



Village of \_\_\_\_\_  
**AMITYVILLE**  
New York

**Village of Amityville  
DRI Business Façade Improvement Program  
Application**

Application Date: 01/26/2024 Submitted by: Mark Epley

Project Name: 37 John Street Sidewalks

Applicant Name: BEH Properties LLC

IRS EIN #, ITIN #, or SS #: 03-0549726

Applicant Phone Number: (516) 903-1676

Email Address: mepley@seafielcenter.com

Site Address: 37 John Street

City: Amityville State: NY Zip: 11701

Applicant Address: 7 Seafield Lane

City: Westhampton Beach State: NY Zip: 11978

Mailing Address (if different): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

1. Provide a brief (1 – 2 sentences) description of the project:

We will be replacing and raising our walkways. This will prevent tripping hazards.

2. Does the applicant own the building? Yes  No

If answered "No", attach the declaration from the building owner providing approval of the project proposal as well as evidence of your lease extending through the 3-year regulatory term. See Required Attachments below. If you answered "Yes", please provide proof of ownership. See Required Attachments below.

3. Describe the current condition of the building's facade:

The current condition is red brick. In good shape. The walkways in front have become uneven over the years.

4. Describe in detail the proposed improvements:

We will be raising up the sidewalks to level them out with the curb. This will bring curb appeal and reduce tripping hazards.

5. Identify the exact components of the project that the grant funding will be used for:

The sidewalk/walkway off the parking lot and into the building.

6. Describe the expected impact your proposed project will have on the building, the occupying or future business(es), and the community:

It will make it easier to access the front door.

7. Is the proposed work visible from a public right of way? Yes  No

8. Will you use your own architect or grant provided assistance? Own  Grant

9. If own, please provide their name/address:

[Empty box for name/address]

10. Grant Request (Small projects \$5000-\$25,000 Large Projects \$25,000-\$100,000) Request should match costs in #12): \$14000

11. Project Match (at least 20% of the total project cost): \$3518

12. Please provide breakdown of the work needed and estimated cost:

Work Description	Estimated Cost
Please see attached estimate from Woodford Bros	\$17518


(If more space is needed, please provide as an attachment)

13. First available date to begin: 02/01/2024

14. Are funds currently available for the entire project? Yes  No

15. This is a reimbursement-based grant, which means the applicant will pay for the project out of pocket and submit requests for reimbursement upon completion of the project. If the applicant does not have funds available for the entire project, explain how the project will be financed. Proof of financial resources required as an attachment. See Required Attached Requirements Below:

See attached proof of funds

16. If the building includes residential space, please indicate the total number of units currently occupied and unoccupied for each floor of the building:

- a. First Floor
  - i. Number of Units Occupied: \_\_\_\_\_
  - ii. Number of Units Unoccupied: \_\_\_\_\_
- b. Second Floor
  - i. Number of Units Occupied: \_\_\_\_\_
  - ii. Number of Units Unoccupied: \_\_\_\_\_
- c. Third Floor
  - i. Number of Units Occupied: \_\_\_\_\_
  - ii. Number of Units Unoccupied: \_\_\_\_\_

17. Please list the names of the current occupying business(es) and the number of both full and part-time jobs associated with each business:

Seafield Services occupies both floors of the building. We have 35 combined full and part-time jobs associated with the business

18. If the building is currently vacant, please share the anticipated date of occupancy and list the names of the future business(es) and the number of both full and part-time jobs associated with each proposed business:

19. Please provide the contact information of the individual(s) managing all requirements of the grant

Name	Title	Role	Phone	Email
Zach Epley	Executive Director	Partner	(516) 903-1676	zepley@seafieldcenter.com

20. Are the property's municipal taxes current? Yes  No

21. Are the property's school taxes current? Yes  No
22. Are the property's water/sewer bills current? Yes  No
23. Are there any liens on the property? Yes  No
- a. If so, please explain:

24. Has applicant received or been awarded an Economic Injury Disaster Loan (EIDL) Yes  No
25. Is the applicant a minority? Yes  No
26. Is the applicant a woman? Yes  No
27. Is the applicant a veteran? Yes  No

Please initial the following statements indicating you understand and agree to each:

- a. Prior to starting, NYS DRI Projects must undergo an environmental review and clearance of scope of work by the State Historic Preservation Office WJ
- b. NYS DRI applications must have at least two bids for each phase of work and reimbursement will be based on the lowest responsible bid WJ
- c. If applicant chooses a bid other than that selected by the Village, the applicant will be responsible for 100% of the difference with no reimbursement WJ
- d. Only work completed by a vendor that is previously approved by the Village of Amityville will be reimbursed WJ
- e. Awardees of NYS DRI program funds must execute a declaration agreeing to maintain improvements for three years following project completion WJ
- f. NYS DRI project grants will be reimbursed for eligible projects only following the satisfactory completion of an approved scope of work and submittal of required documentation WJ
- g. If chosen, a deposit will be required to cover the costs of the environmental review. Such deposit will be forfeited if project is not completed WJ

**Required Attachments**

**Attached?**

- |  |   |
|--|---|
| A. Photos of the building façade in its current condition  | Yes <input checked="" type="radio"/> No <input type="radio"/> |
| B. Drawings or plans of the building which illustrate all proposed work, including any structural work or repair, paint colors, materials samples, etc. (Grant admin can provide assistance) | Yes <input checked="" type="radio"/> No <input type="radio"/> |
| C. Information on the methods and material to be used.   | Yes <input checked="" type="radio"/> No <input type="radio"/> |
| D. Signed declaration from property owner  | Yes <input checked="" type="radio"/> No <input type="radio"/> |
| E. Proof of building ownership OR proof of permission for project and lease extending through 3-year compliance period   | Yes <input checked="" type="radio"/> No <input type="radio"/> |
| F. Proof of financial resources to complete construction,  |   |

such as loan commitment, documentation of available line of credit, or cash in account

Yes  No

G. Itemized budget (template attached)

Yes  No

The undersigned affirms that:

- A. The information submitted herein is true and accurate to the best of my (our) knowledge.
- B. I (we) have read and understand the rules of the Village of Amityville DRI Façade Program and agree to abide by its conditions and guidelines.
- C. I (we) understand that all work completed on the project must be by approved methods and with approved materials. Any variance from that which is agreed upon, without prior approval, may result in the forfeit of any funds from the Kingston DRI Façade Program.

The undersigned applicant agrees to comply with the requirements of this program as outlined in the Village of Amityville DRI Façade Improvement Program Rules.

Signature of Applicant(s):

Print Name(s)

Date: 2/5/24

Date: \_\_\_\_\_

For questions about the application, eligibility, or another concern please contact:  
Vision Long Island at [projects@visionlongisland.org](mailto:projects@visionlongisland.org) or 631-261-0242.

Ways to submit completed applications:

1. Email: [projects@visionlongisland.org](mailto:projects@visionlongisland.org)
2. Fax: 631-606-1502
3. Mail: Vision Long Island, 24 Woodbine Ave., Ste 2, Northport, NY 11768













## Proposal

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Quote: PR115380  
Date Issued: 01/24/2024

**Woodford Brothers Inc**  
P.O. Box 108  
6500 Route 80  
Apulia Station, NY 13020

P (315) 696-8971  
F (315) 696-5931

**Prepared for:**  
Zach Epley  
zacharyepley@gmail.com  
L (516) 903-1676

**Job Location:**  
37 John Street  
Amityville, NY 11701

**Prepared by:**  
Carmine Sauro  
Design Specialist  
csauro@woodfordbros.com  
M (315) 877-3102



# Project Overview

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## Proposal Summary

Total Investment	\$17,518.00
Total Contract Price	\$17,518.00
Deposit Required	\$5,255.40
Deposit Paid	\$5,255.40
<b>Amount Due Upon Installation</b>	<b>\$12,262.60</b>

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## Customer Consent

To assure that we are providing the best solution for each of our customers, all of Woodford Bros., Inc. proposals are subject to our owners or engineers review and approval of the proposed work scope and products offered. Therefore this proposal shall constitute a binding contract on the customer once the customer has signed where indicated below this paragraph; and this proposal shall be binding upon Woodford Bros., Inc. only if this contract shows the "Authorized Signature", below.

Authorized Employee Signature

Date

Acceptance- By signing below, the customer acknowledges they have the right & authority to sign, they have read, received a copy of & understand this proposal & attachments (Job Details, Product List & Limited Warranty, together, the "Contract"), the price & specifications are acceptable & Woodford Bros., Inc. is authorized to do the work. The customer shall make the payment(s) set forth in this contract. Any balance owed is due upon either; installation completion, customer signing of completion form, or as set forth in the invoice provided by Woodford Bros. to the customer. Any balance that is not paid within 30 days of the date of installation completion/invoice will incur a service charge of 1-1/3% per month (16% per annum) plus attorney's fees and costs to collect and enforce this contract. This proposal shall be binding on Woodford Bros., Inc. only if this contract is signed above by the Woodford Bros., Inc., Owner, or Engineer.

Customer Signature

Date

# My Project

Qty            Product Name

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## Other: Lift Settled Concrete

613.7        PolyLEVEL PL250  
              Includes: Rear of building, Front of building

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## Other: Protect Joints

376           NexusPro Joint Sealant  
              Includes: Rear of building, Side of building, Front of building

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## Other: Repair Cracks

129           NexusPro Crack Repair  
              Includes: Rear of building, Side of building, Front of building

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**Total Investment** **\$17,518.00**

**Total Contract Price** **\$17,518.00**

# Product Specifications

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## **PolyLEVEL PL250**

Install PolyLEVEL as indicated on the job drawing. Lifting is included to the limits indicated, concrete adjacent to other concrete that has been lifted (by trees/frost) will be lifted to "blend" & eliminate significant trip hazards, absolute level is not guaranteed, and additional cracking of the slab is possible during a lift. Grinding/sealing of existing cracks in concrete is sold separately. Woodford Bros., Inc. is not responsible for sub-slab utilities that may be affected by the raising of concrete or the filling of voids. (PC009) (31 43 13.1600)

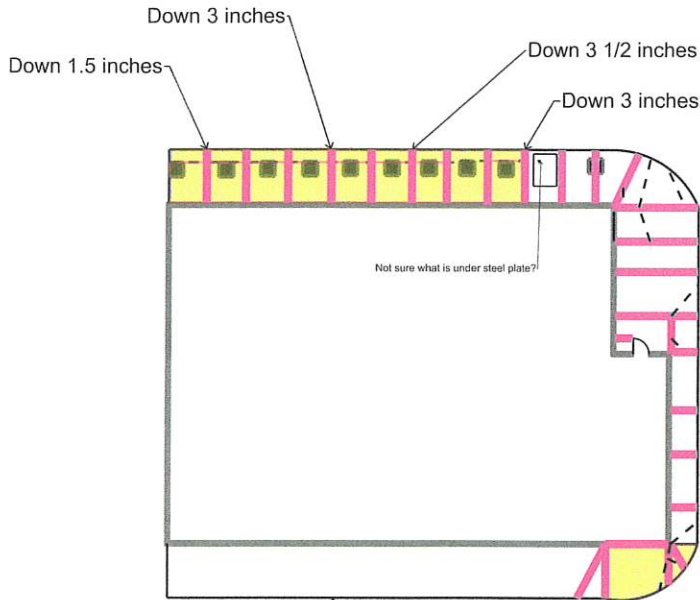
## **NexusPro Joint Sealant**

Caulk concrete cracks as noted on job drawing with NexusPro Joint Sealant. Sealant may need to be re-applied in the future, Select Color \_\_\_\_\_, Black, Charcoal, Gray, Aluminum, Limestone or Desert Sand. Sand finish is included if applicable. (PC009)

## **NexusPro Crack Repair**

Grind (Chase), Clean, Install Backer Rod if necessary & Seal cracks in concrete, masonry, walls, and floors with NexusPro Joint Sealant. Available colors, Aluminum, Bronze, Charcoal, Desert Sand, Gray, and Limestone (please circle one). A sand finish is standard on horizontal surfaces. Not guaranteed to prevent 100% of water or vapor intrusion, may need to be reapplied in the future. (LF)(07 01 90.8300)(PC009)

# Drawing



Legend	
--- NexusPro Crack Repair	— NexusPro Joint Sealant
■ PolyLevel	

Does not want work done newer concrete with no issues

# Job Details

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## Customer Will

1. Agree that this proposal does not include finishes; all finish carpentry, stairs, sheetrock, trim, window adjustment or replacement, doors, siding, painting etc. required after this structural work scope is completed are to be completed by the owner or others.
2. Acknowledge that this work scope has not been reviewed by a licensed engineer. Woodford's do not represent themselves or our employees as (Licensed Engineers). Professional engineering may be added for a fee.
3. Pay an additional \$35 per foot for piers installed beyond the depth of 16'. Pier depth varies based on actual site conditions. Pier installed in excess of allowed 16' per pier will be billed by foreman on completion.
4. BUILDING PERMIT & CODES OFFICIALS, barring emergent situations Woodford Bros., Inc. requires that all permits required by the local jurisdiction are obtained by us not less than 2 weeks prior to the job start or the project will be rescheduled. Depending on the jurisdiction, permit requirements (building, electric, plumbing, etc. will vary significantly. To assure satisfactory compliance our production manager is responsible to obtain all required permits. To control costs for our customers it is our company policy to provide only the minimum services required to obtain permits that are mandated by the local jurisdiction unless the customer requires otherwise. (We will not provide services or charge fees that are not mandated by the codes official). Woodford Bros., Inc. will provide the required services to obtain the required permit(s), and the following fees (if applicable) will be billed separately and in addition to the price stated in this proposal. Permit Procurement Service Fee \$50, Plus the total of all permit fee(s) paid for the project, CAD / Base Drafting Fee \$300 (only if required) & Base Engineering (P.E.) review \$400.00 (only if required), (detailed or extensive drawings or engineering will incur the added cost and will be quoted before starting).

To provide the required engineering services, Woodford Bros., Inc. will retain the services of a licensed engineer. The engineer is Richard Pierce PE of Pierce Engineering PC. Woodford Bros., Inc. is acting as an agent for the purposes of receipt and payment of monies and shall immediately pay such funds to the authorized licensed engineer.

Customer has reviewed, & agrees to these conditions X\_\_\_\_\_

5. To allow efficient completion of the work and to prevent damage of valuables the customer is required to move all personal items and obstacles (including AC or other mechanical devices) outside of the work area prior to this projects start date or agree by change order to pay an extra charge to have items moved at the rate of 75\$ per man hour expended. In the event items are not moved the customer releases Woodford Bros., Inc. and employees from any liability for damage.
6. Customer acknowledges that foundation piers were proposed and are the recommended solution for settlement.
7. Mark any private lines (satellite, sprinkler, water, electric, propane, etc.) that may be hidden underground, and unless "Utilities Insurance" has been purchased and included in the specifications above the customer assumes all liability if damage should occur to unmarked lines.
8. Agree that this proposal includes specific items of repair or reinforcement, Woodford's do not represent this

# Job Details (Continued)

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proposal as being 'all inclusive'.

9. Authorized Woodford's to operate their equipment on our driveway and / hard surfaces and agree to hold them harmless for damage that may be incurred.
  10. Agree that Woodford's are not responsible for underground damage to any unmarked utilities or for unexpected soil conditions or excessive hard digging conditions.
  11. TENTATIVE PROJECT START DATE IS \_\_\_\_\_, We will do our best to maintain this start date, however, the customer acknowledges that this date is TENTATIVE and subject to change due to uncontrollable construction delays including; weather, illness, work restrictions beyond our control or the unexpected expansion of a project earlier in our schedule. All projects are generally completed in the order which they have been approved for production excepting we also reserve the right to give priority to emergency projects if the loss of life or property is a valid concern. Customer has reviewed, & agrees to these conditions  
X\_\_\_\_\_
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Woodford Bros., Inc. Federal ID# 16-1491259

The signing of Woodford's inspection report and/or any occupancy or usage by an owner shall constitute acceptance and final completion of the contract scope/installation. At that time all monies become immediately due and payable (Crew Chief/Foreperson to collect) otherwise contracted finance charges accrue from that time forward. In any event or circumstance, Woodford's are to retain ownership and right of repossession of any and all materials until the account is paid in full. If terms are not met and repossession or collection becomes necessary, the owner assumes all responsibility and liability for all accumulated costs incurred, including the cost of attorneys/collection, and agree to hold Woodford's harmless for any damage that may occur.

Cancellations (other than those allowed by law) are subject to the forfeiture of 15% of the face value of the contract or the amount directly expended by Woodford Bros. Inc., to the benefit of this contract, prior to cancellation, whichever is greater, as liquidated damages, not a penalty. The owner is to carry fire, liability, tornado, and other necessary insurance. The owner is responsible for any additional damage that occurs to their building or structure after our proposal is written but prior to the commencement of the physical work. Unless stated otherwise specifically in writing all proposals are generally to be executed in no more than 18 months from the date of signing, and it is agreed that "Time is NOT of the essence". Contingencies that would materially change the start and completion dates include but are not limited to; weather, strikes, accidents, acts of god, other delays beyond our control, unavailability of key craftsmen & temporary diversion of company forces to complete other projects (s) that are given priority to prevent or mitigate the potential loss of life or property. The owner is responsible for any and all liability pertaining to any contents/ animals/pets with access within the work area. All material is guaranteed to be as specified. The term "approximate eye level and plumb" shall mean appearing correct to the untrained eye. Not all work is warrantied, carefully review the Limited Warranty section for details.

## Job Details (Continued)

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Our workers are fully covered by Workman's Compensation. A "certificate of insurance" will be provided upon request. This proposal may be withdrawn by us if not accepted within two (2) business days. All work will be completed in a workmanlike manner according to Woodford's standard practices. Any material alteration or deviation from the original written specifications will be negotiated with the owner before the execution of any such work and will be executed only upon written agreement (change order) which will detail said changes and any extra charge or credit accordingly. Verbal alterations will not be accepted or considered valid. Undisclosed, abnormal, hidden, or unforeseen working conditions that require us to accomplish added work to achieve the desired result will require that a change order and associated price modification be negotiated. In the event, the change order is not executed for any reason and the project can not proceed satisfactorily due to any physical, monetary or code compliance issues then the work is stopped and the customer agrees to pay prorated billing for all work completed or partially completed up to that time.

Unless otherwise stated herein: it is the customer's responsibility to have complied with any and all Federal, State, and Municipal laws, codes, and regulations, including but not limited to zoning and building codes, further, it is the customer's responsibility to have determined the accurate location of all property lines and assured through collaboration with our companies representatives that this work scope will not illegally encroach on others property or result in our personnel unknowingly committing trespass. The customer shall assume full responsibility for all site, soil, and subterranean conditions pertaining to the property, and for any impact, which said conditions might have upon the construction undertaken pursuant to this contract.

To assure the safety of all persons Woodford Bros. (Contractor) will not remove, work within unsafe distances of, or disturb known hazardous materials or any materials that are reasonably suspected of being hazardous or an "ACM" (asbestos-containing material). The contractor accepts no liability to have identified such materials in advance regardless of the extent of pre-construction site investigations as they are sometimes concealed and/or not readily identifiable. If before the workmen are on-site, existing material is suspected to be an ACM, and the customer has signed the Contractor's written proposal for work then the contractor will, at their expense, contract with an accredited lab to sample and test the suspected ACM. If the testing is negative, then the work will be scheduled and completed per standard procedures. If the testing result is positive, then the customer must have the asbestos legally mitigated, at their expense, by an accredited mitigation company and provide documentation to the contractor certifying the mitigation completion such that the written proposal for work can be performed without health threat to contractor's employees. If the test is positive, the ACM cannot be avoided, and the customer is unable or unwilling to legally mitigate it for any reason then it is mutually agreed that the contract will be declared void. The customer's full deposit will then be returned and constitute a full mutual release of further obligation. If materials suspected of being hazardous or ACM are discovered by our crews while performing work, then all work causing the exposure shall be stopped immediately. The customer will be notified and the material will be tested at the contractor's expense. If the test results are negative the work will resume. If positive, the work causing the exposure will stop and the customer agrees they are liable to legally mitigate the hazard at their expense. They will be invoiced for the work done by the contractor to date based on a percentage of completion calculation. The owner accepts all liabilities, including but not limited to all associated costs of removal and disposal, costs of delays incurred, etc. for any hazardous materials encountered.

## Job Details (Continued)

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The contractor reserves the right to cancel the uncompleted portion of this contract scope in the event that the owner fails to mitigate said hazard by legal/acceptable means within an acceptable time frame.

Any contractor, subcontractor or materialman who provides goods or services pursuant to your home improvement contract and who is not paid may have a valid legal claim against your property known as a mechanic's lien. Any mechanic's lien filed against your property may be discharged. Payment of the agreed-upon price under the home improvement contract prior to the filing of a mechanics lien may invalidate such lien. The owner may contact an attorney to determine his right to discharge a mechanic's lien.

Woodford Bros., Inc. is legally required to deposit all payments received prior to completion in accordance with subdivision 4 of section 71-a of the Lien Law and that, in lieu of such deposit, Woodford Bros., Inc. may post a bond, contract of indemnity or irrevocable letter of credit with the owner guaranteeing the return or proper application of such payments for the purposes of this contract.

Purchaser(s) warrant(s) and represent(s) that (he is) (they are) the owner(s) of the above-mentioned premises and the legal title thereof stands on record in (his) (their) names. Purchaser(s) hereby waive(s) any and all benefits which (he)(they), may have under any and all exemption laws of the state of New York with respect to the payment of any monies due, or to become due Woodford Bros., Inc. or its assigns.

Woodford assumes no responsibility for and is specifically released by the Purchaser(s) and/or co-signer(s) from any defects or violations in or about any portion of the premises not specified in the work to be done by Woodford's hereunder. If any governmental agency orders other work to be done or corrected due to any violations not addressed by our work scope, the purchaser(s) shall pay the cost of such work if accomplished by Woodford's.

This contract shall be governed by the laws of the State of New York. If applicable, the Owner hereby agrees that an Insurance proceeds assignment shall prevail.

The "Owner's Rep." is to be the one individual through whom all business of the Owner(s) or the organization shall be conducted. This individual is hereby authorized by the Owner(s)/Organization to act with the authority of the Owner(s) /entire organization including the authority and ability to disperse funds as "the signer" on behalf of the Owner(s)/Organization. The Owner's Rep. is \_\_\_\_\_ (write-in name).

Woodford Bros., Inc. is authorized to obtain a credit report on the customer(s), at Woodford Bros., Inc. discretion and expense, if a credit report is obtained then I understand that the Owner or Engineer's signature required on the 1st page of this proposal is contingent on the receipt of a credit history report which is acceptable to the company.

Woodford is not responsible for any potential damage done to brickwork around the building

# Limited Warranty

## **PolyLevel®**

Contractor does not represent that PolyLEVEL® will lift the Customer's slab to meet any criteria of levelness, but instead that it will lift the slab as much as practical. For concrete slabs raised with PolyLEVEL®, Contractor warrants that the area where the slab of concrete was lifted will not settle more than ¼ inch for a period of 5 years from the date of installation. If it does, Contractor will provide the labor and materials to re-level the area at no additional charge to Customer. This Warranty excludes patching or caulking between slabs. This Warranty is void if Customer does not maintain grade around slabs and seal joints between slabs.

## **NexusPro**

For areas where the Contractor has installed NexusPro Joint Sealant ("Sealant"), the Contractor warrants that Sealant will remain intact for a period of 5 years from the original date of installation. If Sealant does not stay intact, the Contractor will re-apply Sealant to the area at no additional cost to the Customer.

# Notice of Right to Cancel

You are entering into a contract. You have a legal right under NYS to cancel the contract or sale three days after signing. Woodford Bros., Inc. will extend the NYS minimum of three days to the Woodford Week (five days). By notifying us no later than 11:59 PM on the fifth day after the sale or whichever of the following events occurs last:

1. The date of the transaction, which is: \_\_\_\_\_ or

2. The date you received this notice of cancellation.

In the event that you legally exercise this right to cancel, your full deposit will be returned to you within 10 days of our receipt of this cancellation. Cancellations (other than those allowed by law or outside of the Woodford Week) are subject to the forfeiture of 15% of the face value of the contract or the amount directly expended by Woodford Bros., Inc., to the benefit of this contract, prior to cancellation, whichever is greater, as liquidated damages, not a penalty.

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## How to Cancel

If you decide to cancel this transaction, you may legally do so only by notifying us in writing at:

**Woodford Brothers Inc**  
(315) 696-8971  
www.WoodfordBros.com  
P.O. Box 108  
6500 Route 80  
Apulia Station NY 13020

You may use any written statement that is signed and dated by you and states your intentions to cancel, or you may use this notice by dating and signing below. Keep one copy of the notice because it contains important information about your rights. Legally this notice must be delivered (or postmarked) by midnight of the fifth day after the sale.

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## I Wish to Cancel

Owner's Signature

Date

Owner's Signature

Date

The undersigned acknowledges receipt of the two copies of the Notice of Right to Cancel.

Owner's Signature

Date

Owner's Signature

Date



# Certificate of Capital Improvement

After this certificate is completed and signed by both the customer and the contractor performing the capital improvement, it must be kept by the contractor. Copies of this certificate must be furnished to all subcontractors on the job and retained as part of their records.

**Read this form completely before making any entries.**

**This certificate may not be used to purchase building materials exempt from tax.**

Name of contractor (print or type) Woodford Brothers Inc			Name of customer (print or type) Zach Epley		
Address (number and street) P.O. Box 108			Address (number and street) 37 John Street		
City Apulia Station	State NY	ZIP code 13020	City Amityville	State NY	ZIP code 11701
Sales tax Certificate of Authority number (if any)					

### To be completed by the customer

Describe capital improvement to be performed:

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Project name					
Street address (where the work is to be performed) 37 John Street			City Amityville	State NY	ZIP code 11701

I certify that:

- I am the (mark an X in one)  owner  tenant of the real property identified on this form; **and**
- the work described above will result in a capital improvement to the real property as outlined in the instructions of this form; **and**
- this contract (mark an X in one)  includes  does not include the sale of any items that will **not** become a permanent part of the real property (for example, a free-standing microwave or washing machine).

I understand that:

- I will be responsible for any sales tax, interest, and penalty due on the contractor's total charge for tangible personal property and for labor if it is determined that this work does not qualify as a capital improvement; **and**
- I will be required to pay the contractor the appropriate sales tax on tangible personal property (and any associated services) when the property installed by the contractor does not become a permanent part of the real property; **and**
- I will be subject to civil or criminal penalties (or both) under the Tax Law if I issue a false or fraudulent certificate.

Signature of customer	Title	Date 1/24/2024
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### To be completed by the contractor

I, the contractor, certify that I have entered into a contract to perform the work described by the customer named above, and that I accept this form in good faith. (A copy of the written contract, if any, is attached.) I understand that my failure to collect tax as a result of accepting an improperly completed certificate will make me personally liable for the tax otherwise due, plus penalties and interest.

Signature of contractor or officer	Title	Date
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**This certificate is not valid unless all entries are completed.**

## Instructions

When the customer completes this certificate and gives it to the contractor, who accepts it in good faith, it is evidence that the work to be performed will result in a capital improvement to real property.

A capital improvement to real property is an addition or alteration to real property that:

- (a) substantially adds to the value of the real property or appreciably prolongs the useful life of the real property, **and**
- (b) becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself, **and**
- (c) is intended to become a permanent installation.

The work performed by the contractor must meet all three of these requirements to be considered a capital improvement. This certificate may not be issued unless the work qualifies as a capital improvement. See Tax Bulletin *Capital Improvements* (TB-ST-104).

If a contractor performs work that constitutes a capital improvement, the contractor must pay tax on the purchase of building materials or other tangible personal property, but is not required to collect tax from the customer for the capital improvement. No credit or refund is allowed for the tax paid on the cost of materials by the contractor. See Tax Bulletin *Contractors – Sales Tax Credits* (TB-ST-130).

For guidance as to whether a job is a repair or a capital improvement, see Publication 862, *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*.

**A contractor, subcontractor, property owner, or tenant, may not use this certificate to purchase building materials or other tangible personal property tax free.** A contractor's acceptance of this certificate does not relieve the contractor of the liability for sales tax on the purchase of building materials or other tangible personal property subsequently incorporated into the real property as a capital improvement unless the contractor can legally issue Form ST-120.1, *Contractor Exempt Purchase Certificate*. (See Publication 862 for additional information.)

The term *materials* is defined as items that become a physical component part of real or personal property, such as lumber, bricks, or steel. This term also includes items such as doors, windows, sinks, and furnaces used in construction.

### Floor covering

Floor covering such as carpet, carpet padding, linoleum and vinyl roll flooring, carpet tile, linoleum tile, and vinyl tile installed as the initial finished floor covering in new construction, a new addition to an existing building or structure, or in a total reconstruction of an existing building or structure, constitutes a capital improvement regardless of the method of installation. As a capital improvement, the charge to the property owner for the installation of floor covering is **not** subject to New York State and local sales and use taxes. However, the retail purchase of floor covering (such as carpet or padding) itself is subject to tax.

Floor covering installed other than as described above does not qualify as a capital improvement. Therefore, the charges for materials and labor are subject to sales tax. The contractor may apply for a credit or refund of any sales tax already paid on the materials.

The term *floor covering* does **not** include flooring such as ceramic tile, hardwood, slate, terrazzo, and marble. The rules for determining when floor covering constitutes a capital improvement do not apply to such flooring. The criteria stated in (a), (b), and (c) above apply to such flooring.

### Temporary facilities at construction sites

Subcontracts to provide temporary facilities at construction sites that are necessary for the construction of a capital improvement are considered to be part of the capital improvement project. Examples of temporary facilities include temporary:

- heat, electric, or plumbing services;
- protective pedestrian walkways; and
- scaffolding services.

A primary contractor purchasing qualifying temporary facilities from a subcontractor must give the subcontractor a copy of Form ST-124 issued to the primary contractor by the customer (including a customer that is an exempt organization) to purchase the subcontractor's services exempt from tax.

A certificate is accepted in good faith when a contractor has no knowledge that the certificate is false or is fraudulently given, and reasonable ordinary due care is exercised in the acceptance of the certificate.

If a contractor gets a properly completed Form ST-124 from the customer within 90 days after rendering services, and accepts it in good faith, the customer bears the burden of proving the job or transaction was not taxable.

If you are a contractor who installs items such as washing machines, clothes dryers, dishwashers, refrigerators, furniture, etc., which when installed or placed in real property do not become part of the real property, you must collect tax on your charge for the installation. The individual charge for any of these items is also taxable as the sale of tangible personal property.

If a contractor does not get a properly completed *Certificate of Capital Improvement* within 90 days, the contractor bears the burden of proving the work or transaction was a capital improvement. The failure to get a properly completed certificate, however, does not change the taxable status of a transaction; a contractor may still show that the transaction was a capital improvement.

Contractors and subcontractors must keep any exemption certificate for at least three years after the due date of the last return to which it relates, or the date the return was filed, if later. The contractor must also maintain a method of associating an exempt sale made to a particular customer with the exemption certificate on file for that customer.

### Need help?



Visit our website at [www.tax.ny.gov](http://www.tax.ny.gov)

- get information and manage your taxes online
- check for new online services and features



#### Telephone assistance

**Sales Tax Information Center:** (518) 485-2889

To order forms and publications: (518) 457-5431

**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

### Privacy notification

See our website or Publication 54, *Privacy Notification*.

FULLAM

Est. 1990



CARPENTRY CORP

# Estimate

**T.L. Fullam Carpentry Corp.**

189 Warfield Way  
Southampton, New York 11968

**Bill to**

Zach Epley - BEH Properties  
7 Seafield Lane  
Westhampton Beach, NY 11978

**Details**

Estimate # 527498  
Date 01/13/2024  
60 days  
Expires: 03/13/2024

Description	Qty/Hrs	Rate	Amount
Replace damaged concrete walk at 37 John Street			
Repair damage to curb			
Remove all debris			

<b>Customer message</b>	<b>Subtotal</b>	\$32,000.00
Please note: Subject to being able to remove broken concrete without damaging non-broken concrete. Work cannot start until spring.	<b>15% discount</b>	(\$4,800.00)

---

**Total** **\$27,200.00**

IF THE WORD "ARREARS" IS PRINTED HERE, SEE NOTICE OF ARREARS ON REVERSE SIDE.

**STATEMENT OF TAXES**  
 DECEMBER 1, 2023 thru NOVEMBER 30, 2024 TAX LEVY  
 TOWN OF BABYLON, SUFFOLK COUNTY, NEW YORK  
 TAXES BECOME A LIEN DECEMBER 1, 2023

ITEM NUMBER

010419200

ESTIMATED STATE-AID

COUNTY 349,275,904  
 TOWN 593,299  
 SCHOOL 43,173,918

WWW.TOWNOFBABYLON.COM

OFFICE PAYMENT HOURS  
 MON. TO FRI. 9 A.M. TO 4 P.M.  
 PHONE 631-957-3001

MAKE FUNDS PAYABLE TO:

**JENNIFER MONTIGLIO**  
 RECEIVER OF TAXES  
 200 EAST SUNRISE HIGHWAY  
 LINDENHURST, NEW YORK 11757-2597

FOR SCHOOL INQUIRIES CALL  
 (631) 598-6524

NYS School Code 472006  
 Bill Number 670

IF PROPERTY HAS BEEN SOLD OR TRANSFERRED AFTER  
 MARCH 1, 2023, PLEASE FORWARD THIS STATEMENT TO THE  
 NEW OWNER OR RETURN TO THIS OFFICE.

INDICATE NAME OR ADDRESS  
 CHANGE ON ENCLOSED FORM.

OWNER AS OF TAXABLE STATUS DATE MARCH 1, 2023

TAX BILLING ADDRESS

BEH PROPERTIES INC  
 7 SEAFIELD LN  
 WESTHAMPTON BEACH NY 11978

BEH PROPERTIES INC  
 7 SEAFIELD LN  
 WESTHAMPTON BEACH, NY 11978-2714



SUFFOLK COUNTY TAX MAP NUMBER	LAND ASSESSMENT	TOTAL ASSESSMENT	EXEMPTION	SAVINGS	
DIST. SECT. BLOCK LOT			DESC. CODE VALUE	FULL VALUE	
0101 003.00 05.00 019.003	2,010	18,600			
ACREAGE / DIMENSION	TAX CODE	ROLL SECTION	TYPE	UNIFORM % OF VALUE	FULL VALUE
0.48	101	1	464	0.66	2,818,181
PHYSICAL ADDRESS		TAX WITHOUT EXEMPTION			
29-35 JOHN ST AMITYVILLE 11701		46,094.27			

LEVY DESCRIPTION	% OF CHANGE	EXEMPT CODE	TAXABLE VALUE ADJUSTED BY EXEMPTIONS	TAX RATE PER \$100	TAX AMOUNT
<b>SCHOOL TAX</b>	<b>87.94</b>				
SC006 SCHOOL DIST. - AMITYVILLE	-1.37		18,600	207.9149	38,672.17
LD006 LIBRARY TAX - AMITYVILLE	-2.37		18,600	10.0117	1,862.18
<b>COUNTY TAX</b>	<b>0.94</b>				
D001 COUNTY GENERAL FUND	0.00		18,600	1.4056	261.44
D001S SCCC TAX	1.85		18,600	0.1698	31.58
D002 OUT OF COUNTY TUITION	-51.93		18,600	0.7434	138.27
<b>TOWN TAX</b>	<b>8.21</b>				
D005 TOWN TAX	16.83		18,600	20.3433	3,783.85
<b>OTHER TAX</b>	<b>2.92</b>				
D007 NY STATE REAL PROP TAX LAW	-0.12		18,600	2.3675	440.36
D008 BABYLON CENTRAL FIRE ALARM TAX	3.98		18,600	0.7515	139.78
SW001 SEWER DIST.-COUNTY SEWER RATE	-0.83		18,600	3.8525	716.57
SW002 SEWER DIST.- PER PARCEL CHARGE					35.76
NY STATE MTA TAX				0.0662	12.31

THIS IS YOUR ONLY TAX BILL.

FIRST HALF TAX	23,047.14	SECOND HALF TAX	23,047.13	TOTAL TAX	46,094.27
Due December 1, 2023 - Payable without penalty to January 10, 2024. See reverse side for penalty schedule.		Due December 1, 2023 - Payable without penalty to May 31, 2024. See reverse side for penalty schedule and County Comptroller's notice.		This total tax may be paid in one or two installments.	

WHEN PAYING IN PERSON, DO NOT DETACH STUBS. PLEASE BRING IN ENTIRE TAX STATEMENT

ITEM NUMBER 010419200

When paying by mail, detach and return this stub with payment of the second half tax by May 31, 2024. If paying TOTAL TAX, return both first and second half stubs with payment. When paying in person, do not detach stubs. Please bring in entire tax statement.

Make Funds Payable to: JENNIFER MONTIGLIO, RECEIVER OF TAXES  
 Write Item Number and Telephone Number on Payment.

Second Half Due Full Payment Amount Enclosed



898 Veterans Memorial Highway  
Suite 560  
Hauppauge, NY 11788

# Statement Ending 12/29/2023

BEH PROPERTIES INC

Page 1 of 4

Account Number: XXXXXX4665

BEH PROPERTIES INC  
7 SEAFIELD LN  
WESTHAMPTON BEACH NY 11978-2714

## Managing Your Accounts

Branch Name Westhampton  
 Branch Number 1-631-288-7756  
 Mailing Address 194 Mill Rd  
Westhampton Beach, NY  
11978  
 Website www.dime.com

## Summary of Accounts

Account Type	Account Number	Ending Balance
Business Analysis	XXXXXX4665	\$306,340.72

## Business Analysis-XXXXXX4665

### Account Summary

Date	Description	Amount
12/01/2023	Beginning Balance	\$345,485.89
	2 Credit(s) This Period	\$39,869.46
	9 Debit(s) This Period	\$79,014.63
12/29/2023	Ending Balance	\$306,340.72

### Electronic Credits

Date	Description	Amount
12/01/2023	Remote Deposit Credit	\$26,302.60
12/21/2023	Remote Deposit Credit	\$13,566.86

### Electronic Debits

Date	Description	Amount
12/13/2023	NYS DTF PTET TAX PAYMNT 000000106266226	\$5,250.00

### Other Debits

Date	Description	Amount
12/05/2023	PAYMENT TO Comm Mtg-XXXXXX0001 t L R-OO LOAN 130002527	\$3,307.86
12/05/2023	PAYMENT TO Comm Mtg-XXXXXX0001 t L R-OO LOAN 130002213	\$3,171.77
12/14/2023	Transfer to CK 5028	\$500.00
12/14/2023	Transfer to CK 7383	\$500.00
12/14/2023	Transfer to SAV 2826	\$500.00

### Checks Cleared

Check Nbr	Date	Amount	Check Nbr	Date	Amount
1475	12/18/2023	\$65,000.00	1477	12/27/2023	\$285.00
1476	12/19/2023	\$500.00			

\* Indicates skipped check number



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**COMMERCIAL TRIPLE NET LEASE**

**Parties: BEH Properties, Inc. & Seafield Services, Inc.**

This Commercial Lease Agreement ("Lease") is entered into between Seafield Services, Inc. ("Lessee") and BEH Properties, Inc. ("Lessor").

**Premises:**

Lessor rents to Lessee, and Lessee rents from Lessor the property situated at 37 John St., in the City of Amityville, County of Suffolk, State of New York, also described as 37 John St.. ("the premises"), of which Lessor is the owner, together with the following furnishings and appliances: NA subject to the terms and conditions in this Agreement. Rental of the premises also includes: NA.

**Term:**

The term of this Lease ("Term") and the rental associated with said agreement will begin on December 1, 2019 and end on November 30, 2027 unless sooner terminated as herein set forth or unless extended in accordance with the provisions hereof.

**Definitions:**

Adjacent Facilities - all sidewalks, grounds, areas, vaults, chutes, sidewalk hoists, railings, gutters, water and sewer connections, streets, alleys and curbs, parking areas, malls or passageways in front of, adjacent to or appurtenant to the Premises.

Requirements - all present and future laws, statutes, rules, orders, ordinances, regulations or other requirements (including without limitation Environmental Laws) of any governmental, public or quasi-public authority now existing or hereafter created, and of any and all of their departments and bureaus, and of any applicable fire rating bureau or other body exercising similar functions, and all covenants or restrictions applicable to or affecting the Premises or any Adjacent Facilities.

Prime - the interest rate per annum announced from time to time by NA Bank, (or any successor bank thereto) to be its base rate and may not necessarily be the most favorable rate charged by such Bank.

The words "herein," "hereof," "hereunder" and words of similar import refer to this Lease as a whole and not to any particular Section or Subsection thereof unless the context shall otherwise require.

**Use:**

Lessee shall use and occupy the premise for the purpose of: **Professional Office Space.**

Lessee shall have the right at its own expense to contest, by appropriate proceedings diligently conducted in good faith, any allegation by public authorities that Lessee, the Premises or any Improvements are in violation of any Requirements or any certificate of occupancy affecting the Premises, but only so long as:

(a) Neither the Premises nor any part thereof would by reason of such contest be, in Lessor's sole judgment, in danger of being forfeited or lost;

(b) Lessor shall not in its sole judgment be in danger of being subject to criminal liability or penalty by reason of such contest; and

(c) Lessee shall have indemnified and shall continue to indemnify Lessor with a surety bond, or other means satisfactory to Lessor in its sole discretion, in an amount sufficient to pay any fines, penalties or other charges that may or might be assessed against or become a charge on the Premises if such contest is unsuccessful.

Any such contest may be made in the name of Lessor or Lessee or both, as Lessee shall determine; and Lessor agrees to cooperate reasonably with Lessee in any such contest but without expense to Lessor. Lessee shall pay all costs and expenses (including, but not limited to, Lessor's attorneys' fees) incurred by Lessor in connection therewith. If Lessee upon the conclusion of any contests or proceedings shall fail to pay any fines, penalties or other charges thereby determined to be due, or if prior thereto Lessor, in the exercise of its sole judgment, shall determine that either condition (a) or (b) of this Section is no longer satisfied, Lessor may apply all or any part of any security provided under this Section to the payment, removal and discharge of such amounts and any costs, expenses (including, but not limited to, Lessor's attorneys' fees) and other liabilities accruing in such proceedings, and shall refund to Lessee the balance of any security not so applied, if any. Lessee shall promptly pay to Lessor any deficiency resulting from such application, with the amount of such deficiency to be due as Additional Rent due on the next rent day after any such deficiency is determined, with

interest thereon at the rate of Prime plus three percent (3%) per annum from the date of such determination.

Lessee shall not suffer or permit the Premises or any portion thereof to be used in any manner as might tend to impair Lessor's title to the Building or Land or any portion thereof, or in such manner as might make possible a claim or claims of adverse usage or adverse possession or of implied dedication of the Building or Land or any portion thereof for public use.

Notwithstanding the forgoing, Lessee shall not use the premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device.

#### **Net Rent - Rent Absolute**

Lessor and Lessee agree (a) that this is a **triple net lease**, (b) that Lessee accordingly shall be responsible for all obligations which are normally imposed on the owner of real estate with respect to the Premises which may accrue during the Term including, without limitation, responsibility for the payment of all real estate taxes, special assessments, insurance premiums and repair, replacement and maintenance costs and expenses in connection therewith (except as otherwise expressly set forth herein), and (c) that the Rent and all payments to be made to Lessor hereunder are to be net to Lessor, without deductions or offsets of any kind or nature whatsoever. In no event shall there be any abatement or reduction in the Rent except as may be otherwise specifically provided in this Lease.

Except as otherwise specifically provided herein, damage to or destruction of any portion or all of the Building or other Improvements located upon the Premises, by fire, the elements or any other cause whatsoever, whether with or without fault on the part of Lessee, shall not terminate this Lease or entitle Lessee to surrender the Premises or entitle Lessee to any abatement of or reduction in the Rent payable, or otherwise affect the respective obligations of the parties hereto, any present or future law to the contrary notwithstanding. If the use of the Premises for any purpose should, at any time during the Term, be prohibited by law or ordinance or other governmental regulation, or prevented by injunction, or if there is any eviction by title paramount, this Lease shall not, except as otherwise specifically provided herein, be thereby terminated nor shall Lessee be entitled by reason thereof to surrender the Premises, or to any abatement or reduction in Rent, nor shall the respective obligations of the parties hereto be otherwise affected unless such eviction is due to the act of Lessor or any person or persons claiming any interest in the demised premises by or under Lessor.

This Lease is made upon the foregoing and following covenants, agreements and conditions, all of which Lessee agrees to perform irrespective of whether the particular provision is in the form of a covenant, an agreement, a condition, a direction or any other form.

#### **Payment of Rent:**

Lessee will pay to Lessor a monthly fixed rental of (See attached). Payable in equal installments in advance of the first day of each month, the first such payment on the Rent Commencement Date and subsequent monthly payments on the first (1st) day of each succeeding month during the Term, except when that day falls on a weekend or a legal holiday, in which case rent is due on the next business day. Payment shall be made to the person and at the address the Lessor shall designate in writing. Rental is to be paid in cash, money order, cashier's check and/or certified check, or, at the option of the Lessor, in any other fashion.

Commencing on the Commencement Date, Lessee also covenants and agrees to pay as "Additional Rent" prior to the respective due dates thereof all Impositions, as defined in the Section entitled Impositions contained herein, insurance premiums, charges, costs, expenses, and payments required to be paid by Lessee in accordance with any of the provisions of this Lease.

All amounts payable by Lessee under this Section shall collectively comprise the rent due and payable under this Lease ("Rent").

#### **Late Charges:**

Any installment of Rent or any part thereof which is not made when due shall bear interest at the rate of Prime plus three percent (3%) per annum from the date when the same is due hereunder until the same shall be paid ("Late Charge"). In the event of non-payment of any Late Charge, Lessor shall have, in addition to all other rights and remedies, all rights and remedies provided for in this Lease and by law in the case of non-payment of Rent. No failure by Lessor to insist upon strict performance by Lessee of its obligations to pay Late Charges shall constitute a waiver by Lessor of its rights to enforce the provisions of this Section in any instance thereafter, nor shall acceptance of Late Charges be deemed to extend the time for payment of Rent or any part thereof under this Lease.

The provisions for Late Charges stated herein shall not limit or affect Lessor's other remedies against Lessee under this Lease or under law, including, but not limited to, Lessor's right to charge Lessee for all costs and expenses (including, but not limited to, Lessor's attorneys' fees) incurred in connection with the collection of Rent and Late Charges from Lessee.

**Prorated first month's rent:**

For the period from Lessee's move-in date or beginning date of this agreement, whichever is earlier, through the end of the month, Lessee will pay to Lessor a prorated daily rent of (see attached). This amount will be paid on or before the date the Lessee moves in.

**Utilities:**

All applications and connections for necessary utility services on the demised premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for sewer, water, gas, electricity, and telephone services

**Security Deposit:**

Lessee will pay to Lessor the sum of zero Dollars (00.00) as security deposit for the performance of Lessee's obligations under this lease, including without limitation the surrender of possession of the premises to Lessor as herein provided. It is expressly understood that the Security Deposit shall not be considered an advance payment of rental or a measure of Lessor's damages in case of default by Lessee. Unless otherwise provided by mandatory non-waivable law or regulation, Lessor may commingle the Security Deposit with Lessor's other funds. Lessor may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrearages of rent or to satisfy any other covenant, obligation or default of Lessee hereunder. Following any such application of the Security Deposit, Lessee shall pay to Lessor on demand the amount so applied in order to restore the Security Deposit to its original amount. If Lessor transfers Lessor's interest in the premises during the term of this Lease, Lessor may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of such Security Deposit.

**Impositions:**

Lessee covenants and agrees to pay, before any fine, penalty, interest or cost may be added thereto for non-payment thereof, all taxes, assessments, water and sewer rates and charges, excises, levies, license and permit fees, and other governmental charges, and charges for public and private utilities and services (and, in the event of any non-payment in violation of the foregoing covenants, all fines, penalties, interest and costs with respect to any of the foregoing), general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature that at any time during the Term may be assessed, levied, confirmed, imposed upon or grow or become due and payable out of

or in respect of, or charged with respect to or become a lien on, the Land or the Building or the Premises or any Adjacent Facility or any personal property, equipment or other facility used in the operation of the Premises, or the rent or income received therefrom, or any use or occupancy thereof, or this transaction, or the Rent or other sums payable hereunder (except as otherwise provided in this Section) or under any sublease or license or other similar agreement with respect to use or occupancy of any part of the Premises, or under any document to which Lessee is a party creating or transferring an interest or estate in the Premises (all of which items are herein called "Impositions"). Each Imposition shall be paid not later than the due date thereof, but if by law any Imposition may, at the option of the taxpayer, be paid in installments, Lessee may pay such Imposition in installments as the same becomes due. Lessee shall not be required to pay any Imposition upon or against the Premises or any part thereof or the Improvements so long as Lessee shall, to the extent permitted by law, in good faith and with due diligence, contest the same or the validity thereof by appropriate legal proceedings which shall have the effect of preventing the collection of the Imposition so contested; provided that, pending any such legal proceedings Lessee shall give Lessor such security as may be demanded by Lessor in Lessor's reasonable discretion to insure payment of the amount of the Imposition, and all interest and penalties thereon. In the event that Lessee at any time institutes suit to recover any Imposition or charge paid by Lessee under protest in Lessor's name, Lessee shall have the right, at its sole expense, to institute and prosecute such suit or suits in Lessor's name, in which event Lessee covenants and agrees to indemnify Lessor and save Lessor harmless from and against all costs, expenses (including, but not limited to, Lessor's attorneys' fees), charges or liabilities in connection with any such suit.

Nothing herein contained shall require Lessee to pay any inheritance, estate, succession, transfer or gift taxes or state or federal income taxes of Lessor, except that if at any time during the Term the method of taxation then prevailing shall be altered so that any new tax, assessment, levy, imposition or charge or any part thereof shall be imposed upon Lessor in place of any Imposition as heretofore defined and shall be measured by or be based in whole or in part upon the Premises or the rents or other income therefrom, then all such new taxes, assessments, levies, impositions or charges or part thereof, to the extent that they are so measured or based, shall constitute Impositions for purposes hereof, and Lessee shall pay and discharge the same as herein provided with respect to Impositions.

Any Imposition that relates in part to a period extending beyond the Term (including any Imposition that has been converted into installment payments as provided in this Section, as to which the period over which such

installments are payable shall be deemed to be the period to which such Imposition relates) shall be apportioned between Lessor and Lessee at the expiration of the Term, except that Lessee shall not be entitled to receive the funds representing such apportionment unless and until any then-existing Defaults are cured. Without limiting the generality of the foregoing, Lessee shall pay to Lessor prior to the expiration of the Term Lessee's estimated prorated share of any general real estate taxes becoming due and payable after the expiration of the Term, as estimated by Lessor based upon one hundred ten percent (110%) of the then most recent ascertainable tax bills.

If required by Lessor's mortgagee, as security for the obligations contained in this Section, Lessee shall deposit monthly with Lessor, or such other entity as Lessor may designate, on the first day of each and every month of the Term, a sum equal to one-twelfth (1/12th) of (a) one hundred ten percent (110%) of the then most recent ascertainable amount (or at Lessor's election, if Lessor's interest hereunder is subject to the lien of a mortgage or trust deed, a sum equal to one-twelfth (1/12th) of the mortgagee's estimate of the current amount) of general real estate taxes and annual installments of special assessments levied with respect to the Premises, and (b) the Lessee's insurance premiums as required under the terms of the Section entitled Insurance of this Lease. Such monthly deposits shall be held by Lessor, or such other entity as Lessor may designate, in such account or accounts as may be authorized by then current state or federal banking laws, rules or regulations and which monthly deposits shall be used as a fund to be applied, to the extent thereof, to the payment of such general real estate taxes, special assessments and insurance premiums as the same become due and payable. The existence of such fund shall not limit or alter Lessee's obligation to pay the taxes, assessments or premiums respecting which the fund was created; provided, however, that such fund shall be fully utilized for the payment of such taxes, assessment or premiums. The amount of the fund shall be re-adjusted annually, on the first day of June in each year of the Term, to reflect the actual amount of such taxes, assessments or premiums for the prior calendar year. Lessee shall not be entitled to interest on such fund and Lessor may commingle such fund with its other funds.

Lessee shall furnish to Lessor within ten (10) days after the due date of any Imposition payable by Lessee official receipts of the proper taxing authority or other proof satisfactory to Lessor evidencing payment thereof.

The certificate, advice or bill indicating the non-payment of any Imposition, issued by the appropriate official designated by law to make or issue the same or to receive payment of such Imposition, shall be prima facie evidence

that the Imposition is due and unpaid at the time of issuance of such certificate, advice or bill.

Lessor shall, at its option, have the right at all times during the Term to pay any Impositions not paid by Lessee, and the amounts so paid, including expenses, shall be so much Additional Rent due at the next rent day after any such payment, with interest thereon at the rate of Prime, plus three percent (3%) per annum from the date of payment thereof.

**Default:**

Each of the following shall be an "Event of Default":

1. If Lessee shall fail to pay rent when due, the Lessor, at his option, may terminate all rights of the Lessee herein after not less than five (5) days written notice of such default given in a manner required by law unless Lessee rectifies or cures the default within the said time.
2. If Lessee shall fail to pay any other payment of money, costs or expenses to be paid by Lessee under this Lease, when due, and the continuance of such failure for a period of ten (10) days after written notice from Lessor specifying such failure;
3. In the event of a default made by Lessee in any of the other covenants or conditions to be kept, observed and performed by Lessee, Lessee shall have thirty (30) days after receipt of written notice thereof to cure such default. In the event that the Lessee shall fail to cure any default within the time allowed under this paragraph, Lessor may declare the term of this Lease ended and terminated by giving Lessee written notice of such intention, and if possession of the premises is not surrendered, Lessor may reenter said premises. Lessor shall have, in addition to the remedy above provided, any other right or remedy available to Lessor on account of any Lessee default, either in law or equity. Lessor shall use reasonable efforts to mitigate its damages.
4. The filing or execution or occurrence of any of the following will be considered a Default on the part of Lessee:
  - (a) A petition in bankruptcy by or against Lessee;
  - (b) A petition against or answer by Lessee seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or other relief of the same or different kind under any provision of any

bankruptcy laws;

- (c) Adjudication of Lessee as a bankrupt or insolvent;
- (d) An assignment by Lessee for the benefit of creditors;
- (e) A petition against or proceeding by Lessee for, or the appointment of, a trustee, receiver, guardian, conservator or liquidator of Lessee with respect to the Premises or with respect to all or substantially all of Lessee's property; or
- (f) A petition against or proceeding by or against Lessee for its dissolution or liquidation or the taking of possession of Lessee's property by any governmental authority in connection with dissolution or liquidation.

Where in the case of a petition filed against Lessee under (a), (b), (e) or (f) above, such petition is not dismissed within ninety (90) days after the filing thereof;

- (g) Entry of an order, judgment or decree by any court of competent jurisdiction granting any prayer or demand contained in any petition under (a), (b), (e) or (f) above, which order, judgment or decree is not reversed or vacated within ninety (90) days after it is entered;
- (h) Vacation or abandonment of the Premises; or
- (i) Taking by any person of Lessee's interest in this Lease upon execution, attachment or other process of law or equity.

In the event of Default on the part of Lessee, Lessor, at its option, without further notice or demand to Lessee, may, in addition to all other rights and remedies provided in this Lease, at law or in equity: (a) terminate this Lease and Lessee's right of possession of the Premises, and recover all damages to which Lessor is entitled at law, specifically including, without limitation, the excess of the aggregate Fixed Rent and Additional Rent that would have accrued for the balance of the Term over the then current fair market rental value of the Premises for the balance of the Term, together with all of Lessor's expenses of re-leasing (including repairs, alterations, improvements, additions, decorations, legal fees and brokerage commissions) or (b) terminate Lessee's right of possession of the Premises without terminating this Lease. In all events, Lessor may

re-lease the Premises, or any part thereof for the account of Lessee, for such rent and term and upon such terms and conditions as are acceptable to Lessor. If Lessor shall have elected to pursue its right to terminate Lessee's right of possession of the Premises without terminating the Lease, then Lessor shall have the further right and remedy to subsequently rescind such election and terminate the Lease. For purposes of any such re-leasing, Lessor is authorized to decorate, repair, alter and improve the Premises to the extent deemed necessary by Lessor, in its reasonable discretion, all at Lessee's expense. If Lessor fails to re-lease the Premises, or if the Premises are re-leased and a sufficient sum is not realized therefrom after payment of all Lessor's expenses of re-leasing (including without limitation repairs, alterations, improvements, additions, decorations, legal fees and brokerage commissions) to satisfy the payment, when due, of Fixed Rent and Additional Rent reserved under this Lease for any monthly period, then Lessee shall pay Lessor a sum equal to the amount of Fixed Rent and Additional Rent due under this Lease for each such monthly period, or if the Premises have been re-leased, Lessee shall pay any such deficiency on the rent day applicable to such month. Nothing in the foregoing sentence, however, shall be deemed to mean that Lessor can only collect damages from Lessee hereunder in monthly installments, it being expressly acknowledged by Lessee that Lessor shall always have the right to collect, in a lump sum, from Lessee, damages equal to the excess of the aggregate Fixed Rent and Additional Rent that would have accrued for the balance of the Term over the then current fair market rental value of the Premises for the balance of the Term. Lessee agrees that Lessor may file suit to recover any sums due to Lessor hereunder at any time or from time to time and that such suit or recovery of any amount due Lessor hereunder shall not be any defense to any subsequent action brought for any amount not theretofore reduced to judgment in favor of Lessor. In the event Lessor elects to terminate Lessee's right of possession only, without terminating this Lease, Lessor may, at Lessor's option, enter into the Premises, remove Lessee's signs, Lessee's property, and other evidences of tenancy, and take and hold possession thereof; provided, however, that such entry and possession shall not terminate this Lease or release Lessee, in whole or in part, from Lessee's obligation to pay the Fixed Rent and Additional Rent reserved hereunder for the full Term or from any other obligation of Lessee under this Lease. Any and all property which may be removed from the Premises by the Lessor pursuant to the authority of the Lease or of law, to which the Lessee is or may be entitled, may be handled, removed or stored by the Lessor at the risk, cost and expense of the Lessee, and the Lessor shall in no event be responsible for the value, preservation or safekeeping thereof. Lessee shall pay to the Lessor, upon demand, any and all reasonable expenses incurred in such removal and all storage charges against such property so long as the

same shall be in the Lessor's possession or under the Lessor's control.

In the event Lessor exercises any remedy provided under this Section, all deposits theretofore made by Lessee with utility companies or under this Lease, all unearned insurance premiums and all rights of Lessee under all insurance policies required under this Lease, any claims for refund of any Imposition, any pending insurance claims or condemnation awards, and all fuel and supplies on the Premises shall be deemed to be and are hereby assigned to and transferred to Lessor, to be applied in payment of Lessee's liability under this Lease.

No waiver of any default of Lessee hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Lessor or Lessee shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

#### **Option to Renew - Right of First Opportunity:**

Prior to offering the Premises for let to third parties following the expiration of the Term, Lessor shall first offer to re-lease the Premises to Lessee by delivering notice thereof to Lessee not less than one hundred eighty (180) days prior to the expiration of the Term, with the Fixed Rent during such renewal term to be equal to the then fair market rental value of the Premises ("FMV"), and otherwise on the same terms and conditions set forth herein. Following the receipt by Lessee of such notice, Lessor and Lessee shall negotiate in good faith to determine the FMV of the Premises and, for a period of sixty (60) days following Lessee's receipt of such notice, Lessor shall not offer the Premises for let to any third party. In the event that Lessor and Lessee are unable to agree on the FMV within sixty (60) days of Lessee's receipt of such notice, the right of first offer set forth in this Section shall be null and void and Lessor shall have the right to let the Premises, following the expiration of the Term, to third parties.

#### **Lessor's Failure to Deliver Possession:**

If Lessor is unable to deliver possession of the premises to Lessee for any reason not within Lessor's control, including but not limited to partial or complete destruction of the premises, Lessee will have the right to terminate this Agreement upon proper notice as required by law. In such event, Lessor's liability to Lessee will be limited to the return of all sums previously paid by Lessee to Lessor. Lessee agrees to hold Lessor and Lessor's agents harmless for loss or damage for any reason not within Lessor's

control. In any case, Lessor's liability to Lessee will be limited to the return of all sums previously paid by Lessee to Lessor.

#### **Condemnation:**

If any legally, constituted authority condemns the premises or such part thereof which shall make the premises unsuitable for leasing, this Lease shall cease when the public authority takes possession, and Lessor and Lessee shall account for rental as of that date. In such an event any award, compensation or damages paid as a consequence of any legal proceedings ("Award") shall be paid to and be the sole property of Lessor whether such Award shall be made as compensation for diminution of the value of the leasehold or the fee of the Building or Land or otherwise and Lessee hereby assigns to Lessor all of Lessee's right, title and interest in and to any such Award.

#### **Eminent Domain:**

If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premise, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent shall be apportioned as of the termination date, and any rent paid for and period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the Award for such taking or any payment in lieu thereof.

#### **Assignment of Agreement and Subletting:**

Lessee shall have the right without Lessor's consent, to assign this Lease to a corporation with which Lessee may merge or consolidate, to any subsidiary of Lessee, to any corporation under common control with Lessee, or to a purchaser of substantially all of Lessee's assets provided that (a) the net worth of such assignee after such merger, reorganization or consolidation shall be no less than that of Lessee immediately prior to such merger, reorganization or consolidation, (b) Lessee is not at such time in Default hereunder, and (c) such successor shall execute an instrument in writing fully assuming all of the obligations and liabilities imposed upon Lessee hereunder and deliver the same to Lessor, whereupon Lessee shall be discharged from any further liability hereunder.

Except as set forth above, Lessee will not sublet any part of the premises or assign this Agreement without the prior written consent of Lessor. Any such assignment or subletting without consent shall be void and, at the option of the Lessor, may terminate this lease.

No assignment or transfer of this Lease by Lessee consented to by Lessor shall be effective, unless the assignee or transferee shall, at the time of such assignment or transfer, assume all the terms, covenants and conditions of this Lease thereafter to be performed by Lessee and shall agree to be bound thereby. Notwithstanding such assignment or transfer or the acceptance by Lessor from such assignee of any rent or other monies or other performance of the obligations of Lessee hereunder, Lessee shall remain liable and obligated as a principal (and not as a surety or guarantor) to perform all the terms, conditions and covenants, including the payment of rental and other monies, herein provided to be performed by Lessee.

**Violation of Laws:**

Lessee, guests and invitees of either Lessee or guests will not use the premises in such a manner that violates any law, ordinance, statutes or requirement of any municipal, state or federal authority now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by Lessee.

Lessor shall comply with all laws, orders, ordinances, statutes or requirements now or hereafter affecting the premises.

**Insurance:**

Lessee, at its sole cost and expense, shall maintain at all times during the term of this Lease policies of insurance as follows:

- (a) Insurance against loss or damage to the Building and all other Improvements by fire and such other hazards as may be covered by the form of "all-risk" coverage then customarily in use, in such amount as Lessor may determine to be sufficient to cover one hundred percent (100%) of the full replacement value from time to time of the Building and all other Improvements, the proceeds of which shall be payable to Lessor.
- (b) Comprehensive general public liability insurance against claims for bodily injury, death, and property damage occurring in or about the Premises or Adjacent Facilities, to afford protection in such limits as shall be reasonably requested by Lessor from time to time, but in any event not less than **Fifty Thousand Dollars (\$50,000.00)** in respect to each person, and not less than **One Hundred Thousand Dollars (\$100,000.00)** in respect to any one occurrence causing injury or death, and not less than **One Hundred Thousand Dollars (\$100,000.00)** in respect to property damage.

- (c) Contractual liability endorsement if available, insuring Lessee's contractual liability to indemnify Lessor and others as provided in the Section entitled Lessor's Additional Rights and Remedies.
- (d) Boiler and machinery insurance inclusive of coverage for all steam boilers, pressure vessels, and other such apparatus, including piping, with such limits as Lessor may require from time to time.
- (e) Worker's compensation and employer's liability insurance to the extent of the minimum required statutory limits.
- (f) Such other insurance, including business interruption insurance, in such amounts as may from time to time be reasonably required by Lessor against other insurable hazards that are at the time commonly insured against in the case of premises similarly situated.

All policies of insurance shall be written by companies reasonably satisfactory to Lessor and any mortgagee of Lessor and licensed to do business in the State of New York, and shall name as insured Lessor and such other persons or entities as Lessor may designate, as their interests may appear, and shall provide that losses shall be paid to such insured's as their interests may appear. At the request of Lessor, a mortgagee clause shall be included in such policies covering Lessor's mortgagee. The originals of such policies shall be delivered to Lessor, together with receipts or other evidence that the premiums thereon have been paid for at least one (1) year. Each policy of insurance shall bear an endorsement that such policy shall not be cancelled or modified without at least thirty (30) days prior written notice to Lessor and mortgagee, if any. Certificates evidencing renewals of each policy of insurance shall be delivered to Lessor at least twenty (20) days prior to the expiration dates of the respective policies.

Lessee shall perform and satisfy all requirements of the companies writing any insurance policies referred to in this Lease so that at all times companies of good standing satisfactory to Lessor shall be willing to write such insurance.

Whenever (a) any loss, cost, damage or expense resulting from fire or other casualty or occurrence is incurred by either of the parties to this Lease, or anyone claiming by, through or under it, in connection with the Premises, and (b) such party is then covered in whole or in part by insurance with respect to such loss, cost, damage or expense, then the party so insured hereby releases the other party from any liability it may have on account of such

loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance and waives any right of subrogation which might otherwise exist in or accrue to any person on account thereof, provided that such release of liability and waiver of the right of subrogation shall not be operative in any case when the effect thereof is to invalidate such insurance coverage or increase the cost thereof (provided that in the case of increased cost the other party shall have the right, within thirty (30) days following written notice, to pay such increased cost, thereupon keeping such release and waiver in full force and effect).

In case any action or proceeding shall be commenced against Lessor growing out of any loss, cost, damage or expense under this Section, Lessor may give written notice of the same to Lessee and thereafter Lessee shall assume and discharge all obligation to defend the same and save and keep Lessor harmless from all costs, expenses (including, but not limited to, Lessor's attorneys' fees), liabilities, judgments and executions in any manner growing out of, pertaining to or connected therewith.

In case Lessee shall at any time fail, neglect or refuse to procure or renew any insurance hereinabove provided, then Lessor shall have the right, but not the obligation, to procure or renew such insurance and any amounts paid therefore by Lessor shall be so much Additional Rent due at the next rent day after any such payment, with interest thereon at the rate of Prime plus three percent (3%) per annum from the date of payment thereof.

#### **Property Damage And Destruction:**

If the Premises or any part thereof are damaged or destroyed by any casualty or any other cause of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, insured or uninsured, Lessee shall give Lessor immediate notice thereof, and Lessee shall promptly repair, restore or rehabilitate the Premises at Lessee's own expense, to an extent that, upon the completion of such repairs, restoration or rehabilitation, the value and rental value of the Building and other Improvements shall be substantially equal to the value and rental value of the Building and other Improvements immediately prior to the happening of such casualty; provided, however, that if Lessee has met its obligations to maintain insurance as required herein and such insurance proceeds are made available by any mortgagee of Lessor for such repair, restoration or rehabilitation, then Lessor shall provide such funds for such repair, restoration or rehabilitation. Rent shall not abate during the period of such repair, restoration or rehabilitation regardless of whether the Improvements are unusable by Lessee because of such damage or destruction.

If any excavation or other building operation shall be made upon the Premises or any adjoining property by Lessee, Lessee agrees to assume all obligations of both the owner and the occupant of the Premises with respect to shoring and lateral support and to do all things necessary or desirable to preserve and protect the Premises.

Lessee shall not sign any petition, consent or other instrument in writing whereby any party shall hereafter directly or indirectly acquire the right to use or occupy any portion of any street, driveway or alley that abuts the Premises, or the space above or under the surface thereof, without Lessor joining in such instrument or consenting in writing to the execution thereof, which consent may be withheld in Lessor's sole discretion.

#### **Hazardous Material:**

Lessee hereby indemnifies and holds Lessor and Lessor's officers, directors, shareholders, managers, members, agents and employees harmless from and against, and shall reimburse Lessor and Lessor's officers, directors, shareholders, managers, members, agents and employees for, any and all "Losses" (as hereinafter defined) arising from, out of or as a consequence, directly or indirectly, of the release or presence of any Hazardous Materials on the Premises which first occurs during the Term of this Lease, whether foreseeable or unforeseeable, and whether or not known to Lessee, it being understood and agreed that the foregoing indemnity includes, but is not limited to, all costs of removal, remediation of any kind, detoxification, clean up and disposal of such Hazardous Materials and the preparation of any closure or other required plans, all costs of determining whether the Premises is in compliance and causing the Premises to be in compliance with all applicable Environmental Laws, all costs and fees associated with claims for damages to persons, property, or natural resources, and Lessor's reasonable attorneys' fees and consultants' fees and court costs in respect thereto whether or not litigation or administrative proceedings shall occur, including all costs and expenses incurred or suffered by Lessor by reason of any violation of any applicable Environmental Law which occurs, or has occurred, upon the Premises during the Term of this Lease, or by reason of the imposition of any governmental lien for the recovery of environmental clean-up costs expended by reason of such violation, it being expressly understood and agreed that to the extent Lessor and Lessor's officers, directors, shareholders, managers, members, agents and employees, or any of them are strictly liable under any applicable statute or regulation pertaining to the protection of the environment, this indemnity shall likewise be without regard to fault on the part of Lessee with respect to the violation of law which results in such liability. "Losses" shall mean any and all loss, claim, liability,

damages, injuries to person, property or natural resources, cost, expense, action or cause of action.

Lessee hereby covenants and agrees that all obligations of Lessee under this Section shall survive any termination of the Lease, it being further understood and agreed that the rights of Lessor under this Section shall be in addition to any other rights and remedies under this Lease or at law or in equity.

Any amount due to Lessor under this Section not paid by Lessee within ten (10) days after written demand therefor from Lessor shall bear interest at Prime plus three percent (3%) per annum.

Lessee shall comply with all Environmental Laws throughout the Term

#### **Alterations and Repairs by Lessee:**

Lessee shall not replace, alter or repair the Premises or any part thereof or any equipment or appurtenance thereto if the cost thereof exceeds in the aggregate Fifty Thousand and No/100 Dollars (\$50,000.00) (any such action being hereinafter referred to as a "Capital Improvement"), unless Lessee shall comply with the following requirements, which shall be applicable to all Capital Improvements:

(a) Lessee shall, before the commencement of the work, obtain Lessor's prior consent to the proposed Capital Improvement and shall at least ten (10) days prior to the commencement of the work furnish the Lessor with the following:

- (1) Complete plans and specifications for the work prepared by a licensed architect approved by Lessor, which plans and specifications shall also meet with Lessor's approval, together with the approval thereof by any governmental board, bureau or body then exercising jurisdiction over the Premises, which plans and specifications shall be and become Lessor's sole and absolute property in the event that this Lease shall be terminated for any reason;
- (2) A fixed-sum contract in assignable form made with a reputable and responsible contractor satisfactory to Lessor, providing for the erection, completion and terms of payment for all work, labor and materials necessary to perform the work within the fixed price provided for in such contract;
- (3) An assignment to Lessor of such contract, duly executed and acknowledged by Lessee, to be effective upon any termination of this Lease or

upon Lessor's re-entry upon the Premises following an Event of Default prior to complete performance of such contract, such assignment also to include the benefits of all payments made on account of such contract, including payments made prior to the effective date of such assignment; and

- (4) A surety company completion bond, in form and from an insurer satisfactory to Lessor, issued by an insurer licensed to do business in the State in which the Premises are located, guaranteeing the full completion of the work and payment therefor within a reasonable time, free and clear of all mechanics' or similar liens, encumbrances, chattel mortgages, conditional bills of sale and other charges, in accordance with the plans and specifications approved by Lessor, or other security satisfactory to Lessor, in Lessor's sole discretion.

(b) Lessee shall (1) at its expense carry or cause to be carried the necessary worker's compensation insurance and cause the insurance policies required under the Section entitled Insurance to be endorsed to cover the additional risk during the course of the work, and (2) procure all necessary permits from all governmental agencies and departments having jurisdiction in connection with such work. Lessee shall deliver evidence of compliance with the foregoing requirements to Lessor prior to the commencement of the work. Whenever requested by Lessor during the period of work, Lessee shall cause the architect in charge of the work (or if there is no architect in charge, the general contractor performing the work) to report in writing to Lessor as to whether the work is being done promptly and in a good and workmanlike manner, and in substantial compliance with the plans and specifications for the work. Lessee shall also deliver to Lessor copies of any and all interim or progress certificates or other reports submitted by Lessee's architect, engineer or contractor.

(c) The Capital Improvements shall be made promptly, in a first-class and workmanlike manner, in compliance with all Requirements and shall not lessen the value of the Premises.

Title to any Building, Improvements, fixtures, (other than Trade Fixtures), additions, alterations, restorations, repairs and replacements constructed, made or installed by Lessee, whether or not resulting from any Capital Improvement and including, but not limited to, any repairs, restoration and other work required to be done pursuant to the provisions of other Sections of this Lease, shall be and become Lessor's sole property at the end of the Term without the necessity of Lessee's execution and delivery of

any instrument transferring title thereto. Notwithstanding the foregoing, Lessee covenants and agrees upon Lessor's request to execute, acknowledge and deliver to Lessor any instrument reasonably requested by Lessor to confirm such title, and if Lessee shall fail or refuse to execute, and deliver any such instrument, Lessor is hereby irrevocably appointed Lessee's attorney-in-fact to execute, acknowledge and deliver such instrument in Lessee's name.

**Lessor's Right to Access:**

In the event of an emergency, to make repairs or improvements or to show the premises to prospective buyers or Lessees or for purposes of inspection to determine Lessee's compliance with this Lease or to conduct an annual inspection or to address a safety or maintenance problem, for the purposes of inspecting the same, Lessor or Lessor's agents may enter the premises at reasonable hours, provided Lessor shall not thereby unreasonably interfere with Lessee's business on the premises. Except in cases of emergency, Lessee's abandonment of the premises, court order or where it is impractical to do so, Lessor shall give Lessee notice before entering.

If Lessee shall at any time fail to make any payment or perform any act to be made or performed by Lessee under this Lease beyond any applicable notice and cure periods, Lessor may at its option (but shall not be required to) make any payment or perform any such act, and for such purpose. Lessor may enter upon the Premises and take all such action thereon as may be necessary therefor and any amounts paid by Lessor in connection therewith shall be deemed Additional Rent due on the next rent day after such payment together with interest thereon at Prime plus three percent (3%) per annum from the date of payment thereof

**Lessee's Maintenance:**

Lessee shall, at its sole expense, keep the Premises in good repair and in a clean condition and fully comply at all times with all Requirements and shall keep the Premises and Adjacent Facilities safe and secure and in full conformance with the Requirements, including, but not limited to, the lawful and valid requirements of any municipality in which such Premises may be situated and of all other public authorities, and shall make, at Lessee's own expense, all additions, improvements, alterations and repairs on the Premises and on and to the Improvements, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unseen, required by any lawful authorities or to keep the Premises in good repair or which may be made necessary by the act or neglect of any person or corporation (public or private), including supporting the streets and alleys adjoining the Premises, and, to the fullest

extent permitted by law, Lessee shall keep Lessor harmless and indemnified at all times against any loss, damage, cost or expense by reason of the failure so to do in any respect or by reason of any accident, loss or damage resulting to persons or property from any use which may be made of such Premises or of any Improvements or by reason of or growing out of any act or thing done or omitted to be done upon such Premises or in any Improvements; and Lessee agrees that it shall save, hold and keep Lessor and the Premises free and clear of and from any and all claims, demands, penalties, liabilities, judgments, costs and expenses (including, but not limited to, attorneys' fees), arising out of any loss or damage which may be sustained by adjoining property or adjoining owners or other persons or property in connection with the remodeling, altering, erection, or repairing of the Improvements, except to the extent occasioned by the acts of Lessor, its agents, employees or contractors. Lessee shall not commit or suffer, and shall use all reasonable precautions to prevent, waste, damage or injury to all of the foregoing. Notwithstanding anything contained herein to the contrary, Lessor shall keep in good order and repair the roof, foundation and structural walls of the Premises and Lessee shall have no repair or maintenance obligations with respect to the foregoing except to the extent occasioned by the acts of Lessee, its agents, employees or contractors.

Lessee shall also at its own cost and expense keep the Premises fully and adequately furnished and equipped throughout the Term with all equipment, fixtures and articles of personal property necessary for the operation of the Premises for the purposes herein permitted, and shall make all necessary replacements, renewals, alterations and additions required to maintain all portions of the Premises in first-class rent able condition.

Lessee shall also at its own cost and expense keep the Premises and (if not so maintained by any other party having legal responsibility for such) all Adjacent Facilities clean and reasonably free from dirt, snow, ice, rubbish, obstructions and encumbrances.

Lessee shall also at its own cost and expense promptly comply (subject to its right to contest under the Section entitled Use) with any and all Requirements applicable to or affecting the Premises or the Improvements or any Adjacent Facilities, irrespective of the nature of the work required to be done, extraordinary as well as ordinary, whether or not the same involve or require any structural changes or additions in or to the Premises or the Improvements and irrespective of whether or not such changes or additions be required on account of any particular use to which the Premises or the Improvements or any part thereof may be put.

Lessor shall not be required to furnish any services or facilities whatsoever to the Premises. Lessee hereby assumes full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Premises, except for the roof, foundation and structural walls of the Premises as aforesaid. Lessor shall not be responsible for any loss or damage to any property of Lessee.

#### **Liens:**

Lessee shall not do any act which shall in any way encumber the title of Lessor in and to the Premises, nor shall Lessee create or permit to be created, and shall promptly discharge, any such lien (including, but not limited to, any mechanic's, contractor's, subcontractor's or material man's lien or any lien, encumbrance or charge arising out of any Imposition, conditional sale, title retention agreement, chattel mortgage, security agreement, financing statement or otherwise) upon the Premises or any part thereof or the income therefrom or any personal property used in connection with the operation of the Premises, and Lessee shall not suffer any other matter or thing whereby the estate, rights and interest of Lessor in the Premises or any part thereof might be impaired.

If Lessee shall fail to cause any such lien to be discharged of record, then Lessor, after five (5) days notice of its intention to do so, shall have the right, but not the obligation, in addition to any other right or remedy, to discharge such lien either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or bonding proceedings, and in any such event Lessor shall be entitled if it so elects to compel the prosecution of an action for foreclosure of such lien by the lienor and to pay the amount of judgment in favor of the lien owner with interest, costs and allowances. Any amount so paid by Lessor and all costs and expenses (including reasonable attorneys' fees) incurred by Lessor in connection therewith shall constitute Additional Rent payable by Lessee under this Lease, due from Lessee to Lessor at the next rent day after any such payment, with interest thereon at Prime plus three percent (3%) per annum from the date of payment thereof.

This Lease shall constitute notice that Lessor shall not be liable for any work performed or to be performed, or any materials furnished or to be furnished, at the Premises for Lessee upon credit, and that no mechanic's or other lien for such work or materials shall attach to or affect the estate or interest of Lessor in and to the Premises, unless specifically ordered by Lessor in writing.

Lessee shall have no power to do any act or make any contract that may create or be the foundation for any lien, mortgage or other encumbrance upon the estate of Lessor,

or any other interest of Lessor in the Premises, the Building or the other Improvements or any part thereof.

#### **Surrender of Possession:**

Lessee shall on the last day of the Term or upon any sooner termination thereof, whether by lapse of time or by reason of Lessee's Default or otherwise, surrender and deliver to Lessor the Premises and all Improvements in clean, wholesome, good and safe order and condition and in good repair, ordinary wear and tear excepted, and if Lessee shall thereafter remain in possession thereof, it shall be deemed guilty of forcible detainer of the Premises and shall be subject to all the conditions and provisions contained herein and to ejection and removal, forcibly and otherwise, with or without process of law.

Upon the termination of this Lease by lapse of time, Lessee may remove furniture, trade fixtures and other personal property belonging to Lessee that are incident to the business of Lessee (as distinguished from personal property used in the operation of the Premises); such furniture, trade fixtures and other personal property belonging to Lessee and incident to the business of Lessee are hereinafter referred to as "Trade Fixtures". Lessee shall repair any injury or damage to the Premises or the Improvements that may result from such removal. If Lessee does not remove such Trade Fixtures from the Premises prior to the end of the Term, however ended, Lessor may, at its option, remove the same and deliver the same to any other place of business of Lessee or warehouse the same, and Lessee shall pay the cost of such removal (including the repair of any injury or damage to the Premises or the Improvements resulting from such removal), delivery and warehousing to Lessor on demand, or Lessor may treat such Trade Fixtures as having been conveyed to Lessor with this Lease as a bill of sale, without further payment or credit by Lessor or Lessee.

Any holding over by Lessee of the Premises after the expiration of this Lease shall operate and be construed to be a tenancy from month to month only, at one hundred fifty percent (150%) of the monthly installments of Fixed Rent, plus Additional Rent and other sums otherwise payable hereunder for the Term. Nothing contained in this Section shall be construed to give Lessee the right to hold over after the expiration of this Lease, and Lessor may exercise any and all remedies at law or in equity to recover possession of the Premises and may seek damages in the event of such a hold over tenancy.

#### **Common Area Expenses:**

In the event the demised premises are situated in a shopping center or in a commercial building in which there

are common areas, Lessee agrees to pay his pro-rata share of maintenance, taxes, and insurance for the common area.

**Signs:**

Unless expressly waived in writing, Lessor shall have the right, exercisable without notice, without any liability to Lessee for damage or injury to person, property or business, without being deemed an eviction or disturbance in any manner of Lessee's use or possession of the Premises and without relieving Lessee from its Obligation to pay Rent when due or from any other obligation under this Lease, during the last three (3) months of the Term to install, affix and maintain "For Rent" or "For Sale" signs on the exterior of the Premises.

**Subordination:**

This Lease shall be subject and subordinate at all times to the lien of all mortgages and trust deeds in any amount or amounts whatsoever now or hereafter placed on or against the Building or the Premises or on or against Lessor's interest or estate therein, all without the necessity of having further instruments executed on the part of Lessee to effectuate such subordination; provided that in the event of a foreclosure of any such mortgage or trust deed or any other action or proceeding for the enforcement thereof, or of any sale thereunder, this Lease will not be barred, terminated, cut off or foreclosed nor will the rights and possession of Lessee hereunder be disturbed if there shall exist no Event of Default with respect to the payment of Rent or any other Event of Default hereunder. Lessee shall attorn to the purchaser at any such foreclosure, sale or other action or proceeding or, if requested, enter into a new lease for the balance of the Term then remaining upon the same terms and provisions as are in this Lease contained. Lessee agrees to execute and deliver upon demand such further instruments evidencing such subordination of this Lease to the lien of any such mortgages or trust deeds as may be required by Lessor.

Notwithstanding the foregoing, Lessee shall from time to time on request from Lessor execute and deliver any documents or instruments that may be required by any lender to effectuate such subordination. If Lessee fails to execute and deliver any documents or instruments, Lessee irrevocably constitutes and appoints Lessor as Lessee's attorney in fact to execute and deliver such documents or instruments.

**Agents and Authority to Receive Legal Papers:**

Any notice, which either party may or is required to give, may be given by mailing the same, by certified mail, to Lessee at the premises. The Lessor, any person managing the premises and anyone designated by the Lessor as agent

are authorized to accept service of process and receive other notices and demands, which may be delivered to: The Lessor, at the following address: 7 Seafield Lane, Westhampton Beach, NY 11978.

**Brokerage Fees, Commissions:**

Lessee represents that Lessee was not shown the premises by any real estate broker or agent and that Lessee has not otherwise engaged in, any activity which could form the basis for a claim for real estate commission, brokerage fee, finder's fee or other similar charge, in connection with this Lease.

**Estoppel Certificate:**

At any time and from time to time but on not less than ten (10) days prior written request by either party hereto, the other party shall execute, acknowledge and deliver to the requesting party, promptly upon request, a certificate certifying (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification), (b) the date, if any, to which Fixed Rent and other sums payable hereunder have been paid, (c) that no notice has been received by such party of any Default which has not been cured, except as to Defaults specified in the certificate, and (d) such other matters as may be reasonably requested by the requesting party. Any such certificate may be relied upon by any prospective purchaser, mortgagee or beneficiary under any trust deed of the Premises or any part thereof and by any collateral assignee of this Lease.

**Indemnification of Lessor:**

To the fullest extent permitted by Law, Lessee agrees to indemnify and save Lessor and its respective agents and employees harmless from and against all liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses (including, but not limited to, Lessor's attorneys' fees) that may be imposed upon, incurred by or asserted against Lessor by reason of:

- (a) Any work or thing to be done in, on or about the Premises or any part thereof other than Lessor's Work;
- (b) Any use, occupation, condition, operation of the Premises or any part thereof or of any Adjacent Facility or any occurrence on any of the same;
- (c) Any action or omission on the part of Lessee or any Sub Lessee or any of its or their agents,

contractors, servants, employees, licensees or invitees;

- (d) Any accident, injury (including death) or damage, regardless of the cause thereof, to any person or property occurring in, on or about the Premises or any part thereof or any Adjacent Facility; and/or
- (e) Any failure on Lessee's part to perform or comply with any of the covenants, agreements, terms or conditions in this Lease or in any sublease, license, concession or other agreement entered into by Lessee.

The provisions of this Section shall survive the expiration or earlier termination of this Lease.

Lessee agrees to pay, and to indemnify Lessor against, all costs and expenses (including, but not limited to, Lessor's reasonable attorneys' fees) incurred by or imposed upon Lessor by or in connection with any litigation to which Lessor becomes or is made a party without fault in its part, whether commenced by or against Lessee, or that may be incurred by Lessor in enforcing any of the covenants and agreements of this Lease (with or without the institution of any action or proceeding relating to the Premises or this Lease) or in obtaining possession of the Premises after an Event of Default or upon expiration or earlier termination of this Lease.

Lessor may, but shall not be obligated to, cure any Default by Lessee hereunder. All sums expended and all costs and expenses (including, but not limited to, reasonable attorneys' fees) incurred by Lessor pursuant to the provisions of this Lease or on account of any Default by Lessee under this Lease shall bear interest thereon from the respective dates when expended or incurred by Lessor at Prime plus three per cent (3%) per annum until repaid by Lessee to Lessor, and all such sums together with such interest shall become Additional Rent under this Lease, payable by Lessee to Lessor on the next rent date after such expenditure.

All Rent and other amounts payable by Lessee under this Lease shall be and are hereby declared to be a valid and first lien upon Lessee's interest in the Premises and upon the rents, issues and profits in any manner arising or growing out of the same, and upon Lessee's interest in this Lease.

In the event of any breach or threatened breach by Lessee of any of the covenants, agreements, terms or conditions contained in this Lease, Lessor shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary

proceedings and other remedies were not provided for in this Lease.

No receipt of monies by Lessor from Lessee after termination of this Lease or after the giving of any notice of termination of this Lease shall reinstate, continue or extend the Term or affect any notice theretofore given to Lessee, or operate as a waiver of Lessor's right to enforce the payment of Rent and any other payments or charges herein reserved and agreed to be paid by Lessee then or thereafter falling due, or operate as a waiver of Lessor's right to recover possession of the Premises, it being agreed that after the service of notice to terminate this Lease or the commencement of suit or summary proceedings, or after final order or judgment for the possession of the Premises, Lessor may demand, receive and collect any monies due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such monies collected being deemed payments on account of the use and occupation of the Premises or at Lessor's election on account of Lessee's liability hereunder.

Lessor's granting of any consent under this Lease, or Lessor's failure to object to any action taken by Lessee without Lessor's consent required under this Lease, shall not be deemed a waiver by Lessor of its rights to require such consent for any further similar act by Lessee. No waiver by Lessor of any other breach of the covenants of this Lease shall be construed, taken or held to be a waiver of any other breach or to be a waiver, acquiescence in or consent to any further or succeeding breach of the same covenant. None of Lessee's covenants under this Lease, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Lessor.

No remedy conferred upon or reserved to Lessor under this Lease or under law shall be considered exclusive of any other remedy, but such remedies shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and every power and remedy given by this Lease to Lessor may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, without precluding Lessor's simultaneous or later exercise of any or all other rights or remedies. No delay or omission of Lessor to exercise any right or power arising from any Default or Event of Default shall impair any such right to power or shall be construed to be a waiver of any such Default or Event of Default or acquiescence therein.

**Peaceable Enjoyment:**

Lessor covenants that if and so long as Lessee shall faithfully perform the covenants and agreements of this Lease, Lessee shall and may (subject to the exceptions,

Lessor/Agent's signature: [Signature]  
Title: Secretary, B&H Properties Inc  
Date: 12/1/19  
Address: 7 Seaford Lane, W4B, NY 11978

Phone: \_\_\_\_\_

Lessee: [Signature]  
By (signature): \_\_\_\_\_  
Title: Vice President  
Print name: Seaford Services, Inc Date: 12/1/19

**Rent Schedule**  
**Yearly 3% Increase**

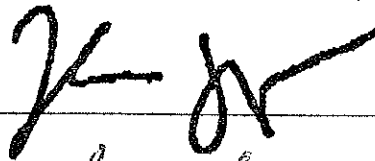
December 1, 2019 – November 30, 2020	\$23,369.51/month
December 1, 2020 – November 30, 2021	\$24,070.60/month
December 1, 2021 – November 30, 2022	\$24,792.72/month
December 1, 2022 – November 30, 2023	\$25,536.50/month
December 1, 2023 – November 30, 2024	\$26,302.60/month
December 1, 2024 – November 30, 2025	\$27,091.68/month
December 1, 2025 – November 30, 2026	\$27,904.43/month
December 1, 2026 – November 30, 2027	\$28,741.56/month

**Addendum to Lease between BEH Properties, Inc. & Seafield Services, Inc.**

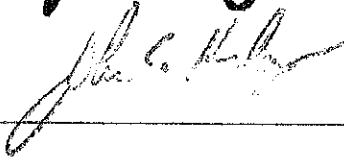
**37 John St., Amityville, NY**

The landlord acknowledges that the rights of reentry into the premises as set forth in this lease do not confer on the landlord the authority to operate a chemical dependence facility. The landlord agrees to give the New York State Office of Alcoholism and Substance Abuse Services at least thirty days notice by certified mail of an intent to re-enter the premises or to initiate dispossess proceedings and at least sixty days notice of expiration of the lease.

Lessor/Agent Signature



Lessee Signature



**SHAREHOLDERS'  
AGREEMENT  
FOR  
BEH PROPERTIES, INC.**

*[Handwritten signature]*

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SHAREHOLDER'S AGREEMENT

This AGREEMENT (the "Agreement") dated as of October\_\_\_\_, 2020, by and among ROBERT ZACHARY EPLEY, residing at <sup>225</sup> ~~70~~ <sup>(ZE)</sup> West Prospect Street, Southampton, New York, ROBERT MARK EPLEY, residing at 158 Harvest Lane, Southampton, New York, and JOHN HALEY, residing at 71 Sag Harbor Road, Southampton, New York (hereinafter individually referred to as "Shareholder" and collectively as "Shareholders"); and BEH PROPERTIES, INC., a New York Corporation with its principal office at 7 Seafield Lane, Westhampton Beach, New York (hereinafter collectively referred to as the "Corporation"). The Shareholders and the Corporation are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

WITNESSETH:

WHEREAS, the Corporation has an authorized capitalization of 200 shares of common stock, no par value, of which 100 shares are now issued and outstanding as set forth in Schedule A, annexed, in the relative percentages set forth therein (hereinafter the "Shares").

WHEREAS, the purpose of the Corporation shall be to manage, invest and maintain the real properties located at 230 West Main Street, Riverhead, New York, 212 West Main Street, Riverhead, New York, 37 John Street, Amityville, New York, 240 West Main Street, Riverhead, New York and any other real properties the Corporation may hereafter acquire;

WHEREAS, the Shareholders desire to continue to conduct the Corporation as a close corporation and to provide for the disposition of a deceased Shareholder's Shares and the

Shares of a permanently disabled Shareholder, as well as to provide for certain restrictions upon a Shareholder's transfer of Shares during his or her lifetime;

WHEREAS, the Shareholders desire to provide for control of the Corporation, the election of officers and directors, and secure continuity and stability of policy and management of the Corporation;

WHEREAS, the Shareholders desire to promote their mutual interests and the interests of the Corporation by imposing certain restrictions and obligations on themselves, the Corporation, and the Shares;

WHEREAS, the Shareholders desire to provide a method for the orderly transfer of their respective Share interests in the event of death or permanent disability of a Shareholder and to assure the payment of a fair and equitable price to a permanently disabled Shareholder or to the estate of a deceased Shareholder;

WHEREAS, the Shareholders may be the owners of policies of life insurance upon the lives of each other and desire that the funds to carry out the transfer of their respective interests be furnished by the life insurance proceeds;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

## ARTICLE 1

### DEFINED TERMS

The following terms shall have the meaning specified in this Article. Other terms are defined throughout this Agreement and those terms shall have the meanings respectively ascribed to them.

1.1 AGREEMENT. The "Agreement" is this contract and all modifications or amendments thereto.

1.2 CODE. The "Code" is the Internal Revenue Code of 1986, as amended.

1.3 DAYS. "Days" means all calendar days, whether or not such days are legal holidays under the laws of the United States or any State.

1.4 ENCUMBER AND ENCUMBRANCE. To "Encumber" means to pledge, hypothecate, or otherwise secure with Shares (or an interest therein) any type of debt or obligation, whether incurred voluntarily or involuntarily, and in any manner whatsoever. An "Encumbrance" is any type of security or surety interest created by such Encumbering.

1.5 OFFERED SHARES. The "Offered Shares" are all of the Shares (and all interests therein) that are offered for sale to the other Shareholders or to the Corporation, or which are deemed to have been so offered pursuant to this Agreement.

1.6 PERMITTED TRANSFEREE A "Permitted Transferee" shall include only: (i) ~~GEORGE W. BENEDICT~~, ROBERT ZACHARY EPLEY, ROBERT MARK EPLEY, and JOHN HALEY or their issue; (ii) testamentary or inter vivos trusts whose beneficiaries are transferees permitted in (i) and herein provided that any such trust is qualified to own shares in an "S" corporation; or (iii) a partnership, limited liability company or other entity in which all of the partners or members, as the case may be, are Permitted Transferees, provided that any such entity is qualified to own shares in an "S" corporation.

1.7 PERSONAL REPRESENTATIVE. A Shareholder's "Personal Representative" includes any administrator, executor, trustee, attorney-in-fact pursuant to a power of attorney given by a Shareholder, or other personal representative who is vested with the responsibility for administering the disposition of any Share on account of a deceased Shareholder's death, on account of the Permanent Disability of a Shareholder, and also any individual who holds such Share as a legatee, distributee, or successor in interest, or trustee where no executor, administrator, or similar fiduciary is appointed or where any appointed executor, administrator, or fiduciary does not have control over the Shares of a Decedent Shareholder or Permanently Disabled Shareholder.

1.8 PROPORTIONATE SHARE. A Shareholder's "Proportionate Share" of the Offered Shares means that fraction of the Offered Shares, the numerator of which is the number of Shares then held by that Shareholder and the denominator of which is the total number of Shares (other than the Offered Shares) then held by all of the Shareholders.

1.9 PURCHASE PRICE. The "Purchase Price" is the price at which, pursuant to the terms of this Agreement, a Shareholder must offer to sell all or any of his or her Shares (or interest therein).

1.10 SELLING SHAREHOLDER. The "Selling Shareholder" is the Shareholder (or his or her Personal Representative) who offers or is deemed to offer to sell some or all of his or her Shares to the other Shareholders and/or the Corporation, pursuant to this Agreement.

1.11 SHAREHOLDERS. The "Shareholders" include all owners of Shares (other than any Shares held as treasury Shares by the Corporation), each of whom is a "Shareholder." The present Shareholders are the parties named in the introductory paragraph of this Agreement.

1.12 SHARES. The "Shares" are the issued and outstanding shares of the Corporation's common stock and any additional shares of the capital stock of the Corporation issued or sold by the Corporation to any person, including (but not limited to) shares issued as a stock dividend, Share split, reverse Share split, recapitalization or reorganization of any type. All such additional Shares shall be issued bearing the restrictive endorsement required by this Agreement.

1.13 TRANSFER. A "Transfer" is any sale, pledge, Encumbrance, gift, bequest, or other transfer of any Shares (or interest therein), whether or not for value and whether or not made to another party to this Agreement. An "Involuntary Lifetime Transfer" is any Transfer made on account of a court order or otherwise by operation of law, including without limitation any Transfer incident to any divorce or marital property settlement or any Transfer pursuant to applicable community property, quasi-community property or similar state law, or any Transfer incident to a bankruptcy or other insolvency proceeding. A "Voluntary Lifetime Transfer" is any Transfer made during a Shareholder's lifetime that is not an Involuntary Lifetime Transfer. Unless the context indicates otherwise, "Transfer" includes both Voluntary and Involuntary Lifetime Transfers. A Transfer made to a Permitted Transferee shall not be a Transfer for purposes of this Agreement, but any subsequent Transfer by the Permitted Transferee shall be deemed to have been made by the Shareholder.

ARTICLE 2  
ADDITIONAL SHARES; LEGEND ON CERTIFICATES;  
SHAREHOLDERS' DUTIES

2.1 NO ADDITIONAL SHARES. For so long as the Shareholders shall be parties to this Agreement, no additional shares shall be issued or authorized by the Corporation without the prior written consent of all Parties.

2.2 LEGEND ON SHARE CERTIFICATES.

Upon the execution of this Agreement, the Share certificates subject hereto shall bear the following legend:

**Sale, assignment, transfer, pledge, encumbrance or other disposition of the shares of stock represented by this certificate is restricted by the provisions of a Shareholders Agreement on file at the office of this Corporation.**

Upon such legend being impressed on the certificates, the certificates shall be returned to the respective Shareholders. Subject to the terms of this Agreement, the Shareholders shall be entitled to exercise all rights of ownership of such Shares. Any Shares hereafter issued to the Shareholders shall bear the same legend.

2.3 SHAREHOLDERS' DUTIES. No Shareholder shall take any action, or cause anyone on his or her behalf to take any action, the result of which would be to deprive, interfere or hinder the other Shareholders or the orderly management, operation, voting and control of the business of the Corporation.

ARTICLE 3  
ELECTION OF DIRECTORS AND OFFICERS  
MANAGEMENT AND CONTINUATION OF EMPLOYMENT

3.1 ELECTION OF DIRECTORS AND OFFICERS.

For so long as this Agreement shall remain in effect, the Shareholders shall vote their Shares to (a) cause the Board of Directors of the Corporation (the "Board") to consist of **ROBERT ZACHARY EPLEY, ROBERT MARK EPLEY, and JOHN HALEY** (each a "Director"); and (b) to cause the following individuals to constitute the Officers of the Corporation (each an "Officer"):

President:	<b>ROBERT MARK EPLEY</b>
Vice President:	<b>JOHN HALEY</b>
Secretary:	<b>ROBERT MARK EPLEY</b>
Treasurer:	<b>ROBERT ZACHARY EPLEY</b>

The Officers so designated shall hold their respective offices until their death, resignation or removal by action of the Board. In the event of the death, resignation or removal of any of the Officers or Directors, the Shareholders shall, by a majority vote, elect his or her successor.

3.2 MANAGEMENT; NET INCOME.

(a) Decisions concerning the management of the Corporation and all corporate action shall be taken by vote of a majority the Directors, with each Director having one vote on all matters subject to paragraph (b) below;

(b) The following decisions shall require unanimous consent of all Directors (i) to add a new Shareholder; (ii) to amend this Agreement; (iii) to merge or

consolidate the Corporation with another Corporation or entity; (iv) to sell substantially all the assets of the Corporation; (v) to dissolve and terminate the Corporation; (vi) to make an assignment for the benefit of creditors or to file a petition in bankruptcy; (vii) to authorize any loan by the Corporation and the Schedule of repayment in excess of \$100,000.00; (viii) to authorize capital expenditures in excess of \$50,000.00 other than in the ordinary course of business, (ix) to authorize the Corporation to enter into a lease or purchase agreement for the occupancy of new or additional office space or investment property or (xi) to enter into a new loan facility or line of credit or other lending arrangement.

(c) The net income of the Corporation shall be distributed at such intervals and in such amounts as decided by a majority of the Directors. The net income of the Corporation shall be determined by the regular independent certified public accountant for the Corporation, unless otherwise agreed by all of the Parties. The determination of such accountant shall be made in accordance with generally accepted accounting principles consistently applied and shall be binding on all Parties.

### 3.3 CONTINUATION OF EMPLOYMENT.

The Corporation shall continue to employ each of the Shareholders in his or her executive capacity for so long as he or she shall continue to duly perform his or her executive duties, at such salaries and expense allowances as may from time to time be fixed by the Board.

## ARTICLE 4 STOCK TRANSFERS

4.1 GENERAL RESTRICTIONS. Except as otherwise provided in this Agreement, no Shareholder shall Transfer his or her Shares (or interests therein) or any part

thereof, except with prior written consent of all the other Parties, and, without such compliance, any such Transfer or purported Transfer shall not be effective to convey title or any interest therein with respect to the Corporation or the Shares.

#### 4.2 PERMITTED TRANSFEREES.

(a) Notwithstanding anything contained herein to the contrary, Shareholders shall have the right at any time and from time to time to gift or bequeath all or any part of his or her Shares to Permitted Transferees.

(b) It is further agreed that before Shares are Transferred to any Permitted Transferee, the Permitted Transferee must sign this Agreement and agree to be bound by its provisions including the restrictions on Transferability of Shares set forth herein.

#### 4.3 CONTINGENCY OF DEATH.

(a) Upon the death of a Shareholder, said deceased Shareholder's interest in the Corporation shall pass to his or her heirs or beneficiaries pursuant to said Shareholder's Last Will and Testament so long as said heir or beneficiary is a Permitted Transferee as defined herein. If said heir or beneficiary is not a Permitted Transferee, said interest shall pass in accordance with subsection (b) below.

(b) Obligations to Purchase Deceased Shareholder's Shares. Subject to the right of Shareholders to transfer Shares to Permitted Transferees under Section 4.2, on the death of a Shareholder (the "Decedent" or "Selling Shareholder"), his or her Personal Representative shall sell all of the Decedent's Shares ("Offered Shares") at the Purchase Price and in accordance with option periods outlined in Article 4.11. Within 30 Days after the appointment of the Decedent's Personal Representative, the Personal Representative shall give notice to the remaining Shareholders ("Non-Selling Shareholders") and the Corporation of the

death of the Decedent ("Notice"). In the event no Personal Representative has been appointed within 90 Days after the date of Decedent's death, or if the Decedent's Personal Representative shall not have given such Notice within such 90-day period, then the Notice shall be deemed given and received 90 Days after the date of Decedent's death.

Notwithstanding anything to the contrary contained in Section 4.11, if the Corporation or one or more Shareholders owns life insurance on the life of the Decedent, the full proceeds of any such policy must be used to purchase the Offered Shares and shall be paid to the Decedent's estate. After such purchase, any Non-Selling Shareholder who did not own life insurance on the Decedent shall have the right to purchase his or her pro-rata share of Decedent's Offered Shares at the Purchase Price from the Corporation or Shareholder(s) that used life insurance proceeds to purchase the Offered shares from Decedent's estate.

(c) Payment of Purchase Price for Decedent's Shares. The Purchase

Price shall be payable as follows:

(i) Insurance proceeds, if any, shall be paid promptly after collection thereof (See Section 4.4, below).

(ii) The excess, if any, of the Purchase Price over such insurance proceeds, shall be paid by the respective buying Shareholders and/or by the Corporation, as the case may be, in 20 quarterly equal annual installments of principal commencing on the first day of the fourth calendar month following Closing, and shall be evidenced by promissory notes (each a "Note") of the respective buying Shareholders and/or the Corporation. Each Note shall bear interest on each installment at a rate per annum equal to the prevailing prime rate for commercial loans established by the bank utilized by the Corporation's principal office but no greater than eight (8%) percent per annum. Each Note shall provide that

in the event of default in the payment of principal or interest, all payments subsequently due shall become due and payable immediately at the election of the payee, and shall contain a provision that it is subject to prepayment without penalty, in whole or part, by the maker.

(iii) In the event the insurance proceeds collected on the life of the Decedent exceed the Purchase Price, such excess insurance proceeds shall nevertheless be paid to the Decedent's Personal Representative promptly after collection thereof.

#### 4.4 LIFE INSURANCE.

(a) Each Shareholder or the Corporation may take out a life insurance policy on the life of each of the other Shareholders, naming himself or herself as beneficiary, in an amount to be reevaluated annually.

(b) (i) All such policies shall be listed in Schedule B, attached hereto, and all proceeds received thereunder shall be held exclusively for the purposes of this Agreement. Each Shareholder shall be the sole owner of, and shall provide funds on account of all required premiums for, the insurance policies on each of the other Shareholders, in accordance with this Section. The Shareholders shall pay all premiums due on the policies and shall give proof of payment to the insured within fifteen (15) Days after the due date of each premium. If proof of payment is not so delivered within each fifteen (15) Day period after its due date, the insured shall have the right to pay such premium and be reimbursed therefor by the other Shareholder upon presentation of proof of payment. The Shareholders shall, upon the written request of any Shareholder, authorize and direct the insurance company to give any insured Shareholder any information about the status of any life insurance policy subject to this Agreement. This Agreement shall extend to and include all additional life insurance policies made subject hereto, and any such additional policies shall be listed in Schedule B.

(ii) In the event the Shares of a Permanently Disabled Shareholder are purchased, then the non-disabled Shareholders shall continue to maintain, and shall pay the premiums for, the policies on the life of such Permanently Disabled Shareholder until he has received full payment for his Shares, at which time he shall have the right to purchase the policies as provided in Section 7.2.

#### 4.5 DISABILITY AND PERMANENT DISABILITY

(a) Payment of Compensation. In the event that during the term of this Agreement, any Shareholder shall become disabled (as hereinafter defined), the Corporation shall make payments to him or her of his Normal Compensation as follows in full for twelve (12) months. "Normal Compensation" shall mean all salary, bonuses and other distributions which the disabled Shareholder received during the year preceding the date of disability. Payments of Normal Compensation shall be at such intervals as the disabled Shareholder customarily received from the Corporation prior to his or her disability.

(b) Purchase of Shares of Permanently Disabled Shareholder. Upon receipt of the certification of permanent disability required by paragraph (d) of this Section (hereinafter "Notice"), then such Shareholder shall be deemed to be permanently disabled (a "Disabled Shareholder") for purposes of this Agreement. Upon receipt of such Notice, the Personal Representative of the Disabled Shareholder shall sell all of his or her Shares ("Offered Shares") at the Purchase Price to the remaining Shareholders ("Non-Selling Shareholders") and/or the Corporation in accordance with the option periods outlined in Article 4.11.

(c) Payment of Purchase Price of Disabled Shareholder's Shares. The Purchase Price for the Offered Shares under this Section shall be payable in one hundred and twenty (120) equal consecutive monthly payments evidenced by promissory notes (each a Note

of the buying Shareholders and/or the Corporation. Each Note shall bear interest on each installment at a rate per annum equal to the prevailing prime rate for commercial loans established by the bank utilized by the Corporation's principal office but no greater than eight (8%) percent per annum. Each Note shall provide that in the event of a default in the payment of principal or interest, all payments subsequently due shall become due and payable immediately at the election of the payee, and shall contain a provision that it is subject to prepayment, without penalty, in whole or in part by the, as the case may be.

(d) For the purposes of this Agreement, permanent disability means physical illness or incapacity, injury or condition which prevents the person from normally performing his or her duties or services for the Corporation or mental illness which prevents the Shareholder from understanding or making normal decisions for the Corporation. Any such permanent disability must be certified in writing by a duly licensed physician in the State of New York who shall be designated by the Corporation. If any Shareholder is not in agreement with the decision of such physician, such Shareholder shall select a physician of his or her own choice also duly licensed in New York State and such two (2) physicians shall decide together whether such Shareholder is disabled within the meaning of this Agreement. If the two (2) physicians so designated cannot agree, then they shall mutually appoint a third such physician whose opinion shall be binding upon the parties with respect to the issue of disability. Any Shareholder certified to be permanently disabled in accordance with the foregoing provisions shall be a "Permanently Disabled Shareholder" for purposes of this Agreement.

(e) Disability with respect to a Shareholder, other than a permanently Disabled Shareholder, for purposes of this Agreement, shall be deemed to have ceased upon a

Shareholder's return to work and resumption of normal duties within 12 months of the commencement of such disability.

#### 4.6 VOLUNTARY LIFETIME TRANSFER OF SHARES.

Subject to the provisions contained in Paragraph 4.2 of this agreement related to uncompensated transfers of Shares to Permitted Transferees:

(a) Offer of Shares to Shareholders and Corporation. If a Shareholder shall desire to make a Voluntary Lifetime Transfer of all or any of his or her Shares or shall resign from the Corporation, (each a "Selling Shareholder") both of which shall be deemed an offer to sell all of his or her Shares ("Offered Shares"), the Offered Shares may be purchased by the other Shareholders ("Non-Selling Shareholders") and/or by the Corporation, at the Purchase Price, subject to Section 4.7 and the option periods outlined in Section 4.11. The Selling Shareholder shall give written notice to the Non-Selling Shareholders and to the Corporation describing the number of Offered Shares he desires to Transfer (the "Notice").

(b) Purchase Terms for Sale of Offered Shares. The Purchase Price shall be payable to the selling Shareholder in twenty (20) equal consecutive quarter-annual payments. The obligation to pay the Purchase Price shall be evidenced by promissory notes (each a "Note") of the respective purchasing Shareholders and/or the Corporation, as the case may be. Each Note shall bear interest on each installment at a rate per annum equal to the prevailing prime rate for commercial loans established by the bank utilized by the Corporation's principal office but no greater than eight (8%) percent per annum. Each Note shall provide that in the event of default in the payment of principal or interest, all payments subsequently due shall become due and payable immediately at the election of the payee, and shall contain a provision that it is subject to prepayment without penalty, in whole or part, by the maker.

4.7 RIGHT OF FIRST REFUSAL.

(a) If the Non-Selling Shareholders and/or the Corporation do not purchase all of the Shares of a Selling Shareholder pursuant to the terms of Section 4.6, and the selling Shareholder shall receive a bona fide written offer from a third party to purchase all, but not less than all, of his or her Shares and desires to accept such offer, the selling Shareholder shall give written notice to the Non-Selling Shareholders and to the Corporation (the "Notice") of his or her intention to accept the third party's bona fide written offer, along with a true copy thereof. The Notice shall constitute an offer to the Non-Selling Shareholders and to the Corporation to sell all his or her Shares ("Offered Shares") to them upon the same terms and conditions as set forth in such bona fide written offer in accordance with the option periods outlined in Section 4.11.

(b) If the Non-Selling Shareholders and/or the Corporation do not agree to buy in the aggregate all of the Offered Shares within the option periods set forth in Section 4.8, then the selling Shareholder shall have the right, within one hundred and eighty (180) Days after the mailing of the Notice, to sell the Offered Shares to the party from whom he or she received the bona fide written offer, upon the same terms and conditions as set forth in such offer; provided, however, that (i) the transferee of the Shares shall be required to agree in writing to be bound by all of the terms and conditions of this Agreement and, (ii) that the transferee shall provide and tender life insurance policies payable to the Non-Selling Shareholders covering the lives of the Non-Selling Shareholders in the same amounts as had been previously provided by the selling Shareholder in accordance with this Agreement.

(c) In the event that the selling Shareholder does not, within one hundred eighty (180) Days of the mailing of the Notice, sell his or her Shares to the party from

whom he or she received the bona fide written offer, on the same terms and conditions as set forth in such offer, and in the future event that the selling Shareholder wishes to sell his or her Shares after the expiration of such one hundred and eighty (180) Days, either to the same purchaser, another purchaser, or upon different terms and conditions, the selling Shareholder shall again be subject to all the provisions and restrictions of Section 4.5 and this Section.

#### 4.8 DRAG ALONG RIGHTS

(a) In the event that the Shareholders who own a majority of the Stock in the Corporation (the "Approving Shareholder") approve any sale of the Company by merger, consolidation, sale of the Company's assets, sale of a majority of the Stock in the Corporation or otherwise, to any person that is not an existing Shareholder or a Permitted Transferee, each Shareholder hereby agrees to consent to, vote for and raise no objections to such sale; provided, the Company shall certify to each Shareholder that the terms and conditions of such sale are on an arm's length basis and are fair to the Company. If such sale is structured as a sale of all of the Stock of the Corporation, each Shareholder shall sell all of the Stock on the terms approved by the Approving Shareholders and shall take all the reasonable actions requested by the Approving Shareholders or the purchaser in connection with the consummation of any such sale.

(b) If the closing of any sale of Stock pursuant to this Section 4.8 has not been effected within 120 days after the Shareholders approve of such sale, the obligation of any Shareholders to participate in such sale shall terminate; provided, the provisions of this Section 4.8 may thereafter be reinstated by vote of the Approving Shareholders in accordance with the preceding paragraph.

(c) Nothing contained in this Section 4.8 shall obligate the Approving

Shareholders to consummate any sale of the Corporation hereunder, and any such sale may be abandoned by the Approving Shareholders at any time. If any such proposed sale is abandoned, the Approving Shareholders shall promptly send written notice thereof to each other Shareholder.

#### 4.9 TAG-ALONG RIGHT

(a) In the event that any Shareholder or group of Shareholders (collectively, the "Approving Shareholders") proposes to sell or otherwise dispose of a majority of the Stock in the Corporation in a single transaction or series of transactions to any person (other than to another Member or to a Permitted Transferee), the Approving Shareholder shall not consummate or enter into any agreement to consummate such sale unless the prospective purchaser also offers to purchase a corresponding percentage of the Shares of each other Shareholder that has exercised his right to participate in such sale under this Section 4.9 at the same price and on the same other terms as the prospective purchaser offered to purchase the Shares of the Approving Shareholder (the "Tag-Along Right").

(b) Prior to any sale under this Section, the Approving Shareholder shall notify the Company and the Members in writing of such proposed sale, including a copy of the documentation relating to such sale, and setting forth (i) the Shares that such Approving Shareholders propose to sell; (ii) the name and address of the prospective purchaser; and (iii) the material terms of such sale, including the amount of consideration (and the value of any non-cash consideration) offered by the prospective purchaser. Within 30 days after receiving the foregoing notice, any Shareholder may elect to exercise his Tag-Along Right by delivering written notice to the Approving Shareholders of his election to participate in the sale of the Shares being offered for sale pursuant to this Section.

(c) If one or more Shareholders timely exercise their Tag-Along Rights, then the Approving Shareholder shall not consummate the proposed sale of Shares unless the prospective purchaser contemporaneously purchases the Shares of the other Shareholders with respect to which the Tag-Along Right has been exercised on terms no less favorable to other such Shareholders than (i) the terms and conditions set forth in the notice provided by the Approving Shareholder pursuant to Section 4.9(b) and (ii) the terms and conditions on which such the prospective purchaser purchases the Shares of the Approving Shareholder. The Approving Shareholder shall notify all Shareholders who have timely exercised their Tag-Along Rights of the consummation of any sale of the Approving Shareholder's Stock, shall cause the Purchaser to remit directly to such other Shareholders the total sales price of their Stock sold or otherwise disposed of pursuant to the Tag-Along Right, and shall furnish such other evidence of the completion and time of completion of such sale or other disposition and the terms thereof as may be reasonably requested by any participating Member.

(d) If no Member timely exercises its Tag-Along Right with respect to a proposed sale or disposition by a Selling Member, then the Tag-Along Right shall be deemed waived with respect to such sale or other disposition, and the Approving Shareholder shall have the right to effect the proposed sale of such Stock for a period of 90 days thereafter on terms no more favorable to the Approving Shareholder than the terms and conditions as set forth in the notice provide by the Approving Shareholder to the other Shareholders pursuant to Section 4.9(b). If such sale is not consummated in such 90-day period, or if the terms of such sale change in any material respect, then such right shall terminate and the terms and conditions of this Section 4.9 shall again be in effect.

#### 4.10 INVOLUNTARY TAKING OF SHARES.

(a) Any Shareholder (hereinafter "selling Shareholder") who has any information that would reasonably lead him or her to expect that an Involuntary Lifetime Transfer is foreseeable must promptly send a notice ("Notice") to the other Shareholders and to the Corporation and offer (or be deemed to have offered) to sell his or her Shares or the number thereof otherwise to be Transferred (the "Offered Shares") to the other Shareholders ("Non-Selling Shareholder") and to the Corporation at the Purchase Price and on the terms set forth in Sections 5.1 and 5.2, below. Such notice shall include a statement of the type of proposed Transfer, the name, address (both home and office), and business or occupation of the person to whom such Shares would be Transferred, and any other facts that are or would reasonably be deemed material to the proposed Transfer.

(b) Consummation of Involuntary Lifetime Transfer. If the other Shareholders and the Corporation do not agree to buy in the aggregate all of the Offered Shares within the Article 4.1 1 option periods, such Involuntary Lifetime Transfer may be completed. If an Involuntary Lifetime Transfer is not consummated within thirty (30) Days after the expiration of such option periods, the provisions of this Agreement will again apply to such Offered Shares as if no such Involuntary Lifetime Transfer had been contemplated and no Notice had been given. An Involuntary Lifetime Transfer is consummated when the Corporation has been given notice that legal title to the Offered Shares has been transferred, subject to its being recorded on its books.

#### 4.11 OPTION PERIODS.

(a) Upon receipt of Notice, the Non-Selling Shareholders shall have 30 days to elect to purchase any or all of the Offered Shares. Such Non-Selling shareholders may

purchase their respective Proportionate Shares of the Offered Shares, or they may elect to purchase same in such other proportions as they shall agree upon.

(b) If the Non-Selling Shareholders shall elect under subparagraph (a) above to buy some, but not all, of the Offered Shares, then each Non-Selling Shareholder who elected to buy some of the Offered Shares under that subparagraph shall have an additional 30 days from the expiration of the option period under subparagraph (a) above in which to elect to buy all or any additional Shares of the Offered Shares remaining to be bought. Those Non-Selling Shareholders may purchase their respective Proportionate Shares of the remaining Offered Shares, or they may purchase same in such other proportions as they shall agree upon.

(c) In the event the Non-Selling Shareholders elect to purchase all of the Offered Shares, the Closing of such purchase and sale shall take place at 2:00 p.m. on the sixtieth (60th) Day following the expiration of the earliest applicable option period in (a) and (b) above, at the principal office of the Corporation, or such other time and place as the parties shall mutually agree.

(d) If, after the expiration of the option periods under subparagraphs (a) and (b) above, some of the Offered Shares have not been purchased by the Non-Selling Shareholders, then the Corporation shall have 30 Days from the expiration of the option period in subparagraph (b) in which to elect to buy all, but not less than all, of the remaining Offered Shares, except in the case of a deceased or disabled Shareholder. A meeting of the Corporation's Board of Directors shall be held within such 30-Day period. At such meeting, the Non-Selling Shareholders shall vote as Shareholders and act as Directors (without the participation of the Selling Shareholder, who shall not vote or act in either capacity). If the Corporation elects to purchase all, but not less than all, of the remaining Offered Shares, the Non-Selling

Shareholders shall take all other steps required to authorize the Corporation to purchase or redeem all of the remaining Offered Shares. In such event, the closing of such purchase and sale shall take place at 2 p.m. on the sixtieth (60th) Day following such meeting, at the principal office of the Corporation, or such other time and place as the parties shall mutually agree.

(e) In the case where Offered Shares are being sold pursuant to Articles 4.5, 4.6 and 4.7 of this Agreement, if the Non-Selling Shareholders and/or the Corporation do not agree to buy in the aggregate all of the Offered Shares within such option periods, or if the Corporation shall not be permitted by law to purchase all of the remaining Offered Shares, then none of the Offered Shares shall be sold unless the selling Shareholder and the purchasing Non-Selling Shareholders and/or the Corporation otherwise agree to the purchase and sale of less than all of the Offered Shares. Otherwise, the selling Shareholder may retain the Offered Shares or sell them to a third party subject to Article 4.6.

**ARTICLE 5**  
**PURCHASE PRICE, DELIVERY OF SHARES AND**  
**OTHER PROVISIONS APPLICABLE TO TRANSFERS**

5.1 PURCHASE PRICE.

(a) For the purpose of purchasing the Offered Shares of a Decedent or of a Disabled Shareholder, or pursuant to a Voluntary or Involuntary Lifetime Transfer, the purchase price (the "Purchase Price") shall be the amount set forth in the Certificate of Value, attached hereto as Schedule C. Within ninety (90) Days after the close of each fiscal year of the Corporation, the Shareholders shall review the Certificate of Value and amend it as necessary by unanimous vote. In the event the Certificate of Value has not been amended for a period of two years or more, the Purchase Price for the respective inter-

ests of the individual parties hereto shall be their proportionate interest of the amounts calculated by the following: (i) net book value of the Corporation (without reflecting the net undistributed earnings of the Corporation), (ii) the goodwill of the Corporation, (iii) the net undistributed earnings of the Corporation, and (iv) the excess of fair value over book value of any real estate owned by the Corporation ("Excess Real Estate Value") as determined on the last day of the month immediately preceding the sale of such Selling Shareholder's or Deceased Shareholder's Interest. The Excess Real Estate Value shall be determined by an appraisal from an independent appraiser selected by the Corporation. If the Selling Shareholder or the Decedent's executor objects in writing to the appraisal obtained by the Company within ten (10) days of receiving same, then the Selling Shareholder or the Decedent's executor may obtain an appraisal by another appraiser mutually acceptable to the parties whose determination shall be binding on all parties. If the parties cannot agree on an appraisal, the Selling Shareholder or the Decedent's executor can still select his or her own appraiser and receive an appraisal value. If the parties do not agree on such appraisal, the two appraisals shall be averaged and the average appraisal value shall be used to calculate the purchase price. If such averaged appraisal is ten (10%) percent or greater than the appraisal obtained by the Company, then the expense of the appraisal shall be borne by the Corporation. Otherwise, it shall be borne by the Selling Shareholder or Decedent's estate.

(b) The net book value and undistributed earnings of the Corporation shall be determined by the regularly retained independent certified accountant for the Corporation in accordance with generally accepted accounting principles applied on a consistent basis, which determination by such accountant shall be binding and conclusive upon all of the Shareholders, their spouses, and their respective heirs, administrators, legal representatives and assigns.

(c) Notwithstanding anything herein to the contrary, the Purchase Price to be paid to any Selling Shareholder (or his or her Personal Representative) shall be reduced by

any obligation that said Selling Shareholder has to the Corporation.

5.2 DELIVERY OF SHARES; TITLE.

(a) Closing. Unless otherwise specifically provided herein, the closing of title with respect to a Transfer of Offered Shares pursuant to this Agreement (a "Closing") shall occur at 2 P.M. on the sixtieth (60th) day following the expiration of all applicable option periods with respect to such Offered Shares, at the principal office of the Corporation, or at such other time and place as the parties shall mutually agree. At the time of any Closing hereunder, certificates for Shares shall be delivered by the Selling Shareholder with all required federal and state transfer tax stamps affixed.

(b) (i) Purchased Shares Deposited in Escrow. Notwithstanding anything herein to the contrary, whenever Offered Shares are to be purchased by the Shareholders or the Corporation under this Agreement and a portion of the Purchase Price shall be paid in installments as permitted hereunder, the Offered Shares shall be deposited in escrow with the Escrow Agent until the Purchase Price contemplated hereunder shall have been paid in full. In the event of a subsequent sale of the Corporation at any time when there remains a balance payable on account of such Offered Shares, the escrow arrangement shall not operate to defeat such sale, but shall require that the balance of the Purchase Price be paid in full within thirty (30) Days following such sale.

(ii) Title to the Offered Shares shall pass to the purchaser immediately upon payment of the closing cash payment and delivery of the Note(s), and certificates for the Offered Shares, duly endorsed for transfer, shall thereupon be delivered to the purchaser. The purchaser shall thereupon pledge such Shares to the Selling Shareholder, and deliver such Shares to the Escrow Agent as security for payment of the Note, and this Agreement is acknowledged to be a valid security agreement for such purposes; provided, however, that unless and until a default occurs under the terms of the Note, the purchaser shall have the sole right to vote the pledged Shares and collect all dividends and other distributions with respect thereto.

(iii) In the event a Shareholder disposes of all his or her Shares in accordance with the terms of this Agreement, then such Shareholder shall have the right to purchase from the other Shareholders and/or the Corporation the insurance policies on his or her life and any disability policies covering him, in accordance with the provisions of Section 7.2, below.

(c) Release of Escrowed Shares. Upon payment in full of all sums due under this Agreement, the Escrow Agent shall forthwith deliver the Shares held by the Escrow Agent to the purchaser. In the event of a default in payment of any installment of principal or interest under any Note given pursuant to this Agreement for a period in excess of sixty (60) Days, upon written notice by the holder of such Note to the Escrow Agent demanding release of the escrow documents, the Escrow Agent shall deliver the certificates representing the escrowed Shares to the holder of such Note 15 days after said Escrow Agent notifies the defaulting party of the receipt of the demand notice for the release. In the event the Escrow Agent receives an objection from any party to this Agreement within such 15 day period, the Escrow Agent shall

hold the Shares in controversy until either the direction of all of the parties or a court of competent jurisdiction renders a disposition as to the escrowed Shares. Upon the Escrow Agent's failure to receive any objection within the specified time period, the Escrow Agent shall forthwith deliver the certificates to the holder of such Note, and upon such delivery of the escrowed Shares and any related documents, the escrow shall terminate.

(d) Restrictions During Escrow. So long as any part of the Purchase Price for Shares purchased hereunder or any part of a loan assignment (as hereinafter described) shall remain unpaid, neither any Shareholder nor the Corporation shall, without first obtaining the written consent of the Selling Shareholder, vote for a resolution or resolutions in favor of the following if any such action would have a material adverse effect on the payment to the Selling Shareholder:

(i) declaring or paying dividends on the capital stock of the Corporation or declaring, making or paying stock bonuses or distributions of any kind other than consistent with past practice;

(ii) reorganizing the Corporation's capital structure;

(iii) merging or consolidating the Corporation with any other corporation or other entity;

(iv) selling or mortgaging a substantial portion of the Corporation's assets other than in the ordinary course of business, or transferring any of the Corporation's assets without fair consideration;

(v) liquidation or dissolving the Corporation completely or partially; or

(vi) causing the Corporation to make an assignment for the benefit of creditors or filing a petition in bankruptcy.

(e) Obligations During Escrow. So long as any part of the Purchase Price for Shares purchased hereunder or any part of a loan assignment (as hereinafter described) shall remain unpaid, the Corporation and non-Selling Shareholders agree to:

(i) provide the Selling Shareholder with annual unaudited financial statements prepared by the Corporation's accountant;

(ii) permit the Selling Shareholder access to all of the books and records of the Corporation at reasonable times and on reasonable notice, at the Selling Shareholder's own cost and expense.

(f) Default in Payment. In the event of a default in any payment due under this Agreement from the Corporation or a purchasing Shareholder, or if the Corporation or any Shareholder shall violate any of the provisions of Paragraphs (d) or (e) of this Section, or should the Corporation fail to satisfy any judgment against it within thirty (30) Days after entry thereof or within such period fail to bond the same, then the Selling Shareholder may, upon ten (10) Days written notice to the non-Selling Shareholders and the Corporations, cause the Escrow Agent to sell any pledged Shares so held at a bona fide public or private sale in such reasonable manner as the Escrow Agent shall determine. In any such sale, either the Selling Shareholder or the non-Selling Shareholder(s) shall be free to purchase all or any part of such pledged Shares. Out of the proceeds of sale, the Escrow Agent shall first reimburse himself for all reasonable expenses of the sale, including but not limited to, reasonable counsel fees, and shall pay to the Selling Shareholder an amount equal to the principal and interest then due, and shall pay any balance of the proceeds to the purchasing Shareholder(s). In the event the proceeds of the sale

are insufficient to cover the expenses of sale together with all of the unpaid obligations of the purchasing Shareholder(s) and the Corporation, the purchasing Shareholders and the Corporation shall remain liable to the Selling Shareholder for any deficiency on the Note.

5.3 RESIGNATION.

If, pursuant to the provisions of this Agreement, any Shareholder shall Transfer all of his or her Shares, he shall, at the Closing, tender his or her resignation as an Officer, Director and employee of the Corporation, which resignation shall thereupon become effective immediately.

5.4 CROSS GUARANTEE BY SHAREHOLDER AND CORPORATION.

The Corporation and Non-Selling Shareholders hereby guarantee the obligations of the purchasing Shareholders or the Corporation, respectively, under this Agreement to pay for Shares, and to repay loans, on the terms provided for herein. Such guarantee shall be deemed unconditional and run for the benefit of the Selling Shareholder, his or her estate, heirs and assigns.

5.5 INDEMNITY AND CONTINUING LIABILITY FOR TAXES.

Except with respect to an Involuntary Lifetime Transfer:

(a) In the event of Transfer of a Shareholder's Shares pursuant to this Agreement, the non-Selling Shareholders shall indemnify the Selling Shareholder or his or her successors and assigns from any and all personal liability (including attorney's fees) in connection with any notes delivered to banks or trade creditors, or indemnity bonds which may have been endorsed by the Selling Shareholder in connection with the Corporation and shall make a good faith effort to cause the Selling Shareholder to be fully discharged from such liabilities.

(b) Anything to the contrary herein contained notwithstanding, if subsequent to closing with respect to the Transfer of any Shares hereunder, the Corporation shall become liable for the payment of any taxes or for any liabilities which relate to a period preceding the closing but which were unknown and not taken into account in determining the purchase price of the Offered Shares ("Unknown Liability"), the Selling Shareholder or his or her Personal Representative shall be liable to the Corporation for repayment of such taxes and/or liabilities in an amount equal to the Unknown Liability multiplied by a fraction, the numerator of which is the total number of Shares Transferred, and the denominator of which is the total number of issued and outstanding Shares of the Corporation prior to the Transfer of such Offered Shares, payment to be made within twenty (20) Days after demand. All tax liabilities constituting an Unknown Liability of a Selling Shareholder shall terminate three (3) years after the date of Closing, unless a claim for reimbursement is presented by the Corporation prior to such date, in which event liability shall continue until the Corporation's obligation is settled and reimbursement is made.

#### 5.6 PURCHASE OF SHAREHOLDER'S LOANS TO THE CORPORATION.

(a) (i) In the event Shares of any Shareholder are purchased by the other Shareholders or by the Corporation, as the case may be, such Shareholders or the Corporation shall simultaneously purchase for full value, and by assignment without recourse from the Selling Shareholder, any loan (whether or not subordinate) owed by the Corporation to the Selling Shareholder or his or her Personal Representative as reflected on the books of the Corporation.

(ii) The loan shall be paid in equal quarterly installments over a period of not more than two (2) years commencing three (3) months from the date of the

assignment, to be evidenced by a non-negotiable promissory note of the non-Selling Shareholders or the Corporation, as the case may be.

(b) The provisions of Section 5.2 of this Agreement shall also be deemed applicable to secure full payment by the non-Selling Shareholders or the Corporation, as the case may be, for this loan assignment and any default in payment shall permit the Selling Shareholder or his or her Personal Representative, as the case may be, to accelerate not only the entire balance of this obligation, but the outstanding balance of the Purchase Price of the Offered Shares as well.

5.7 INSUFFICIENT FUNDS.

In the event that, at any time, the Corporation shall be required to make any payment on account of Shares purchased pursuant to this Agreement and its surplus shall be insufficient for such purpose, then the following provisions shall apply:

(a) The Corporation shall pay on account of such price an amount equal to its entire surplus;

(b) The Corporation and its then Shareholders will promptly take all action required to adjust the capital of the Corporation to the extent necessary to permit payment of the unpaid balance of any amount due; and

(c) If any amount of such required payment still remains unpaid, the other Shareholders of the Corporation shall pay such amount, such payment being treated as a contribution to the capital of the Corporation.

5.8 CONSENT TO CERTAIN CORPORATE ACTIONS. Whenever requested to do so by Shareholders owning a majority of the voting Shares, each Shareholder agrees to vote (directly or by proxy) as a Shareholder and (if applicable) as a Director, in favor of

the Corporation's purchase of any Shares of a Decedent Shareholder or Permanently Disabled Shareholder and in favor of any amendment to the Corporation's articles of incorporation, charter, or by-laws, reduction of its capital, reappraisal of its assets, or any other action required to permit the Corporation to buy such Shares.

#### ARTICLE 6 DUTIES OF THE ESCROW AGENT

6.1 The duties of the Escrow Agent are to demand and receive from the Corporation and/or the purchasing Shareholders, as the case may be, any Note required to be executed as set forth herein and to deliver such Note to the Selling Shareholder, or his or her Personal Representative. If any part of the Purchase Price is represented by such Note, then the Escrow Agent shall take possession of the certificates representing Offered Shares as security for the payment of such Note.

6.2 The Escrow Agent shall have no responsibility except for the performance of his or her expressed duties under this Agreement and no additional duties shall be inferred or implied. The Escrow Agent shall not be required to institute or defend any action involving any matters referred to herein or which affect him or his or her duties hereunder. In the event of any dispute among the Parties with relation to the Escrow Agent or his or her duties, the Escrow Agent may refrain from acting until required to do so by an order of a court of competent jurisdiction.

6.3 The Escrow Agent shall not be responsible or liable for any act or omission on his or her part in the performance of his or her duties as Escrow Agent except as such act or omission constitutes gross negligence or fraud.

6.4 The Escrow Agent shall be reimbursed for any expenses incurred in his or her carrying out the terms of this Agreement, and as compensation for his or her services shall receive no fee. The Corporation, the Shareholders and their respective Personal Representatives shall bear these costs.

6.5 The Shareholders shall have the right to revoke the designation of the Escrow Agent by a writing executed by them and served upon the Escrow Agent, and to appoint a substitute Escrow Agent. Upon the designation of a new Escrow Agent, the Escrow Agent shall deliver to the new Escrow Agent all certificates representing pledged Shares, insurance policies, and any other documents on deposit under this Agreement. Any substitute Escrow Agent shall have all the rights and be subject to all the obligations of the original Escrow Agent. If, after assuming office hereunder, the Escrow Agent becomes disqualified or refuses to serve, a successor may be appointed by agreement between the purchasing Shareholders and the Selling Shareholder, or in the absence of such agreement, in the usual manner by a court of equity.

#### ARTICLE 7 TERM AND RELATED PROVISIONS

7.1 TERM. This Agreement shall terminate upon the occurrence of any of the following events:

- (a) Cessation of the Corporation's business.
- (b) Bankruptcy, receivership or dissolution of the Corporation.
- (c) The voluntary agreement of the Parties hereto.
- (d) Any Shareholder becoming the sole Shareholder of the Corporation.

7.2 PURCHASE OF POLICIES BY INSURED. In the event this Agreement is terminated, or in the event a Shareholder Transfers all of his or her Shares in accordance with the terms of this Agreement, the Selling Shareholder shall have the right within thirty (30) Days from the date of such termination, or Transfer, as the case may be, to purchase from the other Shareholders any or all of the policies upon his or her life listed in Schedule B and any disability policy listed in Schedule C, by paying for each policy, in cash or certified check simultaneously with the transfer of such policies, a consideration equal to the amount of the interpolated terminated reserve thereunder at the date of purchase, plus the proportionate part of the gross premium last paid before the date of purchase covering the period of insurance extending beyond that date. In such event, the Escrow Agent shall deliver such policies to the Selling Shareholder, and the appropriate parties shall execute all instruments of transfer and change of beneficiary as may be necessary.

7.3 SURRENDER OF CERTIFICATES. Upon termination of this Agreement, each Shareholder shall surrender to the Corporation the certificates for his or her Shares and the Corporation shall issue to him in lieu thereof new certificates for an equal number of Shares without the legend required by this Agreement.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

8.1 NOTICES. Any notice, request, instruction or other documents required or permitted to be given hereunder by any Party to the others shall be in writing and delivered personally or sent by Registered or Certified Mail, Return Receipt Requested, to the addresses of the Parties as first set forth above. Any Party may change the address to which notices, etc. are

to be sent by giving written notice of such change of address to the other parties in the manner herein provided for giving notice.

8.2 PARTIAL INVALIDITY. In the event that any part or parts of this Agreement are found to be void, the remaining provisions shall nevertheless be binding upon the Parties with the same effect as though the void part or parts were deleted.

8.3 BINDING EFFECT. This Agreement shall be binding upon and shall operate for the benefit of the Corporation, the Shareholders and their respective Personal Representatives, successors, assigns, heirs, executors and administrators.

8.4 MODIFICATION, CHANGE, ETC. This Agreement may not be changed orally, but only by an agreement in writing signed by the Party against whom enforcement of any waiver, change, modification or discharge is sought. This Agreement contains the entire understanding of the Parties hereto. Words in either the masculine or the feminine form shall be deemed to include or relate to both males and females and, where appropriate, corporations or other entities; words in either the singular or the plural shall be deemed to include both the singular and the plural. All prior agreements or understandings among the Parties with respect to the subject hereof, whether written or oral, are merged herein. There have been no representations made concerning the subject matter of this Agreement, except as may be expressly set forth herein.

8.5 ARBITRATION. Except as otherwise provided in this Agreement, any controversy, claim or dispute arising out of or relating to this Agreement, or the breach thereof, or the interpretation of any of its provisions, shall be settled by arbitration in New York State in accordance with the commercial rules of the American Arbitration Association, and judgment

SCHEDULE A

ALLOCATION OF SHARES IN  
BEH PROPERTIES, INC.


<u>Shareholder</u>	<u>Number of Shares</u>	<u>Percentage of Outstanding Shares</u>
ROBERT ZACHARY EPLEY		33 1/3%
ROBERT MARK EPLEY		33 1/3%
JOHN HALEY		33 1/3%

upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

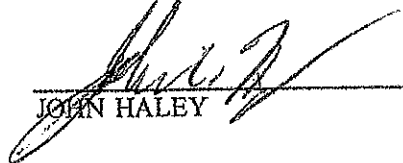
8.6 GOVERNING LAW. This Agreement shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement the day and year first above written.

BEH PROPERTIES, INC.

  
\_\_\_\_\_  
ROBERT ZACHARY EPLEY

  
\_\_\_\_\_  
ROBERT MARK EPLEY

  
\_\_\_\_\_  
JOHN HALEY