

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT ("Agreement") is made this 15th day of November 2013, by and between **James J. Googas and Mary Googas** with a mailing address of P.O. Box 8683, Albany, New York 12208 ("Buyer"), and **City of Albany**, a New York State municipal corporation having its principal place of business at 24 Eagle Street, Albany, New York 12207 ("Seller").

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meanings given them as set forth below:

(a) **"Closing"** shall mean the consummation of the transaction contemplated herein, which shall occur on or about Thirty (30) days after the expiration of the Due Diligence Period, or Buyer's notice that it is waiving the contingencies and Due Diligence Period rights (as defined herein) (the "Closing Date").

(b) **"Due Diligence Period"** shall mean the period beginning on the Effective Date (as defined herein) and extending through sixty (60) days after (i) Seller has delivered to Buyer the Due Diligence Materials (as defined in Section 4 herein) or (ii) the date of this Agreement, whichever is later. Buyer hereby has the right to terminate this Agreement for any reason whatsoever, in its sole discretion, within the Due Diligence Period (including any and all extensions thereto), upon which termination the Earnest Money (or such portion of the Earnest Money as shall be refundable to Buyer, as hereinafter set forth) shall be promptly returned to Buyer and neither party hereto shall have any further obligations or liabilities to the other hereunder.

(c) **"Intended Use"** shall mean the use of the Property for the following purpose: Any legal use.

(d) **"Property"** shall mean that certain property and improvements described in Schedule A. This Property includes all the Seller's rights and privileges, if any, to all land, water, streets and roads annexed to, and on all sides of the property.

(e) **"Purchase Price for Property"** shall mean One-Hundred Thousand Dollars and No/100 Cents (\$100,000.00), payable in cash or cash equivalents at Closing. Purchase Price for Property may also be referred to herein as the "Purchase Price".

(f) **"Effective Date"** shall mean the date of the last signature by Buyer or Seller on the signature page hereto.

Section 2. Proration of Expenses and Payment of Costs and Recording Fees. Seller and Buyer agree that all property taxes, assessments, leases, rents or any assumed liabilities, if any, shall be prorated on a calendar-year basis as of the date of Closing (except for school taxes, which will be adjusted on the school calendar year) and that Seller shall pay all agricultural and/or roll-back taxes, if any, at Closing. Buyer shall pay its attorneys' fees and the costs of any title search, title insurance, survey, all fees and costs relating to any mortgage to be obtained by Buyer, and recording costs.

Section 3. Title. The property shall be conveyed by Seller to Purchaser by means of a Quitclaim Deed. Upon information and belief Seller is the fee simple owner of the Property. Seller has full authority to convey the Property as set forth herein, and title to the Property is (or no later than Closing shall be) insurable at commercially reasonable rates, free and clear of all liens, assessments, delinquent taxes and other monetary encumbrances ("Monetary Liens") and all leases, tenancies, encumbrances, defects and other matters of title.

Section 4. Examination; Conditions; Other Obligations. Seller and Buyer hereby agree to the following with respect to title examination, property inspections, conditions, and other obligations:

(a) **Title Examination.** Buyer shall have the right but not the obligation to cause a title examination to be made of the Property and, prior to expiration of the Due Diligence Period, to deliver notice to Seller of any objections to such title (the "Objections"). Seller shall have ten (10) days after receipt of the Objections ("Seller Response Period") to either: (i) deliver notice to Buyer of its intent and agreement to cure, prior to Closing, all of the Objections at Seller's sole cost and expense, with no adjustment to the Purchase Price; or (ii) notify the Buyer of its election not to cure one or more of the Objections. Within the Seller Response Period, if Seller does not expressly (in writing) agree to cure all of the Objections, Seller shall be deemed to have elected option (ii) above. If Seller elects option (i) above, Seller's agreement to cure all Objections automatically shall become a binding obligation of Seller hereunder. If Seller elects (or is deemed to have elected) option (ii) above, then Buyer shall have the option to either: (a) terminate this Agreement by delivering a termination notice to Seller, with neither party having any further obligations in connection with this Agreement; or (b) proceed toward Closing and take title to the Property subject only to the Objections that Seller does not agree to cure. Notwithstanding anything to the contrary contained herein (including, without limitation, inclusion or exclusion from Buyer's Objections notice) in no event shall Buyer be required to take title the Property subject to, and in no event shall Seller elect or be deemed to have elected not to cure: (1) any Monetary Liens, (2) any requirements of Seller appearing on Schedule B-I or elsewhere within Buyer's title commitment ("Seller Requirements"), or (3) any other liens, encumbrances or other matters first appearing of record after the date of Buyer's initial title examination ("Subsequent Encumbrances"), Seller being hereby obligated to remove or satisfy all such Monetary Liens, Seller Requirements and Subsequent Encumbrances prior to Closing. In the

event Seller fails to remove or satisfy such Monetary Liens, Seller Requirements and Subsequent Encumbrances prior to Closing, Buyer shall have the right, in addition to its remedies contained in Section 7(c) herein, to proceed to Closing and remove or satisfy such matters on behalf of Seller, offsetting the cost to do so with a credit of equal amount against the Purchase Price.

(b) **Delivery and Review of Due Diligence Materials.** Within five (5) days after the Effective Date, Seller shall deliver to Buyer copies of any and all documents in Seller's possession or readily available to Seller pertaining to the Property, including without limitation any title-related documents, easements, surveys, engineering plans, maps, leases, contracts, site plans, environmental reports, soils reports, governmental correspondence or notices ("Due Diligence Materials").

(c) **Examination of Property.** During the term of this Agreement, Buyer, its agents and/or representatives, at Buyer's expense and at reasonable times, shall have the right but not the duty to enter upon the Property for the purposes of inspecting, examining, performing soil boring and other testing, surveying and performing other tests and/or inspections of the Property. Buyer shall be responsible for all damage or liability to the extent resulting from its acts in exercising its rights under this subsection and shall repair any material damage to the Property to the condition it was in prior to Buyer's entry thereon.

(d) **Cooperation.** Seller shall reasonably cooperate with Buyer at all times during the term of this Agreement, at no material cost or expense to Seller, in obtaining any permits, examining the Property, rezoning the Property, providing the Due Diligence Materials, and otherwise proceeding toward Closing.

Section 5. Environmental. To the best of Seller's knowledge and belief, no portion(s) of the Property (including without limitation any buildings, structures or containers thereon) contains any petroleum, oil, asbestos or any other hazardous wastes, hazardous substances, hazardous materials, toxic substances, hazardous air pollutants or toxic pollutants (collectively, "Hazardous Waste") as those terms are defined or otherwise used under any applicable federal, state or local law, regulation or ordinance (collectively, the "Environmental Laws. To the best of Seller's knowledge and belief, no portion(s) of the Property is/are in violation of any Environmental Laws, and neither Seller nor, to the best of Seller's knowledge and belief, any third party has used, manufactured, generated, treated, stored, disposed of, or released any Hazardous Waste on, under or about the Property. To the best of Seller's knowledge and belief, there is/are no storage tank(s) used or previously used for the storage of petroleum-based materials and there are no well(s) (whether existing or abandoned) located on, under or about the Property. Seller has received no correspondence or notice(s) from any governmental department or agency regarding any violations of Environmental Laws or the actual or suspected presence (past or present) of Hazardous Waste on the Property. Seller shall keep Buyer promptly informed at

all times during the term of this Agreement with regard to any actual or suspected contamination of the Property by any Hazardous Waste (past or present), and will immediately forward to Buyer any and all correspondence, reports and/or documents Seller receives with respect to the same. In the event that Buyer discovers any Hazardous Waste on the Property prior to Closing, Buyer, in addition to any and all other rights and remedies available hereunder or at law or in equity, shall have the right to terminate this Agreement. Except as otherwise set forth herein, in the event any Hazardous Waste or any above-ground storage tanks ("AST's") or underground storage tanks ("UST's") are discovered on, in or under the Property, Seller shall immediately (prior to Closing) and properly remove and dispose of such items and all related contamination, such removal and disposal to be obligations of Seller and conditions precedent to Buyer's Closing obligations.

Section 6. Risk of Loss/Damage/Condition/Repair. Seller agrees to maintain the Property in the condition existing on the Effective Date. Until the Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Seller shall not interfere with Buyer's zoning or permitting processes, however, in the event that Buyer determines that the Property must be rezoned in order to allow Buyer's Intended Use, Buyer shall notify Seller of such need and shall obtain Seller's prior written consent for such rezoning, which consent shall not be unreasonably delayed, withheld or refused by Seller. Seller hereby unconditionally agrees that without Buyer's express written approval (at Buyer's sole discretion) Seller shall not (i) apply for any municipal, state, or federal permit(s) related to the Property; (ii) attempt to rezone the Property or any portion thereof; and (iii) undertake any action that obstructs or unreasonably interferes with Buyer's rezoning or permitting processes. If at any time prior to Closing the Property, is not in the same condition as it was on the Effective Date, or the Property is damaged or altered, or the condition thereof becomes such that the Property cannot be conveyed in a manner that would reasonably allow Buyer to develop the Property for the Intended Use, Buyer may, in its sole discretion, either: (a) terminate this Agreement, upon which Buyer shall have no further obligations or liabilities hereunder; (b) proceed to Closing and have the right to require Seller to repair such change, damage or alterations to the Property.

(a) In the event that Buyer does not Close due to a default of this Agreement and Seller is not in default of Seller's obligations hereunder, then Seller may provide Buyer with a written notice of Buyer's default. If Buyer does not cure such default within fifteen (15) business days after such written default notice, Seller shall have the right to terminate this Agreement by written notice to Buyer, and the parties hereto shall be released from further liabilities and/or obligations hereunder (except as otherwise provided herein). Except as may be expressly stated in this Agreement, under no circumstances shall this Agreement be deemed to have automatically terminated.

(b) In the event of a default or breach of the obligations, representations or warranties herein taken or made by Seller, Buyer shall be entitled to its choice of the following remedies:

(i) Buyer may compel Seller to perform each and every one of Seller's obligations, or to cure each and every breach, untruth or inaccuracy of a representation or warranty, as applicable, contained in this Agreement by a suit for specific performance and Buyer shall also be entitled to recover all costs and expenses incurred in connection therewith, and Buyer shall be entitled to pursue any other remedies it may have at law or in equity to collect damages from Seller. In the event the remedy of specific performance is impractical, impossible or unavailable to Buyer, Seller shall be responsible to Buyer for any and all damages incurred by Buyer, and Buyer shall have any and all remedies available at law or in equity, including without limitation a reduction in Purchase Price equal to the amount of damages incurred or to be incurred by Buyer because of such default or breach. Neither This Agreement nor a memorandum thereof shall be recorded; and/or

(ii) Buyer may terminate this Agreement by written notice to Seller, upon which termination Buyer shall be entitled to pursue any remedies it may have at law or in equity to collect damages from Seller, including but not limited to reimbursement for due diligence fees, such as, without limitation, the cost of obtaining a survey, title reports, title commitments, legal fees, appraisal fees, loan fees, environmental and soils reports fees.

Section 8. Closing. Seller hereby agrees to sell the Property to Buyer for the Purchase Price at Closing, and Buyer hereby agrees to pay the Purchase Price at Closing. The Closing shall consist of the execution and delivery by Seller to Buyer of the deed required by this Agreement and other documents customarily executed by a seller in similar transactions. The Closing shall take place by mail or such other place as the parties hereto may mutually agree. Possession of the Property shall be delivered at Closing, unless otherwise agreed herein. Buyer shall have a reasonable amount of time after the Closing Date to complete this transaction so long as Buyer is, in good faith, proceeding towards Closing.

Section 9. Notices. Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date either: (i) delivered in person, (ii) one (1) day after being deposited with a nationally-recognized overnight courier, (iii) sent via facsimile, as evidenced by an automatically generated confirmation report (provided that such notice is also sent via another acceptable method hereunder), or (iv) three (3) days after being deposited in the United States mail, registered or certified, return receipt requested, items (i)–(iv) above being sent to the applicable addresses/numbers set out below, or at such other addresses/numbers as specified by written notice delivered in accordance herewith. Any notices

given or made under this Agreement may be given by legal counsel for the party giving such notice. Buyer's and Seller's respective notice addresses shall be as follows:

Seller's Notice Address:

City of Albany
Department of Law
24 Eagle Street, Room 106
Albany, New York 12207

Buyer's Notice Address:

James J. Googas and Mary Googas
P.O. Box 8683
Albany, New York 12208

Section 10A. Seller's Representations and Warranties; Other Obligations. Seller hereby represents and warrants to and covenants with Buyer as follows, the truth and accuracy of such representations or warranties being obligations of Seller:

(a) **Authorization.** Seller is duly authorized and has full authority to enter into this Agreement and to execute and deliver all documents required for Closing. This Agreement and all documents to be executed and delivered hereunder are and at the time of Closing shall be legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms. Seller has not granted any option or right of first refusal or first opportunity to any party to acquire any interest in the Property.

(b) **Compliance.** To Seller's actual knowledge, Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property, the use and operation of the Property is in compliance with all applicable federal, state and local laws, regulations, codes and ordinances, and the performance of the Agreement will not result in the breach of, constitute any default under, or result in the imposition of, any lien or encumbrance upon the Property under any Agreement or other instrument to which Seller is a party or by which Seller or the Property is bound.

(c) **Condemnation; Pending Litigation.** There is/are no: (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against Seller and/or the Property, and Seller is not aware of any facts that might result in any such action, suit or other proceeding; (iii) to the best of Seller's actual knowledge, changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; and/or (iv) to the best of Seller's actual knowledge, governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer or other improvements on or adjoining the Property, and no owners' association special assessments.

(d) **Accuracy.** To the best of Seller's actual knowledge, all reports and documents (including without limitation the Due Diligence Materials) delivered by Seller to Buyer in connection with this Agreement

are true, correct and complete copies of such documents, containing no misinformation or material omissions, and are without material default including any default that would arise by notice or the passage of time.

(e) **Agreements Concerning Property.** There are no unrecorded written or oral leases or tenancies on or concerning the Property. Except as otherwise specifically agreed herein by Buyer, to the extent there are written or oral leases or tenancies on the Property, recorded or unrecorded, all such leases or tenancies shall be terminated by Seller and the Property shall be completely vacated (including any and all personal property associated with such leases or tenancies) prior to Closing. During the term of this Agreement, Seller shall not enter into any new lease agreements or other agreements or contracts (recorded or unrecorded) concerning the Property, nor (by action or inaction) extend, renew, modify, amend, supplement or change any existing leases or contracts, or otherwise encumber the Property without the prior written consent of the Buyer.

Section 10B. Buyer's Representations and Warranties; Other Obligations. Buyer hereby represents and warrants to and covenants with Seller as follows, the truth and accuracy of such representations or warranties being obligations of Seller:

(a) **Authorization.** Buyer is duly authorized and has full authority to enter into this Agreement and to execute and deliver all documents required for Closing. This Agreement and all documents to be executed and delivered hereunder are and at the time of Closing shall be legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms.

Section 11. Miscellaneous.

(a) **Entire Agreement.** This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto. All Exhibits attached hereto are hereby incorporated into this Agreement.

(b) **Survival.** All representations, warranties, covenants and agreements made by the parties hereto shall be reasserted at Closing and shall survive Closing. Seller shall, at or within one (1) year after Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively complete Closing and to fulfill the obligations set forth herein, this provision to survive Closing.

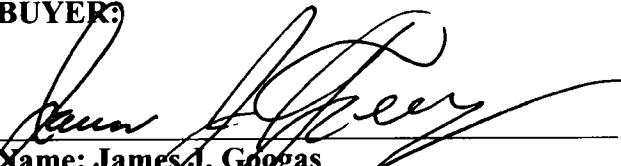
(c) **Applicable Law.** This Agreement shall be construed under the laws of the State of New York.

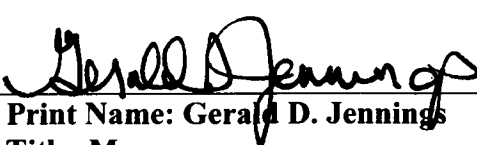
(d) **Calculation of Time Periods.** When computing any period of time described in this Agreement, in the event the last day of the period so computed falls on a Saturday, Sunday, bank or legal holiday under the laws of the State in which the Property is located, the period shall run until the end of the next day which is neither a Saturday, Sunday, bank or legal holiday. The final day of any such period shall be deemed to end at 11:59.59 pm eastern time.

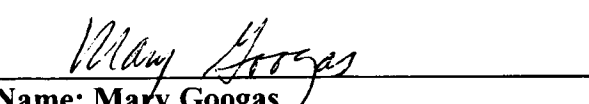
(e) **Real Estate Broker.** Neither party used nor engaged a broker for this transaction.

(f) **Force Majeure.** In the event that either Seller or Buyer shall be delayed, hindered in or prevented from performing any act required hereunder by reason of weather-related delays, natural disasters, strikes, lockouts, inability to procure permits, failure of power, restrictive governmental laws or regulations, civil commotion, riots, insurrection, war, acts of God, fire, unavoidable casualty, the discovery and/or removal of any Hazardous Materials on or from the Property or any other reason not the fault of, or within the reasonable control of, either Seller or Buyer ("Force Majeure"), then performance of such act shall be excused for the period of the delay and the period allowed for the performance of such act shall be extended for a period equivalent to the period of such delay.

(g) **Counterparts; Signatures.** This Agreement may be executed in counterparts and/or with counterpart signature pages, all of which together shall constitute a single agreement. Electronic facsimiles of signatures shall be acceptable and binding.

BUYER:

Name: James J. Googas
Date: 11/15/13

SELLER: City of Albany

Print Name: Gerald D. Jennings
Title: Mayor
Date: November 15, 2013

BUYER:

Name: Mary Googas
Date: 11/15/13

SCHEDULE A

ALL THAT TRACT, PIECE OR PARCEL OF LAND situate, lying and being in the City of Albany, County of Albany, State of New York, more particularly described as follows:

Beginning at a point on the southeasterly side of South Allen Street 60 feet northeasterly from the corner of South Allen Street and Dale Place and running thence northeasterly along said southeasterly side of South Allen Street a distance of 390 feet to a point, thence southeasterly along the division line between lots 251 and 252, 100 feet, running thence northeasterly on a line parallel to South Allen Street 60 feet to the south line of lot 165, thence southeasterly along the division line between lots 166 and 165, 98 feet to the northwest side of Onderdonk Avenue, thence running southwesterly along the northwesterly side of Onderdonk Avenue 510 feet to the northerly line of Dale Place, running thence along the said northerly line of Dale Place 98 feet, thence northeasterly on a line parallel to South Allen Street 60 feet, thence westerly along the division line between lots 238 and 239, 100 feet to the southeasterly side of South Allen Street, the point and place of beginning.

Said parcels being lots 166 thru 182 inclusive on Onderdonk Avenue and Lots 239 thru 251 inclusive fronting on South Allen Street as shown on map or plan of Allen Street Terrace, made by A.L. Eliot, C.E. dated March 8, 1911 and filed in the Albany County Clerk's Office in Book 25 as Map 750.

Also that tract or parcel of land, adjacent to 261 South Allen Street and 70 Onderdonk Avenue, 30 feet wide and 198 feet in length, commonly known as Dale Place as shown on the above referenced map.