

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE SUPERFUND PROGRAM
ECL §27-1301 *et seq.*

In the Matter of the Reimbursement of
Response Costs for an Inactive Hazardous
Waste Disposal Site, Under Article 27,
Title 13, and Article 71, Title 27 of the
Environmental Conservation Law of the
State of New York

ADMINISTRATIVE SETTLEMENT
Index No. R4-20210928-80

DEC Site Name: 222 South Ferry Street
DEC Site No.: 447047
Site Address: 222 South Ferry Street
Schenectady, New York 12305

Hereinafter referred to as "Site"

by: County of Schenectady, as trustee for
Schenectady County Community College
620 State Street
Schenectady, New York 12305

Hereinafter referred to as "Respondent"

1. A. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL"), Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and the New York State Finance Law ("SFL"), and pursuant to such laws the Department is authorized to enter into this Order on Consent and Administrative Settlement (the "Order").

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

C. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13, ECL Article 71, Title 27, ECL 3-0301 and SFL Section 97-b, and resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

D. 6 NYCRR § 375-2.11(c)(1)(ii) authorizes the Department to expend money from the hazardous waste remedial fund provided for at SFL Section 97-b to pay for the cleanup or restoration to its original state of any area where contaminants were disposed of or possessed unlawfully contrary to ECL 27-0914. 6 NYCRR § 375-2.11(c)(1)(iii) authorizes the Department to expend moneys of the hazardous waste remedial fund to pay for site identification, classification and investigation activities, including, but not limited to, testing, analyses, record searches and the Department's related administrative activities.

2. The Respondent is a municipal corporation.
3. The Site is currently listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State (the "Registry") as Site Number 447047, with a Classification of "2" pursuant to ECL 27-1305.
4. The Respondent, by resolution passed on October 12, 2021, has the authority to acquire the Site located at 222 Ferry Street, Schenectady, New York. Respondent has represented to the Department that it never directed, managed, influenced or controlled the activities at the Site.
5. The Respondent has a purchase agreement with 111 Liberty Plaza, LLC, the current owner and Reza Mahoutchian, the Chief Executive Officer, and the former owner, both of whom are potentially responsible parties.
6. The Department performed a Preliminary Site Assessment, which was completed in 2014. Groundwater samples contained concentrations of cis-1,2 dichloroethene and vinyl chloride above NYS groundwater standards.
7. The Department added the Site to the New York State Registry of Inactive Hazardous Waste Disposal Sites as Class 2 (i.e., poses a significant threat to public health and/or the environment) on June 18, 2014 based on the results of the Preliminary Site Assessment.
8. Respondent has represented to the Department that it cannot pay the total past and future investigation and remediation costs incurred by the Hazardous Waste Remedial Fund to address past release(s) of hazardous substances into the environment.
9. Pursuant to the legal authorities cited herein, the Department has incurred costs, and anticipates the need to incur additional costs, paid from the hazardous waste remedial fund for the implementation of a Remedial Program, including the completion of the remediation of hazardous wastes and/or substances identified on or in proximity to the Site. These expenditures are authorized by and in conformance with relevant

and applicable State and federal law.

10. Respondent and the Department agree that the objectives and conditions of this Order are for: (i) Respondent to reimburse a portion of the Department's past and future response costs at the Site; (ii) the Department to release and covenant not to sue the current owner, 111 Liberty Plaza, LLC, Respondent, its members, successors, and assigns for the investigation and remediation of the Site and for the reimbursement of Site-related response costs; (iii) the Department to provide Respondent with contribution protection provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and/or any other applicable federal or state law for matters addressed by this Order because the Respondent has demonstrated to the Department's satisfaction that Respondent was not a person who owned or operated the Site at the time of the disposal of the contamination or otherwise generated or disposed of the contaminants at the Site and has agreed to reimburse the Department for a portion of the past investigation and remedial costs, record an environmental easement and undertake site management activities beginning on January 1, 2023.

11. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site that occurred prior to Respondent's ownership or operation of the Site; and/or (iii) an acknowledgment that such release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

12. Solely regarding the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. Site Specific Definitions

Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 and/or regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations, or amendments thereto. The following items shall have the following meanings:

A. The Site: The real property designated by the Department as Registry Site Number 447047 known as the 222 South Ferry Street Site located at 222 South

Ferry Street, Schenectady, Schenectady County, New York, and more specifically identified as Schenectady County tax lots Section 39.71, Block 1, Lot 14.11. Exhibit "A" is a map of the Site.

II. Payment, Property Transfer and Other Actions

- A. Commencing on the Effective Date of this Order, the Respondent, its principals, agents, members, executors, employees, attorneys, successors and assigns shall refrain from using the Site in any manner that would interfere with or adversely affect the implementation, integrity and/or effectiveness of the investigation and/or remedial measures to be implemented on the Site.
- B. The Department understands that Respondent has agreed to purchase the Site. The Respondent agrees to provide the contract of sale for this pending transaction to the Department upon execution of this Order.
- C. Within twenty (20) business days of the closing of the sale of the Site, Respondent shall pay the sum of TWO HUNDRED FIFTEEN THOUSAND DOLLARS (\$215,000) to the Department via the procedures provided in Paragraph V below for the purpose of resolving liability for the past and future costs associated with the contamination at the Site and incurred by the hazardous waste remedial fund.

III. Appropriate Care/Cooperation

As owner, Respondent shall exercise appropriate care with respect to any remaining contamination at and/or emanating from the Site; shall cooperate fully with the Department in its implementation of any response actions necessary to address contamination at and/or emanating from the Site and shall not interfere with such response actions; and Respondent, any parent company, successors and assigns, shall ensure that any development activities on the Site are in compliance with applicable local, State and federal laws and regulations, including but not limited to 6 NYCRR §§ 375-1.11 and 375-2.11. Respondent represents that it is a Bona Fide Prospective Purchaser ("BFPP") as that term is defined in Section 101(40) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601(40) and that it has and will continue to comply with the requirements of CERCLA §§ 101(40) and 107(r)(1) during its ownership of the Site. Respondent further represents that Respondent would qualify for the protection from liability under CERCLA set forth in CERCLA § 107(r)(1), 42 U.S.C. § 9607(r)(1), with respect to the contamination existing at or migrating from the Site on the effective date of this Order.

IV. Access

A. Commencing on the Effective Date of this Order, Respondent shall provide the Department and its agents, employees, contractors and subcontractors (collectively its "Representatives") with access to the Site at all reasonable times for the purposes of performing any remaining site investigation, sampling and remedial activities, as necessary. The Department and/or its Representatives shall make good faith efforts to notify Respondent or Respondent's authorized representative prior to entering the Site and to the extent possible and reasonable, avoid interfering with business activities at the Site.

- (i) Respondent shall take reasonable steps to ensure that any lessees and sublessees of the Site provide the Department and its Representatives with Site access; including limiting parking upon request and as needed by the Department to complete the above-described activities (e.g. ensuring access to monitoring wells by preventing parking over and around monitoring wells).
- (ii) The Department shall make any request to limit parking, at least 72 hours in advance.

B. Subject to IV.A above, the Department and its Representatives will enter the Site for the performance of work thereon for one or more of the purposes set forth in Environmental Conservation Law ("ECL") Sections 27-1309(3)-(4) and 27-1313(8), and particularly for the purpose of conducting remedial activities at the Property. This is not a notice that the Department intends to acquire the property nor is it an offer to acquire it.

C. Subject to IV.A above, Respondent will permit entry on and use of the Property by the Department and its Representatives to:

- (i) Operate work areas;
- (ii) Remove material generated as part of the Department's remedial activities;
- (iii) Carry on any activity necessary for the investigation and remediation of the Property, including site management (as necessary), together with the rights at all times during the duration of this Order of ingress, egress and regress by the Department and its Representatives for purposes of the remedial action and as will be memorialized in the Environmental Easement;
- (iv) Collection of soil, groundwater and/or soil vapor and indoor air samples;
- (v) Complete injection treatments through 2022;

- (vi) Decommission up to seven (7) on-Site monitoring wells prior to 2023; and
- (vii) Complete quarterly sampling, including groundwater sampling through the final quarter of 2022.

D. Respondent shall provide the documents necessary to complete an environmental easement and shall ensure the filing and recording of the same for the Site. The environmental easement will require compliance with the Site Management plan, which will restrict the use of the Site to commercial and industrial uses and the use of groundwater at the Site among other things.

E. After the Department completes quarterly sampling in 2022, the Respondent shall assume responsibility for all sampling activities under the Site Management Plan, which when finalized is expected to include sampling of approximately 6-8 monitoring wells for volatile organic compounds (VOCs) once every 5th quarter for five (5) or more years, as determined by the Department based on the relevant data and supporting information provided by the Respondent.

V. Payment

In full satisfaction and resolution of any and all claims by the Department related to the existing contamination at the Site, Respondent shall pay the sum of TWO HUNDRED FIFTEEN THOUSAND DOLLARS (\$215,000.00) to the Department either by (1) Electronic Fund Transfer ("EFT") to the New York State Department of Environmental Conservation account in accordance with the Department's current EFT procedures, or (2) by certified or bank check, payable to "New York State Department of Environmental Conservation" mailed to:

Department of Environmental Conservation
Division of Management and Budget Services
625 Broadway, 10th Floor
Albany, New York 12233-4900

The executed Order on Consent shall be sent to:

Regional Attorney Region 4 (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
1130 North Westcott Road
Schenectady, New York, 12306

VI. Release and Covenant Not to Sue

A. Upon the Department's receipt of Respondent's payment pursuant to Section II of this Order, Respondent, the members, successors, and assigns of the Respondent and the current owner, 111 Liberty Plaza, LLC, and its members, shall not be liable to the Department upon any statutory or common law cause of action arising out of the presence of any contaminants in, on, to or emanating from the Site at any time before the effective date of this Order, provided that: (1) Respondent continues to exercise appropriate care and cooperation as required in Section III; and (2) Respondent continues to allow access as required in Section IV.

B. The terms of this release are consistent with those governing the issuance of a Certificate of Completion, including limitations, reopener provisions and extension to successors and assigns, found in 6 NYCRR § 375-2.9.

C. The liability protections set forth in this section shall extend to successors or assigns through acquisition of title to the Site and to any person who develops or otherwise occupies the Site; provided that such persons act with due care and in good faith to adhere to the requirements of relevant institutional controls, including but not limited to a Site Management Plan and the Environmental Easement; and provided that such successor in title, lessee, or lender did not generate, arrange for, transport, or dispose, and did not cause the generation, arrangement for, transportation, or disposal of any contamination located at the Site, and did not previously own the Site.

D. Respondent shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL § 27-1421(6) and 6 NYCRR § 375-1.5(b)(5), and as provided in the provisions set forth in 42 U.S.C. Section 9613 (f). The matters addressed pursuant to and in accordance with this Order and agreement, as that term is used in ECL § 27-1421(6) and 6 NYCRR § 375-1.5(b)(5), include any and all past or future claims for response costs of removal or remedial action incurred not inconsistent with the National Contingency Plan within the meaning of CERCLA § 107(a)(4)(A), 42 U.S.C. § 9607(a)(4)(A), that the Department has incurred or may incur in responding to the release and/or threatened release of hazardous wastes at the Site, as well as any and all past, present, or future federal, state or common law claims, including prejudgment interest accrued thereon, that were, or could now or hereafter be, asserted by the State against Respondent arising out of or in connection with the disposal, release or threat of release of hazardous wastes at, from, or from the Site, including but not limited to any claims regarding off-site contamination that may be emanating from the Site, may have emanated from the Site or may emanate in the future from the Site, whether incurred or to be incurred by the State.

E. The Department hereby reserves its rights, and such release and covenant not to sue shall not extend to, any further investigation and/or remedial

action the Department deems necessary due to:

- Respondent's failure to implement this Order to the Department's reasonable satisfaction; or
- Fraud committed by Respondent in entering into or implementing this Order.

F. Additionally, the Department reserves all of its rights, and any such release and covenant not to sue shall not extend to Respondent, if Respondent causes or allows a post-closing release or a threat of release of any hazardous waste (as that term is defined at 6 NYCRR § 375-1.2[w]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than the contamination existing at or from the Site or arising therefrom at and upon the effective date of this Order (the "Present Contamination").

G. Notwithstanding any other provision in this release and covenant not to sue:

- If, with respect to the Site, there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this Order shall be construed or deemed to preclude the State of New York from recovering such claim against any liable party;
- Except as provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to, the right to recover natural resource damages) with respect to any part, including the Respondent.
- Nothing contained in this Order shall prejudice any of the Department's rights to take any investigatory or remedial action it deems necessary if Respondent fails to comply with this Order or if contamination other than the Present Contamination is encountered at the Site.
- Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.
- Nothing contained in this Order shall be construed to affect the Department's right to terminate the Order and this "Release and Covenant Not to Sue" under the terms of the Order at any time during its implementation if it is determined, after a due process proceeding, that Respondent failed to comply with the Order's terms and conditions.

H. Nothing herein shall be construed as barring, diminishing, adjudicating, or

in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that: (1) Respondent may have against anyone other than the Department, including but not limited to rights of contribution under Section 113(f)(B)(3) of CERCLA, 42 U.S.C. § 9613(f)(B)(3); and (2) the Department may have against anyone other than the Respondent.

I. Except as otherwise provided in this Order, Respondent specifically reserves all rights and defenses under applicable law respecting any assertion by the Department or other party of remedial liability and/or natural resource damages against Respondent, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, hearing, appeal and to any other due process. The existence of this Order or Respondent's compliance thereto shall not be construed as an admission of any liability, fault, wrongdoing, or breach of standard of care by Respondent and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action which shall inure to the benefit of any third party.

VII. Communications

A. All written communications required by this Consent Order shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Respondent shall be sent to:

Ruth Curley, DEC Project Manager
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, New York 12233
ruth.curley@dec.ny.gov

Regional Attorney Region 4 (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
1130 North Westcott Road
Schenectady, New York, 12306

2. Communication from the Department to Respondent shall be sent to:

Rory Fluman
Schenectady County Manager
620 State Street
6th Floor
Schenectady, NY 12305

With a copy to:

Christopher H. Gardner
Schenectady County Attorney
620 State Street
6th Floor
Schenectady, NY 12305

B. The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph I.

VIII. Termination

Should the release and covenant not to sue in Section VI.A herein become null and void, *ab initio*, due to fraud in the execution or implementation of this Order or because the Department, after a due process proceeding, establishes that Respondent fails to materially comply with any provision of this Order, then neither this Order nor its termination shall affect any liability of Respondent to pay costs incurred by the State, except for any State costs paid through the date of the breach, including costs to implement removal and remedial actions, interest, enforcement, and any and all other response costs, as defined in CERCLA.

IX. Miscellaneous

A. The terms of this Order, including the release from liability, shall inure to the benefit of Respondent and its members, successors and assigns. Any change of ownership or corporate status of Respondent, including, but limited to, any transfer of assets or real or personal property, shall in no way alter Respondent's responsibilities under this Order.

B. The Section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order.

C. The terms of this Order shall constitute the complete and entire agreement between the Department and the Respondent concerning the actions required by this Order. No term, condition, understanding or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion or comment by the Department shall be construed as relieving Respondent of its obligation to obtain formal approvals as required by this Order.

D. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27, Title 13 or in regulations promulgated thereunder shall have the meaning assigned to them under such statute or regulations.

E. Respondent's obligations under this Order represent payment for or reimbursement of removal or response costs and shall not be deemed to constitute a fine or penalty.

F. This Order may be executed for the convenience of the parties thereto, individually or in combination, in one or more counterparts, each of which for all purposes shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

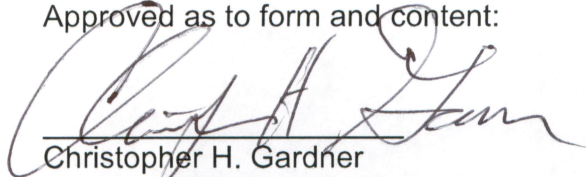
D. The effective date of this Order is the date it is signed by the Commissioner or the Commissioner's designee.

DATED: *January 5, 2022*

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: *Susan Edwards*
Susan Edwards, P.E.
Acting Director
Division of Environmental Remediation

Approved as to form and content:

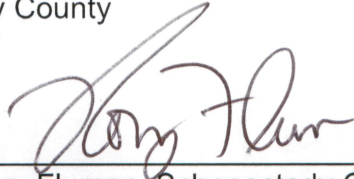

Christopher H. Gardner
Schenectady County Attorney

CONSENT BY
RESPONDENT

Respondent hereby consents to the issuing and entering of this Order on Consent (R4-20210928-80), and without adjudication, waives its rights to notice and hearing herein, and agrees to be bound by the provisions, terms, and conditions contained herein.

Schenectady County

SIGNED: _____


Rory Fluman, Schenectady County Manager

DATE: _____

11/22/21

STATE OF New York)
COUNTY OF Schenectady) ss.:

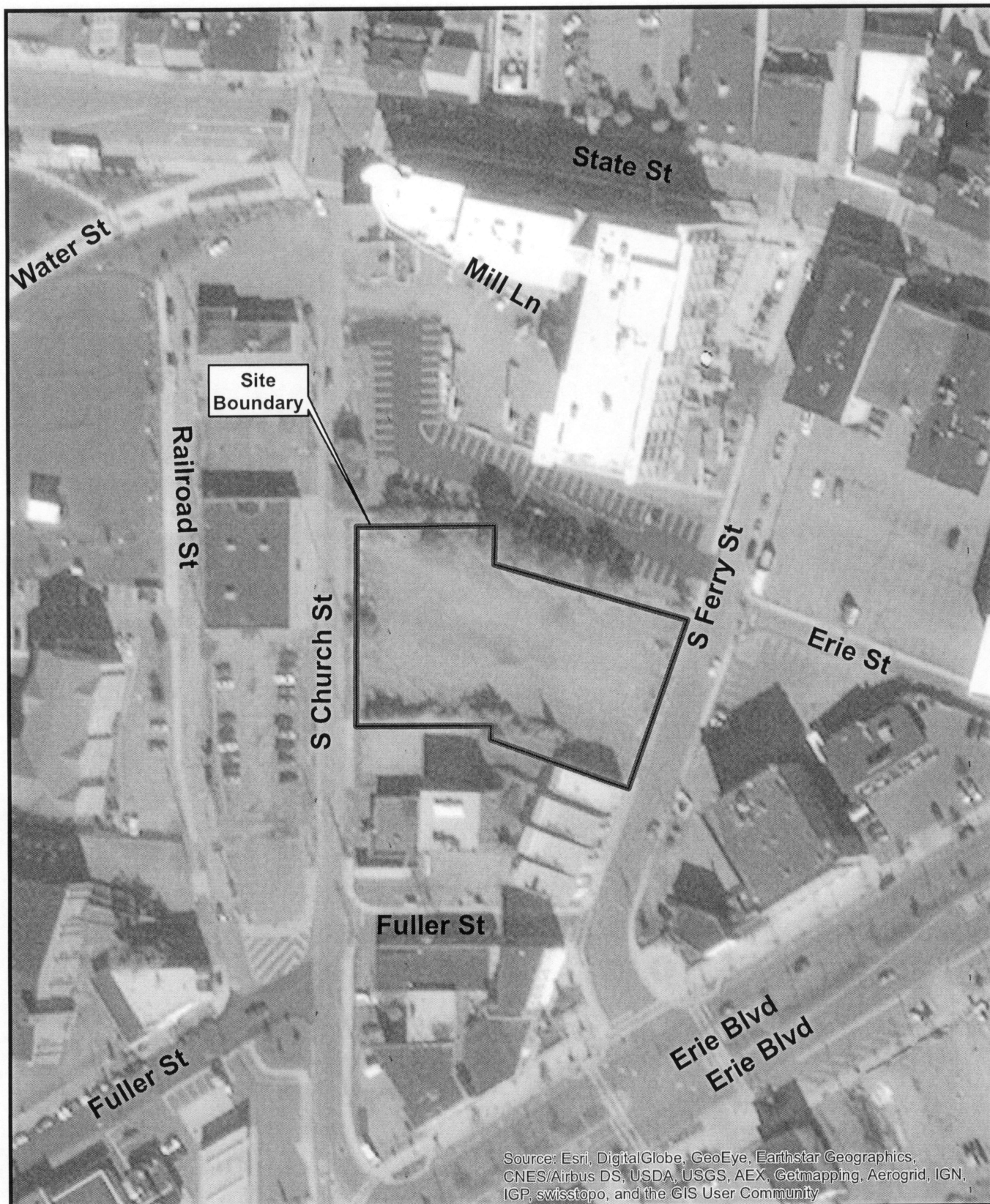
On the 22 day of November in the year 2021 before me, the undersigned, a Notary Public in and for the State, personally appeared Rory Fluman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

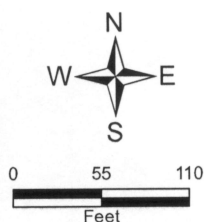
Frank S. Salamone
Notary Public, State of New York
Qualified in Schenectady County
No. 02SA6224102
Commission Expires June 28, 2022

EXHIBIT "A"

Map



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community



Site Map

222 S Ferry St
Schenectady, NY
Site No. 447047

CONTRACT FOR PURCHASE AND SALE OF REAL ESTATE

1. IDENTIFICATION OF PARTIES TO THE CONTRACT

A. **SELLER** – The Seller is 111 **LIBERTY PLAZA, LLC**, a limited liability company, duly organized and existing under the laws of the State of New York, or its' assignee and successor in interest, with an office for the transaction of business at 249 Lake Road, Ballston Lake, NY 12019.

B. **PURCHASER** – The Purchaser is **THE COUNTY OF SCHENECTADY**, a municipal corporation, organized and existing under the laws of the State of New York, with an office for the transaction of business at 620 State Street, Schenectady, NY 12305.

2. PROPERTY TO BE SOLD

The property which the Seller, or its' assignee and successor, is agreeing to sell and which the Purchaser is agreeing to purchase is a parcel of vacant land, with limited improvements thereon presently being used as a parking lot, located in the City of Schenectady, County of Schenectady, State of New York, commonly known and identified as follows: 222 South Ferry Street, and designated as Section, Block and Lot of 39.71-1-14.11.

3. PURCHASE PRICE

The purchase price is One Million (\$1,000,000.00) DOLLARS
The Purchaser shall pay the purchase price as follows:

- a. \$ 10,000.00 deposit due at signing
- b. \$ 990,000.00 in cash or certified check at closing
- c. \$1,000,000.00 TOTAL PRICE

4. CONDITION OF PROPERTY TO BE CONVEYED

A. The subject property, and any improvements or fixtures located on or in said property is being sold "AS IS", and except as otherwise herein provided in paragraph "5" hereof, the Seller has not made and does not make any warranties, either express or implied, statements, claims or representations about the condition or value of the subject property or any buildings, equipment or fixtures located on or in the property being sold. The Seller shall not be responsible for, nor bound by or to any statement made by any Broker or other party or representative that may be at variance with the terms of this agreement. All oral negotiations or representations made by Seller or anyone else in connection with this contract are not binding upon the Seller and the terms herein set forth shall control. The Purchaser hereby agrees to accept the subject property in its "AS IS" condition and to complete the closing of title without regard to the condition of the

subject property, including, but not limited to any existing environmental conditions, subject to Purchaser's completion of due diligence inspections as hereinafter provided. The purchase price herein provided shall not be subject to any diminution or modification by reason of any condition disclosed or determined as a result of any inspection(s) or test(s) sought or obtained by the Purchaser.

B. As hereby disclosed by the Seller and as is known to the Purchaser, the subject property has previously been designated by the New York State Environmental Conservation Department (hereinafter "NYSDEC") as State Superfund Site No. 447047 and has been the subject of numerous prior environmental inspections and assessments. The property is presently the subject of an ongoing remediation and monitoring process undertaken by NYSDEC, that is being conducted and performed by HRP Associates, Inc., 1 Fairchild Square Suite 110, Clifton Park, NY 12065.

5. LIMITED REPRESENTATIONS AND WARRANTIES OF SELLER

Seller, and/or its assignee or successor, to the best of its' knowledge represents and warrants as follows:

(A) The Property is being transferred to the Purchaser in "as-is" condition, together with all improvements and fixtures located thereon at the date of closing.

(B) Seller has no actual knowledge of any material pending or threatened lawsuits or claims against the Seller affecting the Property except the conditions relating to the classification of the subject property by NYSDEC as a "State Superfund Site" and the ongoing remediation project being conducted by that agency.

(C) The Seller owns legal and beneficial title to the Property free and clear of all liens and encumbrances, except those created or imposed by the NYSDEC in connection with the ongoing remediation and monitoring of the property being performed by HRP Associates, Inc., or other claims that may be discharged at the closing of this transaction.

(D) The Property and its present use and condition does not violate any applicable deed restrictions or covenants, restrictions or agreements, site plan approvals, zoning or subdivision regulations or urban redevelopment plans applicable to the Property, as modified by any duly issued variances.

(E) Except as set forth in paragraph "4" relative to the actions of the NYSDEC, no notices of violation of law or municipal ordinances or of federal, state, county or municipal or other governmental agency regulation, orders or requirements relating to the Property have been entered or received by the Seller, and the Seller has no reason to believe that any notice may or will be entered.

(F) Except as set forth herein with respect to the classification, inspection, testing, remediation, and monitoring conducted by NYSDEC, there is no action or proceeding (zoning or otherwise) or governmental investigation pending, or, to the knowledge of the

Seller, threatened against or relating to the Seller, the Property or the transaction contemplated by this Agreement, nor, to the best knowledge of the Seller, is there any basis for such an action.

(G) All roads bounding the Property are public roads and the deed is the only instrument necessary to convey to the Purchaser full access to and the right to the roads freely as well as all rights appurtenant to the Property in the roads.

(H) There are no persons entitled to possession or use of the Property other than the Seller, whether by lease or other agreement, adverse possession, prescription or otherwise.

(I) There is not, nor has there been, any dispute or claim made with respect to the property lines of the Property.

(J) Seller makes no other representations or warranties with respect to the subject property and will convey the same in "as-is" condition, as set forth in paragraph "4" above.

6. RIGHT OF INSPECTION AND ACCESS

(A). During the Due Diligence Period as hereinafter provided, the Purchaser and Purchaser's engineers, environmental engineers, architects and other consultants and agents shall have the right to enter the Property and examine the Property and perform all necessary non-invasive tests and inspections and all other necessary due diligence for the purpose of satisfying itself as to all matters bearing on the condition of the Property and the use and operation of the Property by the Purchaser, provided that the Purchaser shall, at its own expense, return the Property to its condition as it existed prior to any such test or inspection.

(B). Due Diligence Period. Following execution of this Contract by the parties, the Purchaser shall have a thirty (30) day due diligence period within which the Purchaser may, as herein provided, undertake, and complete such inspection(s), test(s), or survey(s) relative to the subject property as follows:

(i). upon reasonable notice to the Seller, or its assignee or successor, and subject to the rights of any Tenants, the Purchaser and/or its designated agents or representatives shall have the right to enter upon the subject property during the thirty (30) day due diligence period for the purpose of conducting all visual and otherwise, non-invasive inspections, tests and measurements relative to the subject property; and to review any information, documents or records, including but not limited to rent rolls, service, maintenance, or other similar contracts, invoices, expense or maintenance records, in the Seller's possession relating specifically, to the operation and maintenance of the subject property. Purchaser shall not be entitled, except upon Seller's consent, to review tax or other similar confidential documents or information relating to the subject property; and the Seller shall not be obliged or obligated to create or compile any documentation or records that do not already exist. All inspections, measurements, or tests conducted

pursuant to this Agreement shall be completed at the sole cost and expense of the Purchaser. The Purchaser shall be responsible for restoring or repairing any damage or disruption caused to the property, and shall defend, indemnify and hold harmless the Seller from any claim for any injury(ies) or damage to any third party arising in connection with or resulting from such inspection(s) or test(s). Except as otherwise required by law, the Purchaser, its agent(s), employees, and/or designee(s) shall not report or disclose the results of said test(s) or inspection(s) to any person or entity other than the Purchaser or Seller without the prior written authorization and consent of the Seller.

(ii). It is expressly agreed that based upon Seller's disclosure and Purchaser's existing knowledge, that Purchaser's due diligence inspection shall exclude performing further inspections or testing relative to the conditions disclosed by the Seller and known to the Purchaser regarding the existing environmental conditions on the subject property or with respect to the ongoing remediation and monitoring of the subject property conducted on behalf of the NYSDEC. Provided however, that this provision shall not preclude the Purchaser from obtaining or reviewing any existing information or reports concerning the existing environmental condition of the subject property.

(iii) In the event, the Purchaser shall elect to cancel this contract based upon any inspection(s) or test(s) completed pursuant to the provisions of this Contract, then the Purchaser or Purchaser's attorney shall notify the Seller and Seller's attorney of such determination in writing and if requested, shall provide to the Seller a copy of any inspection, test or report that is the basis for such cancellation no later than two (2) business days after the inspection report is requested. Upon such cancellation, the Purchaser shall be entitled only to the return of its deposit, subject to the provisions of subparagraph "(A)" above and shall have no other claim for expenses, loss, or damages of any kind whatsoever against the Seller. In the event Purchaser shall fail to timely exercise its right to terminate the contract by notifying Seller of the same, as herein provided, Purchaser's right to cancel or terminate this contract based upon its due diligence inspections, shall be deemed waived.

(iv). During the due diligence period, the Purchaser, at its' own cost and expense, expects to obtain a Release from the NYSDEC, the State of New York and such other governmental agencies or entities as may have jurisdiction or authority over the subject property, releasing the Purchaser and its' successors and assigns from any costs, claims, liabilities, liens, or obligation to remediate, restore the subject property, and/or to undertake or perform any further investigation, testing or environmental assessments relating to any existing environmental conditions thereon or relating to any prior or ongoing inspections, investigations, assessments, remediation or environmental restoration of the subject property undertaken or completed by or on behalf of

the NYSDEC, the US-EPA or any other governmental agency or entity. The parties each acknowledge and agree that the Purchaser's obligation to purchase the subject property pursuant to the terms of this contract shall be contingent and conditioned upon the Purchaser obtaining such Release or an agreement to provide the same prior to the expiration of the thirty (30) day due diligence period. In the event Purchaser shall fail to notify the Seller and Seller's attorney of the failure or inability to obtain such Release prior to the expiration of the due diligence period, then this contingency shall be deemed to have been waived by the Purchaser and its' obligations under the contract shall not be contingent or conditioned upon such Release.

7. ENVIRONMENTAL INDEMNIFICATION

(A) Upon transfer of title, the County of Schenectady releases, forever discharges and covenants not to sue Reza Mahoutchian, Maxim Engineering, PC, or the Seller, 111 Liberty Plaza, LLC, and/or its' assignee or successor with respect to all the Claims as set forth in paragraph (b) of this Section and further agrees to defend, indemnify, and hold harmless Reza Mahoutchian, Maxim Engineering, PC and the Seller, 111 Liberty Plaza, LLC, its' assignee, or successor with respect to any matter within the scope of the Claims, or relating to the existing environmental conditions on the subject property.

(B). Claims shall mean and include, without limitation, any claim, lien, action or cause of action by EPA, DEC, and any other federal and state agency seeking to impose, require, compel any corrective actions or to recover any cost or expenses relating to or arising from or in connection with any investigation, testing, monitoring, remediation, environmental restoration, cleanup, removal or remediation of any contaminated or hazardous substance, material or condition and shall include any environmental duties, obligations, costs or expenses of any kind whatsoever, as well as all oversight costs incurred or to be incurred by the United States, and the State of New York, or any agency thereof, related to the investigation, remediation, cleanup and/or restoration of the Property, and/or any existing environmental conditions on said property. Any defense or indemnification provided to Reza Mahoutchian, Maxim Engineering, PC, 111 Liberty Plaza, LLC., or its' assignee or successor, is limited to such claims and shall not extend to matters unrelated to such claims.

(C). The provisions of this Section, and only this section, shall survive the closing and shall be binding on the parties, their heirs, and assigns, forever.

8. SURVIVAL OF REPRESENTATIONS

Except as otherwise herein provided with respect to environmental conditions and indemnification relative thereto which shall survive the closing and transfer of title, all other representations, warranties, and agreements set forth in this Agreement shall be true on the execution of this Agreement but shall not survive the delivery of the deed and other closing instruments.

9. SELLERS DOCUMENTS

At or before the closing, in addition to documents otherwise required herein, Seller shall furnish the following documents to Purchaser:

- (a) Such documents, undertakings or representations as Purchaser's title insurer, or Purchaser's attorney may reasonably require to convey title to the Purchaser.

10. SELLER CONTINGENCY

This Agreement is contingent upon the Schenectady County Legislature approving this Agreement no later than November 9, 2021. Should such approval not be granted, this Agreement shall be deemed null and void; all deposits, if paid, shall be returned; and neither party shall have any further obligation or duty to the other.

11. TITLE AND SURVEY

A fee title insurance policy, if desired or required, shall be obtained at the expense of Purchaser. The Seller shall provide any existing survey, abstract of title, or title insurance policy information in Seller's possession and control; and Seller shall pay the cost of an abstract of title or updating such abstract of title, or the cost of any title and tax search update in connection with Purchaser's title insurance not to exceed \$450.00

Purchaser shall have no obligation to purchase the Property unless, within thirty (30) days following the full execution and delivery of this Agreement (the "Title Contingency Expiration Date"), the following contingencies have either been satisfied or waived by Purchaser in Purchaser's sole discretion:

- (a) Purchaser shall have obtained a title report or updated abstract evidencing the ability of Seller to convey good and marketable fee title to Purchaser at closing. Nothing contained herein shall permit Seller to refuse to pay off at the closing mortgages and other liens on the Property, excepting any claims or liens relating to or arising from or in connection with any inspections, testing classification, remediation and/or monitoring activities of NYSDEC, and/or relating to any existing environmental conditions on the property.
- (b) Purchaser shall have obtained a survey which does not show any state of facts that would render title unmarketable.

Purchaser shall order such title report and survey within five business days of the execution of the Agreement.

12. CONDITIONS AFFECTING TITLE

The Seller shall convey and the Purchaser shall accept the Property subject to the covenants, conditions, restrictions of record and usual utility easements of record and zoning laws, so long as the Property is not in violation thereof and any of the foregoing does not prevent Purchaser's use of the property as contemplated herein; also subject any state of facts which an

inspection may show, provided that nothing in this paragraph renders the title to the Property unmarketable.

13. TRANSFER OF TITLE

Transfer of title is to be completed at 12:00 Noon on or before November 16, 2021, at the office of Purchaser's attorney.

14. DEED

The Property shall be transferred from Seller to Purchaser by means of a Warranty Deed, or equivalent deed furnished by the Seller. The deed and real property transfer gains tax affidavits will be properly prepared and signed so that it will be accepted for recording by the Schenectady County Clerk.

15. NEW YORK STATE TRANSFER TAX

The Parties agree that the Seller is responsible for the payment of Transfer Tax unless the transaction is exempt from such tax.

16. TAX AND OTHER ADJUSTMENTS

Taxes and assessments shall be apportioned so that the Purchaser and Seller are assuming the expenses of the Property as of the date of transfer of title.

17. REAL ESTATE BROKER

The Parties acknowledge that No Real Estate Broker or Agent was instrumental or participated in bringing about this Agreement.

18. DEPOSITS

Any deposit(s) made by the Purchaser shall be deposited in escrow with the Seller's attorney, Frederick W. Killeen, Esq., 179 ½ Jay St., Schenectady, NY 12305, as a part of the purchase price. All deposits shall be held in escrow by the Seller's attorney until the completion of the transfer of title. If this contract is terminated by reason of any condition herein, or for a reason other than the default or failure of the Purchaser to perform, the deposit shall be returned to the Purchaser upon such termination. The Purchaser will receive credit for the deposit toward the purchase price upon the closing and transfer of title. If the contingencies and terms herein provided cannot be resolved, or in the event of a default by the Seller or the Purchaser, the deposit will be held by the Seller's attorney pending a resolution regarding the disposition of the deposit.

19. NOTICES

All notices contemplated by this agreement shall be in writing, delivered by certified or registered mail, return receipt requested, postmarked no later than the required date, or by personal service by such date to the parties, or by notices between the attorneys for the parties which all be deemed adequate notice. Notices between attorneys may be delivered by regular First-Class mail or

overnight delivery postmarked no later than the required date of notice, or by telecopier/facsimile or e-mail transmitted on or before such date or by personal service by such date. Copies of all notices shall be sent to the following:

If to Purchaser:	County of Schenectady Attn: Rory Fluman, County Manager. Schenectady County Office Building 620 State Street Schenectady, New York 12305
With a copy to: (Purchaser's Attorney)	Christopher Gardner, Esq. Schenectady County Attorney Office of the County Attorney 620 State Street Schenectady, New York 12305 Phone No: (518)-388-4700 Fax No.: (518)-388-4493 e-mail: chris.gardner@schenectadycounty.com
If to Seller:	111 Liberty Plaza, LLC, Attn: Mr. Reza Mahoutchian 249 Lake Road Ballston Lake, New York 12019
With a copy to: (Seller's Attorney)	Frederick W. Killeen, Esq. The Killeen Building 179 1/2 Jay Street Schenectady, New York 12305 Phone: (518) 370-1233 Fax No.: (518) 370-1818 e-mail: kbesql1c@aol.com

20. ENTIRE AGREEMENT

This Agreement contains all agreements of the parties hereto. There are no promises, agreements, terms, conditions, warranties, representations, or statements other than contained herein. This Agreement shall apply to and bind the heirs, legal representatives, successors and assigns of the respective parties. It may not be changed orally.

21. MODIFICATION

No change or modification of this Agreement shall be valid or binding upon the parties, nor shall any waiver of any term or condition be deemed a waiver of the term or condition in the future, unless the change or modification or waiver shall be in writing signed by all parties.

22. COUNTERPARTS AND ELECTRONIC SIGNATURE

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Confirmation of execution by electronic transmission of a facsimile, or emailed signature page, shall be binding on a party so confirming.

23. BINDING EFFECT

This Agreement shall inure for the benefit of and be binding upon the parties, their legal representatives, heirs, successors and assigns and except as otherwise herein provided its' provisions shall not survive the closing and transfer of title.

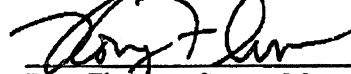
SELLER

111 LIBERTY PLAZA, LLC.

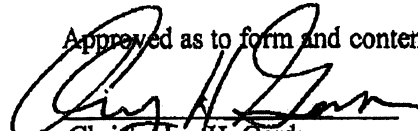
By: _____
Reza Mahoutchian, Managing Member

PURCHASER

COUNTY OF SCHENECTADY


Rory Fluman, County Manager

Approved as to form and content:


Christopher H. Gardner,
County Attorney

STATE OF NEW YORK)
COUNTY OF SCHENECTADY) ss.:

On the ____ day of October, 2021, before me, the undersigned, a Notary Public in and for said State, appeared **Reza Mahoutchian**, individually, 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 signature(s) 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

STATE OF NEW YORK)
COUNTY OF SCHENECTADY) ss.:

On the 26 day of October, 2021, before me, the undersigned, a Notary Public in and for said State, appeared **Rory Fluman**, individually, 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), as the County Manager of Schenectady County and that by his/her/their signature(s) 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

Frank S. Salamone
Notary Public, State of New York
Qualified in Schenectady County
No. 02SA6224102
Commission Expires June 28, 2022

STATE OF NEW YORK)
COUNTY OF SCHENECTADY) ss.:

On the 27 day of October, 2021, before me, the undersigned, a Notary Public in and for said State, appeared **Christopher Gardner**, individually, 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), as the County Attorney for Schenectady County and that by his/her/their signature(s) 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

Frank S. Salamone
Notary Public, State of New York
Qualified in Schenectady County
No. 02SA6224102
Commission Expires June 28, 2022

22. **COUNTERPARTS AND ELECTRONIC SIGNATURE**

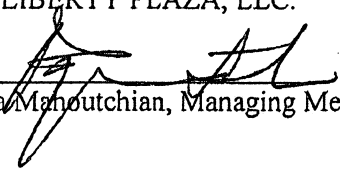
This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Confirmation of execution by electronic transmission of a facsimile, or emailed signature page, shall be binding on a party so confirming.

23. **BINDING EFFECT**

This Agreement shall inure for the benefit of and be binding upon the parties, their legal representatives, heirs, successors and assigns and except as otherwise herein provided its' provisions shall not survive the closing and transfer of title.


SELLER

111 LIBERTY PLAZA, LLC.

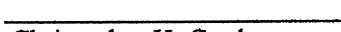
By: 
Reza Mahoutchian, Managing Member

PURCHASER

COUNTY OF SCHENECTADY

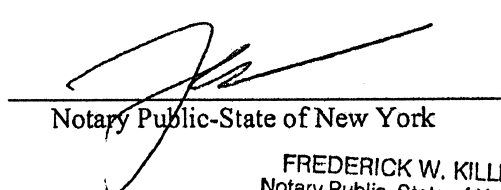

Rory Fluman, County Manager

Approved as to form and content:


Christopher H. Gardner,
County Attorney

STATE OF NEW YORK)
COUNTY OF SCHENECTADY) ss.:

On the 3rd day of November, 2021, before me, the undersigned, a Notary Public in and for said State, appeared **Reza Mahoutchian**, individually, 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 signature(s) 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

FREDERICK W. KILLEEN
Notary Public, State of New York
Qualified in Schenectady County
My Commission Expires 8/31/25
No. 4663573