to remedy, then either party may terminate this Agreement on written notice to the other and the Deposit and Additional Deposit shall be returned to the Purchaser; provided however, that Seller shall have the right to appeal the notice of Violation by any means afforded by applicable statutes provided that such appeal does not result in any delay in Closing. The foregoing notwithstanding, where the Seller has elected to terminate this agreement due to a violation where the cost to cure will be in excess of [REDACTED] the Purchaser may nullify such termination if the Purchaser agrees to be liable for the cost to cure in excess of [REDACTED] – whereupon the Seller shall sell the Property to the Purchase subject to the violation and give the Purchaser a [REDACTED] credit on the Purchase Price at the time of Closing. The Purchaser shall thereafter be liable for the cost to cure the violation.

G. The execution and delivery of this Agreement and the performance of its obligations hereunder by Seller will not conflict with any provision of any law or regulation to which Seller is subject or any agreement or instrument to which Seller is a party or by which it is bound or any order or decree applicable to Seller or result in the creation or imposition of any lien on any of Seller's assets or property which would materially and adversely affect the ability of Seller to carry out the terms of this Agreement. Seller has obtained any consent, approval, authorization or order of any court or governmental agency or body required for the execution, delivery or performance by Seller of this Agreement.

H. Seller has not commenced a voluntary bankruptcy case concerning Seller, to Seller's knowledge, no involuntary bankruptcy proceedings have been commenced against Seller, Seller has not commenced any other proceedings under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency, or liquidation or similar law of any jurisdiction and no such proceeding has been commenced against Seller.

I. Seller has not made an assignment for the benefit of creditors, admitted in writing its inability to pay its debts generally as they become due, or consented to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof and no assets of Seller have been attached, seized, levied subjected to a writ or distress warrant, or levied upon, or come into the possession of any receiver, trustee, custodian, or assignee for the benefit of creditors.

J. To the best of Seller's knowledge, there is no pending claim, lawsuit, proceeding or other legal, quasi-legal or administrative challenge concerning the Property or the operation thereof or any condition thereon and no such claim, lawsuit, proceeding or challenge is threatened in writing by any person or entity, except for claims for property damage or personal injury covered by insurance.

K. Neither Seller nor, to the best of Seller's knowledge, any predecessor user or other person has ever generated, stored, or disposed of any Hazardous Substance or Hazardous Material (as defined by New York State Environmental Conservation Law) on the Property. To the best of Seller's knowledge, no Release (as hereafter defined) of a Hazardous Substance has occurred at, on, under, above or from the Property in violation of any law rule or regulation governing same.

L. With the exception of the correspondence attached as Schedule 4.L., there are no actions, suits, claims, citations, proceedings, arbitrations, investigations, or inquiries, governmental or

otherwise, seeking money damages, injunctive relief, remedial action or any other remedy pending or threatened against or affecting the Property relating to: (i) a violation or non-compliance with, or any matter otherwise arising under, any Environmental Law; (ii) the release or threatened release of any Hazardous Substance; or (iii) the exposure to any Hazardous Substance or any other contaminant or pollutant, noises or vibrations to the extent the same arises from the condition of the Property or Seller's ownership or use of the Property. The Seller does not know of any condition, event or occurrence that could give rise to any such action, suit, claim, citation, proceeding, arbitration, investigation or inquiry against or affecting the Property.

M. Until the Closing, Seller will maintain in effect all insurance policies now maintained on the Property pursuant to their respective obligations under this Agreement.

N. Assignment of Grants – The Purchaser intends to apply for certain grants for its intended use and development of the Project (“Grants”) and occasionally, the grant providers issue the Grants in the name of the owner of the Property. With respect to such Grants issued in Seller's name, as the owner of the Property, Seller shall assign all of its right, title and interest in and to the Grants over to Purchaser and cooperate with Purchaser as needed to facilitate Purchaser's receipt of the Grant funds, all at Purchaser's sole cost and expense. This Representation and warranty shall survive Closing.

The representations and warranties made herein shall be deemed true and effective as of the date of Closing and Seller shall sign an instrument memorializing same at Closing. If any of the representations and warranties set forth herein is not true and correct in any material respect as of the date when made or as of Closing, Purchaser may, at its election, terminate this Agreement by delivery of written notice to Seller, whereupon the Deposit and all Additional Deposits shall be returned to Purchaser and neither party shall have any further obligation to the other hereunder. With the exception of Section 4 N., Seller's representations and warranties set forth herein shall merge with the deed and not survive the Closing.

5. PROVISIONS WITH RESPECT TO THE CLOSING

A. Seller shall execute, as required, and deliver to Purchaser at the time of the Closing the following to effectuate the transfer of the Property by Seller to Purchaser:

(i) At the time of Closing Seller shall deliver to Purchaser a Bargain and Sale Deed with Covenant Against Grantor's Acts, for the Property, properly executed and acknowledged so as to convey title as required by this Agreement free and clear of all tenants, occupants or rights of any third party. Seller shall also provide such affidavits as Purchaser, Purchaser's title insurance company or any lender shall reasonably require in order to omit from its title policy all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same or similar to Seller's name.

(ii) A Combined Real Estate Transfer Tax Return / Credit Line Mortgage Certificate and Certification of Exemption from Estimated Personal Income Tax (Form TP-584) and a Real Property Transfer Report Form 5217;

(iii) A Non-Foreign (FIRPTA) Affidavit pursuant to Section 1445 of the Internal Revenue Code;

(iv) A Statement of Sale with applicable pro-rations as of the date of Closing;

(v) An assignment and assumption of leases and security deposits, if any;

(vi) A resolution signed by the members/managers of Seller authorizing the transactions contemplated by this Agreement;

(vii) A reaffirmation of the representations and warranties made herein;

(viii) Easements and TP-584's required for recordation of same; and

(ix) Such other affidavits and any and all of the documents as may be reasonably required by Purchaser's counsel or the title insurance company providing title insurance to Purchaser.

B. Purchaser shall execute as required and deliver to Seller at the Closing the items listed above, and such other documents and certifications which Seller or Purchaser's title company may reasonably request.

C. Transfer of title to the Property (the "Closing") shall be held at the Purchaser's attorney's office on or about 60 days following the expiration of all applicable contingencies and due diligence periods (subject to satisfaction of all contingencies). Possession of the Property shall be transferred to the Purchaser at Closing. Except as may be expressly set forth in this Agreement: (i) neither Seller, nor the employees, agents or representatives of Seller have made any verbal or written representations or warranties whatsoever with respect to the condition of the Property, its suitability for any use, the zoning and other laws, regulations and rules applicable thereto or the compliance by the Property therewith, or the taxes or other charges applicable thereto; (ii) Purchaser has not relied and will not rely on any such representations made or to be made; and (iii) Purchaser acknowledges that no such representations or warranties have been made. The place or date of the Closing may be changed by mutual agreement between the parties or their respective attorneys.

6. **CLOSING ADJUSTMENTS & CLOSING COSTS** Rents actually received as Closing, insurance premiums, utility invoices, city and county property taxes, school taxes, including general and special assessments levied and assessed against the Property, shall be prorated and adjusted between the parties hereto as of the date of Closing. The Seller shall pay the transfer tax and any other tax payable by reason of the transfer of the Property, and recording/filing fees for the TP-584 and the discharge of any mortgage and/or clawback agreement. The Purchaser shall be responsible for the payment of New York State mortgage tax, if any, and all recording fees for the deed, RP-5217 and any mortgage. Seller and Purchaser shall each be responsible for their respective legal fees in connection with this Agreement and the transaction contemplated herein.

7. **UNMARKETABLE TITLE** Within the Due Diligence Period, Seller shall obtain and furnish to Purchaser an up-to-date abstract of title commencing with a Warranty Deed recorded not later than 1945, current County and City Tax Searches, a copy of Seller's title insurance policy, if any, an up-to-date instrument survey of the Property, and tax receipts for the current year (collectively, the "**Title Materials**"), all at Seller's expense. Purchaser shall raise written objections to Seller's title within thirty (30) days of receipt of the Title Materials, as to any matter which renders the title unmarketable ("**Title Objection Notice**"), except for matters accepted according to the terms of the Agreement. Seller shall have fifteen (15) days after its receipt of the Title Objection Notice to notify Purchaser that Seller has decided to either (i) remedy the items stated in the Title Objection Notice; or (ii) to notify Purchaser that Seller is unable or unwilling to cure any such title defect (the "**Seller's Title Response**"). Any matters affecting title which are not objected to by Purchaser in the Title Objection Notice (other than "**Seller Encumbrances**," defined below, which shall automatically be deemed objected to without the need for notice) shall be deemed "**Permitted Encumbrances**".

"**Seller Encumbrances**" shall mean (1) any mortgage or deed of trust or other monetary lien voluntarily granted or expressly assumed by Seller and encumbering the Property, (2) any and all judgment liens encumbering the Property, (3) any lis pendens, levy, attachment, or writ of attachment, (4) any and all local, state, and federal tax liens encumbering the Property (except for real estate tax liens securing amounts that are not yet due and payable), and (5) any and all mechanic's or supplier's liens encumbering the Property

arising from work performed or materials furnished at the Property (except for any liens arising in connection with Buyer's inspections of the Property). All Seller Encumbrances (whether or not the subject of a Title Objection Notice) shall be satisfied by the Seller on or prior to the Closing Date or, if not so satisfied, shall be satisfied at Closing out of the proceeds otherwise payable to Seller.

With respect to all other items set forth in a Title Objection Notice, if Seller elects to remedy the title, and remedies the title in manner satisfactory to Purchaser and Purchaser's title insurance agent, prior to Closing, Purchaser agrees to complete the sale on the Closing Date specified above. If Seller is unable or unwilling to timely remedy the title and Purchaser does not elect to waive such defects, then Purchaser may terminate this Agreement by providing written notice thereof to Seller by no later than ten (10) days after Purchaser's receipt of the Seller's Title Response upon which all liability of both parties by reason of this Agreement shall cease, and the Deposit and all Additional Deposits shall be released to Purchaser. If Purchaser does not terminate this Agreement within the time periods prescribed above, all matters of title objected to by Purchaser (other than Seller Encumbrances) as to which Seller refused in writing to remedy shall also be deemed Permitted Encumbrances.

Notwithstanding anything contained in this Agreement to the contrary, Purchaser shall be obligated to accept title to the Property, subject to the following exceptions to title: (i) real estate taxes and assessments not yet due and payable; (ii) the printed exceptions which appear in the standard form ALTA owner's policy of title insurance issued by the title company providing the title commitment; and (iii) the Permitted Encumbrances.

8. **NOTICES** All notices, requests and other communications under this Agreement shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, addressed to the parties at their respective addresses shown at the beginning of this Agreement, or at such other address which the parties shall have given notice of as herein provided. All such notices, requests and other communications shall be deemed to have been sufficiently given for all purposes hereof, on the date of personal delivery or the receipt or refusal thereof as the case may be.

Copies of any notice (as an accommodation and not as a condition to its effectiveness) shall likewise be sent by the same means to the attorney for the respective parties, as follows:

Seller's Attorney: Hancock Estabrook, LLP
Attn: Daniel K. Mannion, Esq.
1800 Tower I
100 Madison Street
Syracuse, New York 13202
dmannion@hancocklaw.com

Purchaser's Attorney: Lynn, D'Elia, Temes & Stanzyck
Attn: Anthony D'Elia, Esq.
449 South Salina Street, 2nd Floor
Syracuse, NY 13202
anthony@ldts-law.com

9. **DAMAGE, DESTRUCTION & CONDEMNATION**

A. If, prior to the Closing, all of the Property is destroyed or damaged by fire or other casualty, Seller shall promptly notify Purchaser of such fact. Seller shall then either proceed promptly and with due diligence to make the repairs or notify Purchaser that Seller elects not to make such repairs. Purchaser shall have the option, to be exercised by notice to Seller within ten (10) business days after receipt of such notice of the occurrence of such casualty, to either (i) terminate this Agreement, even if Seller has

agreed to make the repairs and receive a return of all of the Deposit, or (ii) proceed to Closing with an assignment to Purchaser of all of the rights of Seller to the proceeds, if any, under Seller's insurance policies covering the Property with respect to such damage or destruction which has not been repaired by Seller and there shall be credited against the Purchase Price the amount of any deductible and proceeds previously received by Seller. The provisions of this Section 9 shall survive the Closing.

B. Seller represents that it has no knowledge of any proceedings instituted or to be instituted by any municipal, state or federal agency to condemn or acquire the Property or any portion thereof, by eminent domain. In the event Seller is informed of the initiation of any condemnation proceeding, Seller agrees to promptly notify Purchaser in writing, forward to Purchaser copies of any and all notices, maps and documents received in connection therewith and permit Purchaser to participate in such proceedings and/or negotiation. If a condemnation is initiated, then Purchaser, within ten (10) business days of Seller's notification, shall notify Seller that Purchaser either:

(i) Elects to cancel this Agreement, whereupon the Deposit shall be returned to Purchaser and neither party shall have any further obligation to the other hereunder; or

(ii) Elects to accept delivery of the deed to the Property and Purchaser shall then pay the full purchase price as set forth herein (less any condemnation award actually received by Seller) or take at Closing an assignment of all Seller's right in and to any condemnation award not yet received by Seller pertaining to the Property so taken, including substitution of Purchaser in any pending condemnation proceeding.

C. Purchaser shall be deemed to have elected option (ii) in paragraph B above if it fails to notify Seller of its election within the time frame stated above.

10. **ACCESS** Upon execution of this Agreement and provided that Purchaser has paid the Deposit pursuant to Section 3 of this Agreement, Purchaser and Purchaser's agents and contractors (collectively, "**Purchaser's Representatives**") shall be allowed to enter upon the Property at reasonable times and upon reasonable prior notice to Seller, to conduct such inspections and/or tests ("**Inspections**") necessary to satisfy the contingencies set forth in this Agreement; provided, however, that (i) Purchaser shall not be permitted to conduct "invasive" investigation, testing or sampling at the Property, including, without limitation, soil borings, groundwater sampling or other matters commonly contemplated by a Phase II environmental site assessment (the "Phase II"), without the prior consent of Seller, which consent shall not be unreasonably withheld; and (ii) Purchaser hereby agrees to use reasonable efforts to minimize the interference with Seller's operation and enjoyment of the Property. Purchaser shall comply with all applicable laws, rules and regulations in connection with the Inspections. Purchaser agrees to indemnify and hold Seller harmless in regard to the Inspections and further agrees to repair any damage and restore the Property to substantially the condition existing prior to any Inspection. All Inspections shall be carried out at Purchaser's sole cost and expense. Purchaser will provide Seller copies of any and all written reports and documentation related to such Inspections.

11. **SIGNAGE** Purchaser may, at its sole cost and expense and in compliance with all applicable laws, regulations, rules and ordinances, install and/or erect signs on, at and upon the Property to market the Property for lease and/or announce the future project.

12. **MISCELLANEOUS**

A. **Entire Agreement / Modifications**. This Agreement embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended,

discharged or terminated except by a written agreement of such waiver, modification, amendment, discharge or termination executed by the parties and then only to the extent set forth in such instrument.

B. Applicable Law. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of New York.

C. Captions. The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

D. Binding Effect / Assignment. This Agreement, when executed by both parties, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns. Purchaser shall have the right to assign its rights and/or obligations under this Agreement without the prior consent of Seller. Seller shall cooperate with the Purchaser with respect to the Purchaser's assignment of this Agreement.

E. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures delivered by facsimile or electronically via e-mail shall be deemed original signatures for all purposes of this Agreement.

F. Memorandum of Contract. The parties agree that neither this Agreement, nor a memorandum of this Agreement, shall be recorded and any attempted recordation by Purchaser shall be void and constitute a default hereunder.

G. Broker. The Seller shall be responsible for and shall pay all commissions and fees according to the terms of any applicable brokerage agreements. Purchaser represents and warrants that Purchaser has not retained or employed any broker in furtherance of this transaction. Purchaser shall indemnify, defend and hold harmless Seller for any breach of this Section 12 G. The provisions of this paragraph shall survive the Closing or any cancellation or termination of this Agreement.

H. Full Performance. The acceptance of the deed by Purchaser shall be deemed to be the full performance and discharge of every agreement and obligation on the part of Seller to be performed pursuant to the provisions of this Agreement except those, if any, which are herein specifically stated to survive the closing.

I. Default. In the event that Purchaser defaults on its obligations under this Agreement, the Deposit shall be forwarded to Seller. In the event that Seller defaults on its obligations under this Agreement, the Deposit shall be returned in full to Purchaser. In the event that either party defaults on its obligations hereunder, the non-defaulting party shall have such rights as are available pursuant to law or at equity, including but not limited to, the right to seek specific performance.

J. No Interpretation Against Drafter. This Agreement has been entered into at arm's length and between persons sophisticated and knowledgeable in business and real estate matters. Accordingly, any rule of law or legal decision that would require interpretation of this Agreement against the party that has drafted it is not applicable and is irrevocably and unconditionally waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purposes of the parties and this Agreement.

K. Attorneys' Fees. If any action, suit, arbitration or other proceeding is instituted to remedy, prevent or obtain relief from a default in the performance by Seller or Purchaser of its obligations under this Agreement, each party shall be responsible for paying its own attorneys' fees.

L. Waivers; Extensions. No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other agreement or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

M. Severability. Any term or provision of this Agreement that is invalid or unenforceable will be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement.

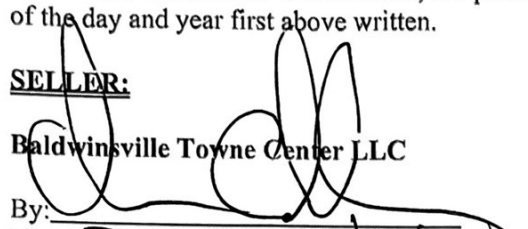
N. 1031 EXCHANGE. Either party may engage in consummating a like-kind tax deferred exchange wherein the Property will be exchanged for one or more properties of a like kind, as provided in Section 1031 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, and the other party shall reasonably cooperate therewith provided that the exchanging party shall use commercially reasonable and good faith efforts.

[signatures on next page]

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


SELLER:

Baldwinsville Towne Center LLC

By: 
Name: Dan Cochran
Title: Dan Cochran

PURCHASER:

AC Hammer LLC

By: 
Charles Breuer
Member

Schedule 4.K.

See attached correspondence.