



Wallace Altes, Chairman  
Andrew Ross, Vice Chairman

Bill Dunne  
Ken Zalewski

**TROY LOCAL DEVELOPMENT CORPORATION  
Board of Directors Meeting  
Planning Department Conference Room**

**City Hall  
433 River Street, Suite 5001  
Troy, New York 12180**

**May 31, 2013  
8:30 a.m.**

**AGENDA**

- I. Approval of the Minutes from the May 10, 2013 meeting.
- II. Draft LDA for 9 First Street
- III. Troy Dock and Marina
- IV. Adjournment

**TROY LOCAL DEVELOPMENT CORPORATION  
Board of Director and  
Audit and Finance Committee  
Meeting Minutes  
May 10, 2013  
8:30 a.m.**

**BOARD MEMBERS PRESENT:** Wallace Altes, Chair, Bill Dunne, Andrew Ross and Ken Zalewski

**ABSENT:** Andrew Torres, Ph.D.

**ALSO IN ATTENDANCE:** Justin Miller Esq., Monica Kurzejeski, Jeff Buell, Chris Cowlell, Joe Mazzariello, Paul Goetz, Kathe Kennedy, Selena Skiba and Denee Zeigler

**Minutes**

Wallace Altes called the meeting to order at 8:30 a.m. and advised they would be meeting as a committee of the whole.

Audit and Finance Committee

I. BST Audit Presentation

Paul Goetz from BST gave a presentation to the board the results of the audit performed for the year 2012. Mr. Goetz gave a summary of each page of the document and asked the board if they had any questions.

Andy Ross questioned what it meant by 'due to other governments'. Mr. Goetz explained that those amounts represent Main Street grant funds. Ken Zalewski questioned our financial health. Mr. Goetz explained that overall it is good, especially with the \$2.5 million currently there. The chairman explained that the loans being offered are riskier than those offered by banks. Mr. Goetz explained that the account funds need to continue to increase because if one or more of the loans default, it could cause a fall out.

Mr. Goetz explained to the board the communication letters that are included in the packet. It is set up to be a negative letter. All in all a good audit, minor adjustments are needed.

II. Adjournment of Audit and Finance Committee

The Chairman thanked Mr. Goetz for giving his presentation to the Audit and Finance Committee

**Ken Zalewski made a motion to adjourn to the Audit and Finance Committee portion of the meeting.  
Andrew Ross seconded the motion, motion carried.**

Regular Board Meeting – 9:00 a.m.

III. BST Audit

During the Audit and Finance Committee portion of the meeting, BST gave a presentation regarding the 2012 Audit. The full board was there for the presentation

**Andy Ross made a motion to accept the audit by BST.  
Ken Zalewski seconded the motion, motion carried.**

- IV. 207 Broadway – The board reviewed a loan term sheet for The Clark House project at 207 Broadway and advised they should be ready to move to the next stage in June. Jeff Buell spoke on behalf of the loan sheet stating that it would be one of the safer loans that have been presented to them. Funds would be generated as a result of this loan. The Chairman also noted that support of this project is an important statement for the City. Jeff Buell mentioned that there were already positive comments made on the work done so far. Bill Dunne asked when we would see mock ups of the windows. Mr. Buell advised they will have them for the May 16<sup>th</sup> Planning Commission meeting. Ken Zalewski wanted to commend them for using reclaimed materials from the building and doing the work themselves. Andy Ross had a question on the set up of the interest. Jeff Buell explained that they have had many discussions with Justin Miller on the structure of the loan and agreed to keep it as it is. The Chairman asked if they would be able to make quarterly interest payments. Mr. Buell agreed to that. The Chairman asked if there were any other questions.

**Andy Ross made a motion to accept the loan term sheet and move to the next step of creating a LDA.  
Ken Zalewski seconded, motion carried.**

- V. 9 First Street – Jeff Buell discussed the steps they have taken so far with assistance from Justin Miller. Justin Miller advised the board they are following the same set up as the process of purchasing the Marvin Neitzel building at 444 River Street. They are currently working towards setting up a LDA. Justin advised the board that Jeff Buell was interested in doing some clean-up and demo on the building before he formally buys it.

Jeff Buell advised the board he purchased the building for \$10,000. He pointed out that it has a lot of historical character. He was looking to set up a 2 year LDA agreement if they can close in June 2014. Mr. Buell advised he would like to close by Fall. Mr. Buell stated that the worst case scenario would be that they have to wait the full two years, but there would be a significant return on the property. Ken Zalewski verified that Ryan Biggs was the engineer. Jeff Buell advised that he has been through the building. Justin Miller advised that a formal resolution will be ready for the June board

meeting. The Chairman asked if the board had any questions regarding the loan term sheet.

**Andrew Ross made the motion to approve the loan term sheet for 207 Broadway.**

**Ken Zalewski seconded the motion, motion carried.**

VI. Indigo Hair Salon

Monica Kurzejeski introduced Indigo Salon owner Kathe Kennedy to the board and advised that she has already submitted receipts towards her \$25,000 loan. Andy Ross stated that currently the loan was for equipment only, but understood that the applicant wanted to expand the scope to include bricks and mortar. Kathe Kennedy spoke to the board about her project and the work she has done on the building to date, completely re-doing the electrical and plumbing. Ms. Kennedy advised she has put everything into the building itself and would like to have the salon in by June. The Chairman asked if the board has any questions.

**Ken Zalewski made a motion to expand the scope of work for Indigo Salon to include bricks and mortar.**

**Andy Ross seconded the motion, motion carried.**

VII. Bomber's – 2 King Street

Bill Dunne advised the board that in the next two weeks Bomber's will be ready for their Certificate of Occupancy and NYBDC will be sending reimbursement for the \$200,000 bridge loan. Mr. Dunne explained that they have run into an issue with their National Grid Main Street grant. They were advised that they can no longer get interim payments; they will only pay her once it is done. Tami Dzembo is asking the board for a bride loan for \$50,000 until the National Grid Main Street funds come through. Justin Miller stated the board can use the same language as the bridge loan for \$200,000, but amend it to show \$50,000.

Justin Miller wanted to note that when the board is reimbursed by Realex for the \$200,000 bridge loan, interest from January will be included. Andy Ross asked if there was any chance they won't be opening. Bill Dunne advised they will be open by next month. Selena Skiba advised the board that she has been invoiced for the interest since January. Andy Ross asked if they can include an end date of October 1, 2013 in the agreement for the \$50,000. Bill Dunne hopes to close the following Friday and issue them the check in the same day.

**Andy Ross made a motion to set up a bridge loan for \$50,000 with Realex, LLC.**

**Ken Zalewski seconded the motion, motion carried.**

VIII. Vincent Douglas & Economic Development Program

Monica Kurzejeski talked about the 50/50 façade grant that was brought before the board last month and the new Economic Development Program. The program will be set up to offer loans ranging from \$25,000 to \$150,000. This amount was allocated in the budget to be used between July 2013 –

June 2014. For projects asking for \$100,000 she would like to see at least 20% of their own hard capital. An announcement will be made to the public with the assistance of Jessica Sibley of the Mayor's office. Monica explained that her hope is to follow CDBG projects and offer economic development grants, such as the façade grant, as a boost to the business owners. Andy Ross asked the amount that Vincent was asking for. Monica Kurzejeski explained that he was looking for a \$10,000 50/50 Matching Façade grant through the TLDC's façade improvement program. He will supply the board with receipts and proof of payment of at least \$10,000 and we will reimburse him \$5,000.

**Andy Ross made the motion to approve the 50/50 Façade improvement grant for \$5,000.  
Ken Zalewski seconded the motion, motion carried.**

The board discussed the maintenance agreement guidelines.

IX. Center of Gravity

The board discussed the resolution approved for the Center of Gravity at the last meeting. The chairman talked about the ribbon cutting that recently took place and the great turn out. The chairman asked if the boards had any questions about the project. (see attached Resolution 05/13 - #1)

**Ken Zalewski made the motion to approve the \$47,000 payment for The Center of Gravity.  
Andy Ross seconded the motion, motion carried.**

X. Leonard Hospital/Taylor Apartment Exchange

Justin Miller spoke to the board about the land exchange agreement between Leonard Hospital and The Troy Housing Authority. A map of Taylor Apartments 1 & 2 was handed out to the board for review. THA proposes to use the Leonard Hospital site for Veteran housing. In exchange, the Taylor Apartment site would be open for the LDC to develop. Justin Miller explained the attached resolution would authorize taking the title from the City and enter into a LDA with them to develop their property. We would be able to work on the Taylor 1 & 2 site once a plan is developed. Bill Dunne spoke to the board about the layout of the four Apartments currently on the site. Justin Miller noted that the THA parcels would need to be sub-divided. A suggestion was made to set up a committee to come up with ideas for the site. Andy Ross questioned if an environmental study has been done yet? Bill Dunne stated that we have ordered one and so has THA. The Chairman also mentioned that Sage Colleges and CDTA expressed interest in the site as well as some private developers. The Chairman noted that the LDC would be in a good position to steer it in a good direction – similar to the Neitzel project. Monica Kurzejeski commented that it will be exciting to see what proposals would be coming in. Joe Mazzariello asked the timeframe for the closing. Justin Miller explained that it could be as soon as the end of the year or April of next year. (see attached Resolution 05/13 - #2)

**Andy Ross made a motion to approve the resolution to acquire land at 74 New Turnpike Rd and to enter into a land exchange agreement with THA.**

**Ken Zalewski seconded the motion, motion carried.**

XI. Essence Loan Term Sheet

Monica Kurzejeski spoke to the board about the loan term sheet for Essence Hair Salon. Andy Ross questioned if the loan was for equipment. Monica stated that her loan is for equipment. Andy Ross questioned how we secure the equipment. He stated that in general he is not in favor of providing loans for equipment. Justin Miller advised that there is also personal guarantee written into the agreement. Monica Kurzejeski explained the grant amount is set for \$12,000. The Chairman wanted to note that we have already made a commitment to her for this amount, but in the future will steer away from equipment loans. (see attached Resolution 05/13 - #3)

**Ken Zalewski made a motion to approve the payment to Essence Salon in the amount of \$12,000.00.  
Andy Ross seconded the motion, motion carried.**

XII. Old World Provisions

Monica Kurzejeski advised the board that as of now Old World Provisions are caught up and up to date on their loan. She will be meeting with them on Monday to discuss options and potential investors. Monica mentioned that the County also has funds invested. Justin Miller spoke about the resolution attached to re-structure their loan. Joe Mazzariello asked how it would benefit everyone. Monica Kurzejeski advised that the restructure will help the business stay on track with it's payments due to the peaks and valleys of their sales. Andy Ross asked Justin Miller if they have reviewed the agreements. Justin Miller advised yes and they do have personal guarantee. Joe Mazzariello asked if there was a way to find out who they are in debt to. Monica Kurzejeski advised the board that she will set up a meeting of the creditors to discuss. The people at Old World Provisions are looking for an outside investor to come in and help. (see attached Resolution 05/13 - #4)

**Ken Zalewski made a motion to accept the resolution for the second modification of Old World Provisions loan agreement.  
Andy Ross seconded the motion, motion carried.**

XIII. Main Street Monitoring Form

Monica Kurzejeski explained to the board that the Main Street grant program is complete. We were recently monitored by the Office of Community Renewal and were asked to correct a few items. One item was to come up with a formal monitoring plan to be used over the next seven years. The Chairman asked if there were any questions about the form.

**Ken Zalewski made a motion accept the Main Street Monitoring Plan.  
Andrew Ross seconded the motion, motion carried.**

XIV. Adjournment

The Chairman thanked everyone for attending and spoke in general about how busy the board is getting. He stated that it is a positive point, but need to stay on track with all of the additional items.

**Ken Zalewski made a motion to adjourn.**

**Andrew Ross seconded the motion, motion carried.**

The meeting was adjourned at 11:18 a.m.

DRAFT

## TROY LOCAL DEVELOPMENT CORPORATION

At a special meeting of the Directors of the Troy Local Development Corporation (the "Corporation") was convened on Friday May 31, 2013, at 8:30 a.m.

### RESOLUTION OF THE TROY LOCAL DEVELOPMENT CORPORATION AUTHORIZING THE EXECUTION AND DELIVERY OF A LAND DISPOSITION AGREEMENT WITH 9 FIRST STREET TROY, LLC, ALONG WITH RELATED DOCUMENTS IN FURTHERANCE OF THE DISPOSITION OF 9 FIRST STREET

WHEREAS, pursuant to Sections 402 and 1411 of the Not-For-Profit Corporation Law ("N-PCL" or the "LDC Act") of the State of New York, the Corporation was established as a domestic, not-for-profit corporation on November 29, 1988, and thereafter reincorporated as a domestic, not-for-profit local development corporation pursuant to N-PCL Section 1411(h) pursuant to a certain Certificate of Reincorporation filed on April 5, 2010 (the "Certificate"), all for certain charitable and public purposes, among other things, including relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, carrying on scientific research for the purpose of aiding the City of Troy, New York (the "City") by attracting new industry to the City or by encouraging the development of, or retention of, an industry in the City, and lessening the burdens of government and acting in the public interest; and

WHEREAS, in furtherance of the purposes and powers vested in the Corporation under the LDC Act and Certificate, the Corporation previously acquired a certain property located at 9 First Street in the City consisting of approximately .04 acres of land (the "Land", as further defined herein) upon which is situated a 4-story mixed-use building containing approximately 6,500 sf of space (the "Improvements", and collectively with the Land, the "Property"); and

WHEREAS, in furtherance of the redevelopment of the Property to its highest and best use, the Corporation desires to cause the redevelopment of the Property for use as a mixed-use commercial and rental housing property; and

WHEREAS, 9 First Street Troy, LLC (the "Company") submitted a proposal (the "Proposal") in wherein the Company proposes to undertake a certain Project (the "Project") consisting of (A) the acquisition of the Property from the Corporation; (B) the planning, design, rehabilitation, construction, reconstruction and renovation of the Improvements of a mixed-use commercial property consisting of a first floor retail space and three (3) apartment units on the upper floors along with related and appurtenant improvements and amenities (the "Improvements"); (C) the acquisition and installation in and around the Property and Improvements of certain machinery, equipment and other items of tangible personal property (the "Equipment", and collectively with the Property, Improvements and the Equipment, the "Facility"); and

WHEREAS, in furtherance of the Project, the Corporation and Company have negotiated terms for disposition of the Property to the Company (the "Disposition") to be memorialized

within a certain Land Disposition Agreement with Exclusive License and Option (the “LDA”); and

WHEREAS, the Corporation further desires to provide the Company with preliminary Project development access and improvement rights to the Property and an exclusive option to acquire the Property from the Corporation in furtherance of the Project.

WHEREAS, the transfer of the Property is exempt from publicly advertising for bids and obtaining fair market value pursuant to PAL Section 2897(7)(ii) as it is within the purposes of the Corporation to (i) acquire by purchase, lease, gift, bequest, devise or otherwise real or personal property or interests therein, (ii) to sell, lease, mortgage or otherwise dispose of or encumber any of its real or personal property or any interest therein upon such terms as it may determine to be suitable, and (iii) to undertake certain projects and initiatives for the benefit of and to lessen the burdens of the City; and

WHEREAS, pursuant to PAL Section 2897(6)(d)(i)(B), an explanatory statement of the circumstances of such transfer of the Property is not required to be prepared by the Corporation as the fair market value of the Land is not in excess of one hundred thousand dollars; and

WHEREAS, PAL Section 2897(7)(c), prior to the Corporation transferring the Property for less than fair market value, it must consider certain information as set forth in PAL Section 2897(7)(b) and make a determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer; and

WHEREAS, the Corporation has taken into consideration the description and purpose of the transaction, the Disposition and description of the Property to be transferred, the kind and amount of benefit to the public, the value received compared to the fair market value and its powers and purposes under Section 1411 of the N-PCL; and

WHEREAS, in furtherance of the Project, the Corporation desires to (i) authorize the execution and delivery of the LDA, (ii) authorize the undertaking of the Disposition in accordance with the terms of the LDA, a draft of which has been set before this meeting, and (iii) authorize the execution and delivery of such documents and instruments as are necessary to undertake the foregoing.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TROY LOCAL DEVELOPMENT CORPORATION, AS FOLLOWS:

Section 1. In furtherance of the Disposition, the Corporation has taken into consideration the provisions of PAL Sections 2897(7)(b) and (c), including (i) a description of the Land and Property, (ii) an appraisal of the Land and Property, (iii) detailed background on the purpose of the Disposition and transfer of the Land and Property to the Company in furtherance of the Project, including the job creation and other community benefits associated with the Project as outlined within the Proposal submitted by the Company, (iv) the value to be received from the Company in connection with undertaking the Disposition of the Property to the Company, (v) the identity of the Company as a private party participating in the Project, and (vi)

alternate offers associated with the Property, if any. Having taken the foregoing into consideration, the Corporation hereby determines that there is no reasonable alternative to accomplishing the transfer of the Property to the Corporation that would achieve the purposes of facilitating the Project. Subject to the terms and conditions set forth within the LDA, the Corporation hereby authorizes the undertaking of the Disposition of the Property to the Company pursuant a Bargain and Sale Deed (the “Deed”) containing such terms and conditions as the Chairman (or Vice Chairman) and/or Executive Director and transaction counsel to the Corporation approve as to form, and the Chairman (or Vice Chairman) and/or Executive Director of the Corporation are hereby authorized, on behalf of the Corporation, to execute and deliver the Deed along with any and all documents necessary and required to deliver title to the Property to the Company, including instruments and recording forms in furtherance of same, in such form as authorized by the Chairman, Vice Chairman and/or Executive Director of the Corporation, the execution thereof by the Chairman, Vice Chairman and/or Executive Director of the Corporation to constitute conclusive evidence of such approval.

Section 2. The Chairman (or Vice Chairman) and/or Executive Director of the Corporation are hereby authorized, on behalf of the Corporation, to execute and deliver the LDA in substantially the form attached hereto as **Exhibit A**, with such changes, variations, omissions and insertions as authorized by the Chairman, Vice Chairman and/or Executive Director of the Corporation, the execution thereof by the Chairman, Vice Chairman and/or Executive Director of the Corporation to constitute conclusive evidence of such approval.

Section 3. The officers, employees and agents of the Corporation are hereby authorized and directed for and in the name and on behalf of the Corporation to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Corporation with all of the terms, covenants and provisions of the documents executed for and on behalf of the Corporation. The foregoing authorizations shall include, but not be limited to execution and delivery by the Chairman, Vice Chairman, Executive Director, Secretary and Acting Secretary of the Corporation of banking signature cards and other instruments necessary to evidence the foregoing

Section 4. This resolution shall take effect immediately.

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

	Yea	Nay	Absent	Abstain
Wallace Altes	[ ]	[ ]	[ ]	[ ]
William Dunne	[ ]	[ ]	[ ]	[ ]
Andy Ross	[ ]	[ ]	[ ]	[ ]
Peter Ryan	[ ]	[ ]	[ ]	[ ]
Hon. Kenneth Zalewski	[ ]	[ ]	[ ]	[ ]

The Resolution was thereupon duly adopted.

**SECRETARY'S CERTIFICATION**

STATE OF NEW YORK                    )  
COUNTY OF RENSSELAER            ) SS:

I, the undersigned Acting Secretary of the Troy Local Development Corporation, DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the Troy Local Development Corporation (the "Corporation"), including the resolution contained therein, held on May 31, 2013, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Corporation and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Corporation had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Corporation present throughout said meeting.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation this \_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
DeNee Zeigler, Acting Secretary

[SEAL]

**EXHIBIT A**  
**FORM OF LDA**

**LAND DISPOSITION AGREEMENT WITH LICENSE  
AND EXCLUSIVE OPTION**

**THIS LAND DISPOSITION AGREEMENT WITH LICENSE AND EXCLUSIVE OPTION** (hereinafter, the “Agreement”), dated as of the 1<sup>st</sup> day of June, 2013, by and between the TROY LOCAL DEVELOPMENT CORPORATION, a not-for-profit local development corporation duly existing under the laws of the State of New York (the “State”) with offices at 433 River Street, 5<sup>th</sup> Floor, Troy, New York 12180 (the “Corporation”) and 9 FIRST STREET TROY, LLC, a domestic limited liability company duly formed and validly existing under the laws of the State with offices at 25 Blue Heron Drive, Averill Park, New York 12018 (the “Company”).

**WITNESSETH:**

WHEREAS, pursuant to Sections 402 and 1411 of the Not-For-Profit Corporation Law (“N-PCL” or the “LDC Act”) of the State of New York, the Corporation was established as a domestic, not-for-profit corporation on November 29, 1988, and thereafter reincorporated as a domestic, not-for-profit local development corporation pursuant to N-PCL Section 1411(h) pursuant to a certain Certificate of Reincorporation filed on April 5, 2010 (the “Certificate”), all for certain charitable and public purposes, among other things, including relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, carrying on scientific research for the purpose of aiding the City of Troy, New York (the “City”) by attracting new industry to the City or by encouraging the development of, or retention of, an industry in the City, and lessening the burdens of government and acting in the public interest; and

WHEREAS, in furtherance of the purposes and powers vested in the Corporation under the LDC Act and Certificate, the Corporation previously acquired a certain property located at 9 First Street in the City consisting of approximately .04 acres of land (the “Land”, as further defined herein) upon which is situated a 4-story mixed-use building containing approximately 6,500 sf of space (the “Improvements”, and collectively with the Land, the “Property”); and

WHEREAS, in furtherance of the redevelopment of the Property to its highest and best use, the Corporation desires to cause the redevelopment of the Property for use as a mixed-use commercial and rental housing property; and

WHEREAS, 9 First Street Troy, LLC (the “Company”) submitted a proposal (the “Proposal”) in wherein the Company proposes to undertake a certain Project (the “Project”) consisting of (A) the acquisition of the Property from the Corporation; (B) the planning, design, rehabilitation, construction, reconstruction and renovation of the Improvements of a mixed-use commercial property consisting of a first floor retail space and three (3) apartment units on the upper floors along with related and appurtenant

improvements and amenities (the “Improvements”); (C) the acquisition and installation in and around the Property and Improvements of certain machinery, equipment and other items of tangible personal property (the “Equipment”, and collectively with the Property, Improvements and the Equipment, the “Facility”); and

WHEREAS, in furtherance of the Project, the Corporation and Company have negotiated terms for disposition of the Property to the Company (the “Disposition”) to be memorialized herein; and

WHEREAS, the Corporation and the Company wish to enter in to this Agreement to provide Company with preliminary Project development access and improvement rights to the Property and an exclusive option to acquire the Property from the Corporation in furtherance of the Project.

NOW THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto formally covenant, agree and bind themselves as follows:

## ARTICLE I REPRESENTATIONS AND COVENANTS

### Section 1.1. Representations and Covenants of the Corporation.

The Corporation makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Corporation is a duly established and existing not-for-profit, local development corporation organized pursuant to the LDC Act and pursuant to the LDC Act and the Certificate, the Corporation has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The Corporation has the authority to take the actions contemplated herein under the Act.

(b) The Corporation is the fee owner of the Property and has duly authorized the execution and delivery of this Agreement.

(c) Pursuant to the terms hereof, it is contemplated that the Corporation will transfer to the Company title to the Property and the Company will undertake the Project, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and the City, and improving their standard of living.

(d) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the LDC Act or of any corporate restriction or any agreement or instrument to which the Corporation is a party or by which it is bound, or will

constitute default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Corporation under the terms of any such instrument or agreement.

(e) The Corporation has been induced to enter into this Agreement by the undertaking of the Company to undertake the timely performance of the Project.

Section 1.2. Representations and Covenants of the Company.

The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company (i) is a domestic limited liability company duly formed and validly existing under the laws of the State, (ii) has the authority to undertake business in the State and enter into this Agreement, and (iii) has duly authorized the execution and delivery of this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Corporation hereby finds that, based on the Company's Proposal, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

(d) The Project-related activities of the Company will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Corporation harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d).

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party,

and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Agreement.

## ARTICLE II DEVELOPMENT RIGHTS, OPTION AND CONSIDERATION

Section 2.1. Development Rights. Subject and pursuant to the terms, conditions and contingencies contained within this Agreement, the Corporation hereby grants to the Company the exclusive right to undertake the Project on the Property. During the term of this Agreement, neither the Corporation nor the Company shall engage in discussions with any other developers or solicit proposals relating to or for the Project. The exclusive development rights provided herein shall be granted for a period of one (1) year from the date hereof (the "Development Term"). In the event that a Closing Date, as defined within Section 2.2, below, is not scheduled and a Closing, as defined below, is not conducted within the Development Term, as may be extended pursuant to the terms of this Agreement, the Company's rights and obligations hereunder, with the exception of the obligations contained within Section 8.11 hereof, shall lapse and become null and void. It is expressly agreed by the parties hereto that the Corporation and the Company shall work cooperatively to assure that the Company may expediently initiate, undertake, and complete the Project. The Company shall have the right to request two (2) six (6) month extensions to the Development Term (such individual, successive six (6) month periods hereinafter, the "Extension Terms"). Any such request for extensions (an "Extension Request") by the Company shall be submitted to the Corporation in writing at least sixty (60) days prior to the end of the Development Term, as may be extended. In no event may the Development Term be extended to comprise a period of greater than two (2) years. The Corporation may approve or disapprove such a request in its sole and absolute discretion, such approval of the Corporation shall not be unreasonably withheld, conditioned, or delayed. It is expressly agreed by the parties hereto that any such request may reasonably be denied by the Corporation where there remain any unsatisfied Express Contingencies, as defined herein, where any such unsatisfied Express Contingency results from the action or failure to act on the part of the Company.

Section 2.2. Exclusive Option to Acquire the Property; Primary Property Accepted As-Is. (a) Subject and pursuant to the terms, conditions and contingencies contained within this Agreement, the Corporation hereby grants to the Company the exclusive option to acquire fee title to the Primary Property for purposes of undertaking the Project (collectively, the "Option"). The Property is comprised of approximately .04 acres, is identified as TMID No. 100.60-2-2 and is more particularly described within **Exhibit A**, hereto. Said Option is hereby granted by the Corporation to the Company in exchange for the \$1,000.00 Deposit, as further described herein and paid by the Company contemporaneously herewith, and for the Company's willingness to undertake the Project, which shall promote the industry, health, welfare, convenience and prosperity of the inhabitants of the State and the City, and improve their standard of living. The Company may exercise the Option only during the Development Term, as defined herein, and said Option shall be exercised and perfected by the Corporation and the Company on

the Closing Date, as defined herein. In the event that a Closing is not conducted within the Development Term, the Option shall lapse and become null and void.

(b) Except as may otherwise be set forth in this Agreement, the Company acknowledges and agrees that neither the Corporation nor any agent or representatives of Corporation have made, and Corporation is not liable or responsible for or bound in any manner by any express or implied representations, warranties, covenants, agreements, obligations, guarantees, statements, information or inducements pertaining to the condition of the Property, nor any part thereof. Company acknowledges, agrees, represents and warrants that it has had, and/or shall have had, the opportunity and has in fact, and/or shall have in fact, inspected the Property and all matters respecting the Property and is and/or shall be fully cognizant of the condition of the Property and that it has had, and/or shall have had, access to information and data relating to all of same as Company has considered necessary, prudent, appropriate or desirable for the purposes of this transaction and that Company and its agents and representatives have, and/or shall have had, independently inspected, examined, analyzed and appraised all of same. Company acknowledges that Company is and/or will be fully familiar with the Property and Company agrees, except as may otherwise be set forth in this Agreement, to accept the Property "AS IS", with all faults, in its current condition, subject to reasonable wear and tear. Corporation shall maintain the Property in its current condition until Closing (subject to the Company's rights herein). Company shall be responsible at its sole cost and expense to obtain and satisfy all required governmental or regulatory inspection, certificates or other such transfer requirements prior to Closing. As used herein, "condition of the Property" shall mean the title and physical condition thereof, including all environmental matters, the quantity, character, fitness and quality thereof, merchantability, fitness for particular purpose, the income, expenses or operation thereof, the value and profitability thereof, the uses which can be made thereof, title to the Property, the structural and mechanical condition of the Property, the building, structure and Improvements situate thereon, the plumbing, heating, electric and ventilating systems (if any) serving the Property and any other matter or thing whatsoever with respect thereto. Corporation has in full force and effect liability and casualty insurance insuring the Property, as appropriate. There have been in force since the acquisition of the Property by the Corporation policies of insurance protecting the Corporation against all losses and claims, and there have been no gaps or lapses in such insurance coverage for such period.

Section 2.3. Consideration. In exchange for the exclusive development rights, Option and title to the Property, as contemplated herein, the Company shall pay to the Corporation the sum of TEN THOUSAND DOLLARS (\$10,000.00) as follows:

(a) \$1,000.00 upon execution of this Agreement, such payment to serve as the Deposit in exchange for the Development Rights and Option, such Deposit shall become non-refundable six (6) months from the date hereof; and

(b) \$9,000.00 to be paid on the Closing Date.

Section 2.4 Closing Date; Contemplated Transactions. (a) Closing Date. The consummation of the within described transactions shall be hereinafter referred to as the "Closing". The date of the Closing (hereinafter, the "Closing Date"), shall be at least forty-five days after the Corporation's receipt of the Closing Notice from the Company, and as mutually established by the Corporation and the Company during the Development Term pursuant to the terms, conditions and contingencies contained within this Agreement.

(b) Contemplated Transactions. In furtherance of the Project and on the Closing Date, the Corporation and the Company contemplate (A) the Corporation undertaking the Disposition of the Property to the Company; and (B) to the extent desired by the Company and authorized by the Troy Industrial Development Authority ("TIDA"), the Company and TIDA entering into agreement(s) that would allow TIDA to retain a leasehold interest in the Property for purposes of providing financial assistance to the Company in the form of (i) sales and use tax exemptions in connection with the construction of the Project, (ii) mortgage recording tax exemption(s) in connection with one or more financings undertaken by the Company in furtherance of the Project, and (iii) a partial real property tax exemption relating to the Improvements to be contained within a Payment-in-lieu-of-Taxes Agreement ("PILOT Agreement", the terms of which shall be negotiated by the Company and TIDA, and collectively with the above-described financial assistance, the "TIDA Financial Assistance").

Section 2.5. Fees and costs. The Corporation and Company shall bear their respective costs and fees incurred in furtherance of the Project.

### ARTICLE III LICENSE PROVISIONS

Section 3.1. Grant of License. (a) Subject and pursuant to the terms, conditions and contingencies contained within this Agreement, the Corporation hereby grants to the Company an exclusive, revocable license (the "License") to enter the Property for the exclusive purposes of surveying, studying, testing, drilling, boring and otherwise analyzing the Property in connection with the planning, design and engineering of the Project, as defined herein. The Company shall provide the Corporation with copies of all marketing reports, engineering reports, architectural renderings and test results associated with the Property and Project received by the Company during the term hereof, including, but not limited to structural reports, appraisals, marketing reports, asbestos and/or lead paint studies, and other reports and results relating to the Primary Property, the building and site conditions. The License shall be co-terminus with the Development Term, as defined herein, unless otherwise revoked by the Corporation. The Corporation, as Licensor, may revoke this license at any time if the Company, as Licensee, is in breach of any term or provision hereof and such breach has not been cured within Five (5) days of written notice of such breach has been given to the Company by the Corporation.

The foregoing License shall include the right to enter the Property to undertake certain clean-up, demolition and stabilization activities (the "Stabilization") to be undertaken by the Company, such Stabilization to be limited to the following activities (and herein, the "Scope of Work"):

- 1) Secure all necessary demolition and building permits in accordance with applicable law;
- 2) Installation of secure doorways (keys to be provided to the Corporation);
- 3) Removal of debris, garbage and non-fixtured appliances and equipment;
- 4) Upon identification of Asbestos Containing Materials (ACM), present plan for proper removal and undertake disposal in full accord with State laws;
- 5) Demolition and removal of non-load bearing walls, false ceilings, plaster and drywall, kitchen and bath fixtures and other internal materials;
- 6) Stabilization and capping of electrical and plumbing outlets (Company shall utilize licensed electrician and plumber);
- 7) Installation of temporary lighting as necessary (Company shall utilize licensed electrician);
- 8) Retention of interior historical trim and accents (as confirmed by Corporation prior to commencement of Scope of Work);
- 9) Stabilization of staircase in 3rd and 4th floors; and
- 10) Removal of sections of upper rear flooring and replacement of joists (as necessary) and subfloors.

The Company's right to undertake the Stabilization and related Scope of Work shall be subject to the Company's receipt of all local and State approvals and permits necessary to undertake same. The Company shall immediately apply for all necessary permits and approvals required to undertake the Scope of Work. Prior to commencing items number 6, 7, 9 and 10, above, the Company shall have prepared and submit plans and specifications prepared by a licensed engineer, which shall be reviewed and approved as to form by the Corporation. The Company shall use reasonable commercial efforts to complete the Scope of Work by October 31, 2013. In the event that a Closing is not achieved during the term hereof, the Company agrees to restore the Property to such condition as required by the Corporation (the "Restoration") and the Company shall and hereby does indemnify of the Corporation by the Company of all regulatory liabilities associated with the Stabilization. In addition, to the extent that a Closing is not achieved pursuant hereto, the Company hereby acknowledges that the Corporation shall not be liable for any costs associated with the Stabilization or Scope of Work undertaken within the Property and forever releases the Corporation from any cost or responsibility associated therewith.

(b) License Indemnities and Events of Default. The Company, as Licensee, does hereby protect, defend, indemnify and hold harmless the Corporation, as Licensor, against any and all claims, costs, judgments, liens, or actions, including reasonable attorney's fees and costs of defense, for damage to property or injury to persons suffered on, or resulting or arising from the Company's activities on the Property, including any activities, actions, malfeasance or omissions of the Company or any officer, employee,

director, agent or contractor of the Company. The provisions of this paragraph shall survive termination of this agreement. The Company further hereby protect, defend, indemnify and hold harmless the Corporation, as Licensor, against any and all claims, costs, judgments, liens, or actions, including reasonable attorney's fees and costs of defense, for claims, judgments, actions and any related liens associated with the Company's business activities as same may affect the Corporation or title to the Property, including, but not limited to any action or dispute that may give rise to a lien against the Property. If at any point during the Development Term an action or proceeding (whether coupled with a lien filing or not) is threatened or initiated by a third party against the Corporation or the Corporation's title to the Property in connection with the Company's business activities relative to the project or otherwise, the Company shall be deemed in default of this Agreement unless cured within Five (5) business days of written demand to cure tendered by the Corporation. The Company's failure to cure such a default (whether through payment, settlement, performance or payment bond, or otherwise) within said Five (5) day period shall have the effect of terminating this Agreement, including all development rights, the Option and any other rights of the Company contained herein or otherwise. In all events, the Company's indemnification of the Corporation and obligation to pay all Corporation costs associated with any such default shall survive the termination of this Agreement.

(c) License Insurance Requirements:

At all times throughout the term of this Agreement, the Company, as Licensee, shall maintain the following insurance:

(a) Worker's compensation insurance, disability benefits insurance, and each other form of insurance which the parties hereto are required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Licensee working on the Project.

(b) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Licensor by any applicable workmen's compensation law; and a blanket excess liability policy in the amount not less than \$2,000,000, protecting the Corporation, as Licensor, against any loss or liability or damage for personal injury or property damage.

All insurance required by this Agreement shall name the Corporation, as Licensor, as a named insured. All such insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Licensee and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in

which the Company, as Licensee, is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Licensee and the Corporation as their respective interests may appear, and (ii) if possible, at least thirty (30) days written notice of the cancellation thereof to the Licensee and the Corporation, as Licensor. All such certificates of insurance of the insurers that such insurance is in force and effect, shall be deposited with the Corporation on or before the first occasion on which Licensee is to enter on the Land for the purposes described in this Agreement. Prior to expiration of the policy evidenced by said certificates, the Licensee shall furnish the Corporation evidence that the policy has been renewed or replaced or is no longer required by this Agreement.

#### ARTICLE IV TIDA FINANCIAL ASSISTANCE AND PILOT PROVISIONS

Section 4.1. TIDA Payment in Lieu of Tax Agreement. During the term hereof, the Company may apply to TIDA in connection with securing Financial Assistance in furtherance of the Project, including a Payment in Lieu of Tax Agreement (“PILOT Agreement”) to be negotiated by the Company and TIDA.

#### ARTICLE V CONTINGENCIES PRIOR TO PERFORMANCE

Section 5.1. Express Contingencies.

With the exception of undertaking pre-closing activities (as further defined herein), the parties hereto shall not be obligated to undertake a Closing, as defined herein, until the following express contingencies (“Express Contingencies”) are met:

(a) Completion of the Scope of Work. The Company shall complete the Scope of Work, as defined herein, pursuant to and in compliance with the License.

(b) Project Design, Site Plan Approval and SEQRA. The Company, at its exclusive cost and expense, shall complete all planning, engineering, architectural and design activities necessary to construct the Project. The Company shall further secure site plan approval(s) necessary to undertake the project from the City Planning Commission. Further, the Company shall cause the Project to be reviewed pursuant to the State Environmental Quality Review Act (“SEQRA”) by an appropriate lead agency.

(c) Building Permit Approval. Any and all required building permits and approvals shall be secured by the parties hereto, including any State and Local permits or authorizations required to undertake the Project.

(d) Preliminary and Firm Construction Financing Commitments. The Company shall secure firm financing commitment(s) in form and substance customary for transactions of the type contemplated by this Agreement at interest rates and on other

terms acceptable to the Company in its reasonable discretion providing for the provision of funds sufficient to fund all costs associated with the Project.

(e) Corporation Authorizing Resolutions. The Corporation shall adopt any additional required resolutions necessary to undertake the Disposition and Project.

## ARTICLE VI PROPOSED UNDERTAKINGS FOR PROJECT; COMPANY INDEMNITIES

### Section 6.1. Proposed Undertakings by the Corporation.

(a) Pre-closing Activities. The Corporation, where appropriate, shall use commercially reasonable efforts to eliminate the express contingencies set forth in Section 5.1 above. The Corporation's commercially reasonable efforts shall be used to carry out the procedures required pursuant to the LDC Act and to assist the Company, where appropriate, in securing any necessary approvals from the City, TIDA and any other appropriate regulatory and grant providing entities.

(b) Closing and post-closing activities. Upon satisfaction of the express contingencies set forth within Section 5.1 above, and no less than forty-five (45) days after the Corporation's receipt of the Closing Notice as defined within Section 6.2(c) below, it is contemplated that the Corporation will transfer the Primary Property and Secondary Properties to the Company for purposes of allowing the Company to undertake the Project.

### Section 6.2. Proposed Undertakings by the Company.

(a) Undertaking of Project. The Company shall immediately undertake the Project on the Closing Date. The costs incurred by the Company in furtherance of undertaking the Project shall be 100% borne by the Company. The Company shall use best efforts in undertaking all aspects of the Project.

(b) Pre-closing activities. The Company, where appropriate, shall use best efforts to eliminate the express contingencies set forth within Section 5.1, above. The Company's best efforts shall be used to prepare for immediate commencement of construction on the Closing Date, including: (i) to finalize all necessary plans and specifications for the Project, including finalized budget figures, which shall be provided to the Corporation; (ii) to secure any and all necessary permits and approvals for the Project; and (iii) to finalize and execute all necessary primary general construction and/or construction management contracts for the construction of the Project (copies of which shall be provided to the Corporation).

(c) Closing and post-closing activities. Upon satisfaction of the express contingencies set forth within Section 5.1, above, and upon no less than forty-five (45) days' written notice to the Corporation (the "Closing Notice"), the Company may

exercise the Option to acquire the Primary Property and Secondary Properties from the Corporation on the Closing Date. The Company will construct the Project pursuant to terms of this Agreement, TIDA Agreements, as applicable, and any financing indentures, covenants and conditions.

(d) Project performance measures and timeframes. The TIDA Agreements may contain provisions requiring the Company to meet specific performance measures and timeframes for completion of the Project.

Section 6.3 Company Indemnification of Corporation and Hold Harmless Provisions. Notwithstanding any other provision contained herein or within any other agreement by and among the parties hereto, the Company hereby releases the Corporation and its assigns from, agrees that the Corporation, and its assigns shall not be liable for, and agrees to indemnify, defend and hold the Corporation and its assigns and their executive director, officers, members, directors and employees, and their respective successors, assigns or personal representatives, harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Project. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Corporation or any of its members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability; except, however, that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the indemnified party to the extent that such an indemnity would be prohibited by law. The above-described indemnifications shall survive the Closing Date and during the term of the Lease.

## ARTICLE VII NO RECOURSE OF CORPORATION

### Section 7.1. No Recourse; Special Obligation.

(a) The obligations and agreements of the Corporation and Company contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Corporation and Company, and not of any member, director, officer, agent or employee thereof in his or her individual capacity, and the members, officers, agents and employees of the Corporation and Company shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(b) The obligations and agreements of the Corporation contained herein shall not constitute or give rise to an obligation of the State or of the City, and neither the State nor the City shall be liable hereon or thereon, and, further, such obligations and

agreements shall not constitute or give rise to a general obligation of the Corporation, but rather shall constitute limited obligations of the Corporation, as its interests may appear, payable solely from the revenues of the Corporation derived and to be derived from the sale or other disposition of the Primary Property.

(c) No order or decree of specific performance with respect to any of the obligations of the Corporation hereunder shall be sought or enforced against the Corporation unless (i) the party seeking such order or decree shall first have requested the Corporation in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Corporation shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) if the Corporation refuses to comply with such request and the Corporation's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Corporation an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the Corporation refuses to comply with such request and the Corporation's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Corporation and its members, directors, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

Section 7.2. No Joint Venture Created.

The parties hereto mutually agree that by entering into this Agreement the parties hereto are not entering into a joint venture.

ARTICLE VIII  
MISCELLANEOUS PROVISIONS

Section 8.1. Notices.

All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

To the Corporation: Troy Local Development Corporation  
Troy City Hall  
433 River Street, 5<sup>th</sup> Floor  
Troy, New York 12180  
Attn: Chairman

With copies to: Harris Beach PLLC

677 Broadway, Suite 1101  
Albany, New York 12207  
Attn: Justin S. Miller, Esq.

To the Company: 9 First Street Troy, LLC  
25 Blue Heron Drive  
Averill Park, New York 12018  
Attn: Jeffrey Buell, Managing Member

With copies to: Keith R. Gorman, Esq.  
17 British American Boulevard  
Latham, New York 12110

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

Section 8.2. Binding Effect.

This Agreement shall inure to the benefit of and shall be binding upon the Corporation, the Company and their respective successors and assigns.

Section 8.3. Severability.

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 8.4. Amendments, Changes and Modifications.

This Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

Section 8.5. Execution of Counterparts.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.6. Applicable Law.

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York for contracts to be wholly performed therein.

Section 8.7. Recording and Filing.

This Agreement or a memorandum thereof, shall be recorded or filed, as the case may be, in the Office of the Clerk of the County of Rensselaer, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

Section 8.8. Survival of Obligations.

This Agreement shall survive beyond the Closing Date and the performance of the obligations of the Company to make payments required by Section 2.3. All indemnities contained herein and inuring to the Corporation and its respective assigns shall survive any termination or expiration of this Agreement.

Section 8.9. Section Headings Not Controlling.

The headings of the several sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Agreement.

Section 8.10. No Broker.

The Corporation and the Company represent and warrant to the other that no party hereto has dealt with any broker or finder entitled to any commission, fee, or other compensation by reason of the execution of this Agreement, and each party agrees to indemnify and hold the other harmless from any charge, liability or expense (including attorneys' fees) the other may suffer, sustain, or incur with respect to any claim for a commission, fee or other compensation by a broker or finder claiming by, through or under the other party.

Section 8.11. No Additional Waiver Implied by One Waiver.

In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 8.12. Force Majeure.

Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, acts of God, war, insurrection, terrorism, natural disasters or epidemics proximate to the Project. As a condition to the claim of nonliability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

Section 8.13. Assignment.

(a) This Agreement may not be assigned in whole or in part except to a Related Person of the Company (as that term is defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the Internal Revenue Code of 1986, as amended, hereinafter "Related Person") without the prior written consent of the Corporation. A transfer in excess of 50% of the equity voting interests of the Company, other than to a Related Person of the Company, shall be deemed an assignment and require the prior written consent of the Corporation. Any assignment shall be consented to by the Corporation on the following conditions, as of the time of each assignment:

- (i) no assignment shall relieve the Company from primary liability for any of its obligations hereunder;
- (ii) any approved assignee shall assume the obligations of the Company hereunder to the extent of the interest assigned;
- (iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Corporation a true and complete copy of such assignment and the instrument of assumption; and
- (iv) if the Corporation shall so request, as of the purported effective date of any assignment pursuant to subsection (a) of this Section 8.13, the Company at its cost shall furnish to the Corporation with an opinion, in form and substance satisfactory to the Corporation as to items (i) and (ii) above.

(b) Any such assignment shall be subject to the review and approval by the Corporation and its counsel (at no cost to the Corporation; any such cost to be paid by the Company, including reasonable attorneys fees to be agreed upon by the Company and Corporation prior to review and approval of any such request), and shall contain such terms and conditions as reasonably required by the Corporation and its counsel.

IN WITNESS WHEREOF, the Corporation and the Company have caused this Agreement to be executed in their respective names, all as of the date first above written.

TROY LOCAL DEVELOPMENT  
CORPORATION

By: \_\_\_\_\_  
William Dunne, Executive Director

9 FIRST STREET TROY, LLC

By: \_\_\_\_\_  
Name: Jeffrey Buell  
Title: Managing Member

State of New York            )  
  )  
County of Rensselaer        )        ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2013 before me, the undersigned, personally appeared **William Dunne**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

State of New York            )  
  )  
County of Rensselaer        )        ss.:

On the \_\_ day of \_\_\_\_\_ in the year 2013 before me, the undersigned, personally appeared **Jeffrey Buell**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**PERFORMANCE GUARANTY**

For good and valuable consideration, Jeffrey Buell and Christopher J. Colwell, (herein, the "Guarantors"), hereby jointly and severably, irrevocably, absolutely and unconditionally guarantee to the Troy Local Development Corporation (the "Corporation") and its assigns the full and prompt payment of all indebtedness, liabilities and performance obligations of the 9 First Street Troy, LLC (the "Company") hereunder including, without limitation, the undetaking of performance requirements and payment of the principal amount of the respective obligations and all interest, fees, costs and expenses. The within guarantees are independent of and in addition to any other guaranty, endorsement, collateral, remedy, statutory right or other agreement held by the Corporation or its assigns and are a guaranty of payment and performance, not of collection.

Dated: As of June 1, 2013

By: \_\_\_\_\_  
Jeffrey Buell

By: \_\_\_\_\_  
Christopher J. Colwell

State of New York     )  
  )     ss.:  
County of Rensselaer     )

On the \_\_ day of \_\_\_\_\_ in the year 2013 before me, the undersigned, personally appeared **Jeffrey Buell**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

State of New York     )  
  )     ss.:  
County of Rensselaer     )

On the \_\_ day of \_\_\_\_\_ in the year 2013 before me, the undersigned, personally appeared Christopher J. Colwell, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

EXHIBIT A  
DESCRIPTION OF THE PROPERTY

ALL THAT CERTAIN PARCEL OF LAND, with the buildings and improvements thereon erected, situate, in the City of Troy, County of Rensselaer and State of New York, on the west side of First Street in the Third Ward of the City of Troy aforesaid, being a portion of two certain lots of land known and distinguished on a certain map made by Flores Banker May 1, 1787, as numbers 72 and 73 on the east side of River Street, which said portion is described as follows:

BEGINNING at the point of intersection of the west line of First Street by the south line of the south wall of brick office No. 9, which point is 131 feet 4 inches southerly from the intersection of the west line of First Street by the east line of River Street, and running thence westerly along said south line and its continuation 72 feet to rear line of lands and premises belonging to the Estate of Mrs. Lydia Brooks, deceased; thence northerly along said rear line 8 feet 5 - 1/2 inches to the south wall of brick store No. 214, situate on the east side of River Street, which point is 45 feet 6 inches easterly from said east line of River Street; thence easterly along said south line of said south wall and its continuation 3 feet to its intersection by the east line of the lands and premises belonging to Mrs. Elizabeth Van Schoonhoven; thence northerly along Harry R. Lane and to the heirs of William H. Van Schoonhoven 42 feet to point of intersection of said last mentioned line by the continued center line of the party wall between brick office Nos. 7 and 8 situated on the west side of First Street; thence easterly along said center line 34 feet 6 inches to the west line of First Street; thence southerly along said last mentioned line 37 feet to the place of beginning.

SUBJECT, nevertheless, to a certain agreement relative to south wall of said office No. 9, made between Derrick lane, now deceased, and Luke H. Thrall, dated February 23, 1822 and recorded in the Rensselaer County Clerk's Office in Book 10 Page 190, and another agreement dated May 4, 1864 between J. Lansing Van Schoonhoven and said William H. Young, recorded in said clerk's office in Book 127 page 512. Excepting thereout a strip 8 inches wide on the south side as described in a deed from William H. Young and wife to J. Lansing Van Schoonhoven dated May 4, 1864 in Book 123 Page 288.