

# **Exhibit 7**

AGREEMENT OF SALE

2017 DEC 28 P 12: 17

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2018 between: THE TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY, a New York public benefits corporation and an Urban Renewal Agency of the State of New York, 200 Howell Avenue, Riverhead, New York 11901 ("CDA") and the TOWN OF RIVERHEAD, a municipal corporation formed under the laws of the State of New York, 200 Howell Avenue, Riverhead, New York 11901 (the "Town"; CDA and the Town are hereinafter sometimes collectively referred to as the "Seller"), and CALVERTON AVIATION & TECHNOLOGY LLC, a limited liability company duly formed under the laws of the State of Delaware, with its principal place of business at c/o Triple Five Real Estate LLC, 1 Meadow Lands Plaza, 3<sup>rd</sup> Floor, East Rutherford, New Jersey 07073 (hereinafter "Purchaser").

WHEREAS, Seller is the owner of Lots 6, 7 and 8 on the proposed Subdivision Map entitled "Map of Enterprise Park at Calverton" (collectively referred to as the "Property"). A copy of the Subdivision Map is annexed hereto as Exhibit A; and

WHEREAS, Seller wishes to sell the Property to Purchaser and Purchaser wishes to purchase the Property from Seller for the purpose of its redevelopment; and

WHEREAS, both Seller and Purchaser believe that the redevelopment of the Property in a manner permitted under the Town of Riverhead Planned Development (PD) Zoning District adopted on August 16, 2016, the Town of Riverhead Comprehensive Master Plan, as amended on August 2, 2016, and the Town of Riverhead Calverton Enterprise Park Urban Renewal Plan, as amended on August 2, 2016, is consistent with the Goals and Objectives of the Comprehensive Plan for the Development of the Enterprise Park at Calverton ("EPCAL"); and

WHEREAS, as a condition of Seller's obligation to sell the Property to Purchaser, Purchaser will have to demonstrate to CDA that it possesses the financial capability as well as the skill, expertise, and experience to acquire and redevelop the Property in a commercially reasonable manner, and based upon that showing, be found to be a Qualified and Eligible Sponsor under the provisions of the General Municipal Law by resolution of the Town Board as the governing body of the CDA; and

WHEREAS, Purchaser is owned by Triple Five Ventures Co. LLC, a limited liability company duly formed under the laws of the State of Delaware, with its principal place of business at 1 Meadowlands Plaza 3rd Floor, East Rutherford, New Jersey 07073, and Luminati

Aerospace, LLC, a limited liability company duly formed under the laws of the State of Delaware, with its principal place of business at 400 David Court, Calverton, New York 11933.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, and intending to be legally bound hereby, Seller, Town, and Purchaser hereby incorporate each of the preceding paragraphs into the body of this Agreement as if fully set forth therein and agree as follows:

I. SUBJECT OF SALE

A. Upon and subject to the terms and conditions herein contained, Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, all of Seller's right, title and interest in and to the Property, which is more particularly described in Schedule A annexed hereto, together with a perpetual exclusive easement benefitting Lot 7 over the portion of the aircraft parking area and taxiway adjacent to the westerly boundary of Lot 7 as more specifically set forth in the Easement Agreement dated October 16, 2001, and recorded in Liber 12148 at cp 184, together with a right to enforce the buffer area provisions contained in said easement.

B. The acquisition shall be for the purpose of redeveloping the Property as set forth in the Intended Development Plan, as defined in Section III below. The redevelopment shall be substantially consistent with the record of the proceedings held by the Town Board as the governing body of the CDA to determine whether Purchaser is a Qualified and Eligible Sponsor for the redevelopment of the Property consistent with the uses permitted in the Planned Development Zoning District, except as otherwise approved by the applicable governmental bodies and subject to the terms and conditions of this Agreement.

C. Purchaser hereby acknowledges that it is familiar with the Property and its physical condition and that Seller is transferring, and Purchaser shall accept, the Property in its physical "AS IS" condition as of Closing (as such term is defined below), without any representation or warranty, stated or implied, whatsoever by Seller or any employees, representatives or agents of Seller relating to the Property.

II. PURCHASE PRICE

A. The total purchase price (the “Purchase Price”) is Forty Million Dollars (\$40,000,000) payable as set forth in this Section II.

B. Within five (5) business days after the Effective Date (as such term is defined below), Purchaser shall deposit with First American Title Insurance Company, at its office located at 333 Earle Ovington Boulevard, Suite 608, Uniondale, New York 11553 (the “Escrow Agent”), the sum of Five Hundred Thousand Dollars (\$500,000) (the “Initial Deposit”), which shall be held in an interest bearing account. The taxpayer identification numbers of Purchaser and Seller shall be furnished to Escrow Agent upon request. Said payment shall be either by one or more unendorsed bank check(s) drawn on a bank which is a member of the New York Clearinghouse Association payable to “First American Title Insurance Company” or by wire transfer to an account designated by Escrow Agent for these purposes, which funds shall be held in escrow (the “Escrow Account”). The Initial Deposit shall be held in escrow by the Escrow Agent pursuant to the terms of Section VIII below, to be released upon the first of the following events to occur: (i) the Closing, at which time it shall be paid to Seller as set forth in Section II(H); (ii) Purchaser’s failure to provide Seller with either a Notice to Proceed (as such term is defined below) or a Notice of Extension (as such term is defined in Section V below) prior to 5 p.m. (New York time) on the last day of the Initial Due Diligence Period (as such term is defined in Section V below), whereupon it shall be paid to Purchaser as set forth in Section II(D) below, (iii) Purchaser’s extension of the Due Diligence Period (as such term is defined in Section V below), whereupon it shall be paid to Seller as set forth in Section V(B) below; (iv) the termination of this Agreement for a reason other than the breach or default of Purchaser, whereupon it shall be paid to Purchaser; (v) the termination of this Agreement during the Initial Due Diligence Period due to Purchaser’s breach or default, whereupon it shall be paid as set forth in Section II(F), or (vi) the termination of this Agreement after the Initial Due Diligence Period due to Purchaser’s breach or default, whereupon it shall be paid to Seller. Interest on the Initial Deposit shall be paid to the party that ultimately receives payment of the Initial Deposit, except that, if the Initial Deposit has not been previously released to Seller under Section V and the Closing occurs, interest on the Initial Deposit shall be paid to Purchaser at the Closing. If the Initial Deposit is not deposited with the Escrow Agent within five (5) business days after the Effective Date, Seller shall have the right to terminate this Agreement upon notice to Purchaser,

whereupon the parties shall be released from any and all liability and obligation under this Agreement, except as may be expressly stated otherwise in this Agreement.

C. If Purchaser has provided Seller, with a copy to the Escrow Agent, with a notice to proceed to Closing (the “Notice to Proceed”) prior to 5 p.m. (New York time) on the last day of the Due Diligence Period, then within three (3) business days after the expiration of the Due Diligence Period, Purchaser shall deposit with the Escrow Agent in the Escrow Account, an additional sum of Five Hundred Thousand Dollars (\$500,000) (the “Second Deposit”), which sum shall be paid by Purchaser either by one or more unendorsed bank check(s) drawn on a bank which is a member of the New York Clearinghouse Association, payable to “First American Title Insurance Company” or by wire transfer to the Escrow Account. The Second Deposit shall be held in escrow pursuant to the terms of Section VIII below, to be released upon the first of the following events to occur: (i) the Closing, at which time it shall be paid to Seller; (ii) the termination of this Agreement for a reason other than the breach or default of Purchaser, whereupon it shall be paid to Purchaser; or (iii) the termination of this Agreement due to Purchaser’s breach or default, whereupon it shall be paid to Seller. Interest on the Second Deposit shall be paid to the party that ultimately receives payment of the Second Deposit, except that, if the Closing occurs, interest on the Second Deposit shall be paid to Purchaser at the Closing. If Purchaser has provided Seller with a Notice to Proceed prior to the expiration of the Due Diligence Period, and the Second Deposit is not deposited with the Escrow Agent within three (3) business days after the expiration of the Due Diligence Period, Seller shall have the right to terminate this Agreement upon notice to Purchaser, with a copy to the Escrow Agent, whereupon the Escrow Agent shall be authorized to release the Initial Deposit to Seller (or Seller may retain the Initial Deposit if it was already released to Seller) and the parties shall be released from any and all liability and obligation under this Agreement, except as may be expressly stated otherwise in this Agreement.

D. If Purchaser has not provided Seller with either a Notice to Proceed or a Notice of Extension prior to 5 p.m. (New York time) on the last day of the Initial Due Diligence Period, this Agreement shall terminate, whereupon the Escrow Agent shall release the Initial Deposit to Purchaser and the parties shall be released from any and all liability and obligation under this Agreement, except as may be expressly stated otherwise in this Agreement.

E. If Purchaser has not provided Seller with a Notice to Proceed prior to 5 p.m. (New York time) on the last day of the Due Diligence Period and the Due Diligence Period was extended, this Agreement shall terminate, whereupon Seller shall retain the Initial Deposit and the parties shall be released from any and all liability and obligation under this Agreement, except as may be expressly stated otherwise in this Agreement.

F. If this Agreement is terminated during the Initial Due Diligence Period due to Purchaser's breach or default, the Escrow Agent shall hold the Initial Deposit until there is (i) a final judicial determination of the amount of actual damages to Seller as a direct result of such breach or (ii) the parties mutually agree as to the amount of actual damages. If the amount of actual damages as so determined or agreed to is less than the amount of the Initial Deposit, the Escrow Agent shall pay the amount of actual damages to the Seller and the balance of the Initial Deposit to Purchaser. If the amount of actual damages as so determined or agreed to is in excess of the amount of the Initial Deposit, the Escrow Agent shall pay the Initial Deposit to the Seller and the Purchaser shall pay such excess to Seller.

G. The provision of a Notice to Proceed by Purchaser shall be deemed a representation by Purchaser that as of the end of the Due Diligence Period, Purchaser and its agents, representatives and employees have had full opportunity and have been granted full access to examine and inspect the physical nature, condition and state of repair of the Property, including, and without limitation, all matters relating to engineering and environmental concerns, the property documents, all other title information, plans and specifications, historical information, real property taxes, market factors and all other information with respect to the Property, financial, physical or otherwise.

H. The Purchase Price less the Initial Deposit and the Second Deposit, or Thirty Nine Million Dollars (\$39,000,000), shall be payable at Closing by Purchaser's wire transfer of immediately available funds to an account or accounts to be designated by Seller at or prior to Closing.

### III. INTENDED DEVELOPMENT PLAN

Purchaser intends to develop the Property as set forth in the Development Plan attached hereto as Exhibit B (the "Intended Development Plan"). Purchaser acknowledges that its Intended Development Plan must comply with all requirements of the Town Zoning Code. A

critical component of the Intended Development Plan is the agreement of Purchaser to spend not less than \$1,000,000 (the “Infrastructure Work Amount”) to make infrastructure improvements to the runways on the Property (the “Infrastructure Work”) during the period commencing on the Closing and terminating on the second anniversary of the Closing (the “Completion Period”), provided that if the Infrastructure Work cannot be performed during any portion of the Completion Period due to any contingency beyond Purchaser’s reasonable control, whether or not foreseeable, including, but not limited to, acts of God, fires, explosions, storms, earthquakes, floods, drought, accidents, sabotage, blockade, embargo, war (whether or not declared and whether or not the United States is a participant), riots, terrorist acts, labor disputes or shortages, strikes, laws (including ordinances, rules, regulations, codes, plans, injunctions, judgments, orders, decrees, and rulings) of any federal, state, local, or foreign government (or any agency thereof), delays not caused by Purchaser in obtaining required permits or approvals from any federal, state, local, or foreign government (or any agency thereof), or any other similar contingency (collectively, referred to hereinafter as a “Force Majeure Events”), the Completion Period shall be extended for one day for each day that any such Force Majeure Event exists. To guarantee the completion of the Infrastructure Work, at the Closing Purchaser shall execute a guaranty in the form attached hereto as Exhibit C (the “Completion Guaranty”), and to secure the Completion Guaranty, Purchaser shall either post a letter of credit in form and substance reasonably satisfactory to Seller, or deliver to Seller cash, in an amount equal to the Infrastructure Work Amount.

#### **IV. EFFECTIVE DATE OF CONTRACT**

The Effective Date of this Agreement shall be the date on which this Agreement is executed and delivered by all parties following Seller’s adoption of the resolution (the “Resolution”) determining Purchaser to be a Qualified and Eligible Sponsor (the “Effective Date”). This Agreement shall become final and binding upon the parties on the Effective Date.

#### **V. DUE DILIGENCE PERIOD**

A. Purchaser shall have ninety [90] calendar days from the Effective Date to perform all inspections and environmental and zoning studies and to review all geotechnical, soils, wetlands and environmental reports that may be available (“Initial Due Diligence Period”).

B. Purchaser shall have the option to extend the Initial Due Diligence Period for an additional ninety [90] calendar day period, provided Purchaser gives Seller notice of the extension (“Notice of Extension”), with a copy sent to the Escrow Agent, which Notice of Extension must be received by Seller prior to 5 p.m. (New York time) on the last day of the Initial Due Diligence Period, whereupon the Escrow Agent shall be authorized to release the Initial Deposit to Seller, which shall be applied to the Purchase Price at the Closing. Seller shall refund the Initial Deposit to Purchaser upon the termination of this Agreement for any reason other than (i) the breach or default of Purchaser or (ii) pursuant to Section II(E). As used herein, “Due Diligence Period” shall mean (a) if the Initial Due Diligence is not extended pursuant to this Section V(B), the Initial Due Diligence Period or (b) if the Initial Due Diligence is extended pursuant to this Section V(B), the Initial Due Diligence Period as extended pursuant to this Section V(B).

C. During the Due Diligence Period, Purchaser or its agents, at Purchaser’s sole cost and expense, shall have the right to employ one or more environmental consultants and other professionals to perform or complete a “Phase I” environmental inspection and assessment of the Property and, if recommended by the Phase I, a “Phase II” environmental inspection and assessment and archeological study. Purchaser and its consultants shall also have the right to undertake or complete a technical review of the documentation, reports, plans, studies and information in the possession of Seller, concerning the environmental condition of the Property.

D. In order to facilitate the Phase I, the Phase II, if applicable, the technical review and any other tests and studies related to the Property (collectively, the “Tests”), Seller shall provide reasonable access to its files and those of other Town agencies or departments and access to the Property as set forth in paragraph H below, and any costs associated therewith shall be borne by Purchaser. Purchaser acknowledges receipt from Seller of copies of the Record of Decision of Transfer and Reuse of Naval Weapons Industrial Reserve Plant, Calverton, dated September 9, 1998; the Department of the Navy’s Finding of Suitability to Transfer, dated September 8, 1998; the Quitclaim deed from the United States of America to the CDA, dated September 9, 1998; and the Draft and Final Supplemental Generic Environmental Impact Statement and Finding Statement adopted July 19, 2016. Additional documentation and information is available at <http://nwirp-calverton.adminrecord.org>. In addition, the complete environmental review and study of the property conducted in connection with the transfer of the

Property from the United States of America to the CDA is archived in the Riverhead Public Library and available for review by Purchaser.

E. Within five (5) calendar days after the Effective Date, Seller will provide Purchaser with copies of, or access to, the following information, if in Seller's possession and to the extent not already provided:

- (1) all geotechnical, soils, wetlands environmental and/or engineering reports of the Property (collectively, the "Engineering Reports") in Seller's possession, if any;
- (2) all title policies issued to Seller for the Property (including copies of any easements, restrictions or other encumbrances);
- (3) all surveys or plans of the Property; and
- (4) all permits, approvals, and reports (the inadvertent failure to provide any reports other than the Engineering Reports shall not constitute a breach of this Agreement) relating to the development of the Property.

F. If Purchaser is satisfied, in Purchaser's sole discretion, with the Tests and/or other studies, Purchaser may, by notice sent to Seller, with a copy sent to the Escrow Agent, send a Notice to Proceed.

G. Purchaser shall provide Seller with copies of all due diligence reports and materials generated by or on behalf of Purchaser, at no cost to Seller, within three (3) business days of Purchaser's receipt of such reports from any engineers, contractors, subcontractors, consultants or other such vendors (referred to collectively as "engineers" or "Purchaser's Agents"), provided it is not contractually prohibited from doing so. Purchaser shall use its commercially reasonable efforts to (i) not be contractually prohibited from providing Seller with copies of all due diligence reports and materials generated by or on behalf of Purchaser and (ii) if a potential engineer will not agree that Purchaser shall be permitted to provide Seller with copies of all due diligence reports and materials prepared by such engineer on behalf of Purchaser, locate a substitute engineer that will so agree. It is understood and agreed that Purchaser does not make any representation or warranty as to the accuracy or completeness of such reports and materials and shall not have any liability to Seller resulting from the use by Seller of such reports and materials.

H. Subject to the terms below, Seller hereby grants to Purchaser and Purchaser's Agents a non-exclusive license and right to enter upon the Property to conduct the Tests.

I. During the Due Diligence Period, Seller shall allow Purchaser and its inspectors and contractors reasonable access to the Property for the purpose of the Tests and /or studies (and for no other purpose); provided that Purchaser shall not interfere with the normal operation, use, occupancy, management or maintenance of the Property. Notwithstanding anything to the contrary set forth in the foregoing sentences, in exercising its rights under this subsection, Purchaser shall not enter the Property without at least two (2) business days' advance written notice (which notice shall be by e-mail) to Dawn Thomas, Community Development Administrator at [thomas@townofriverheadny.gov](mailto:thomas@townofriverheadny.gov). Such notice shall include either (i) a summary of the sum and substance of the work orders or contracts or (ii) a copy of its work orders or contracts with each of the engineers performing the Tests. With respect to the Phase I, and, if applicable, the Phase II, the notice must contain a detailed itemization of the specific tests to be performed in connection therewith. The Tests shall be conducted during business hours with Seller being given the opportunity to have a representative present. The Tests shall be conducted pursuant to and in strict compliance with the applicable codes, rules, regulations or laws of the Town of Riverhead, County of Suffolk and State of New York. No boring, drilling or other invasive tests or other physical intrusion into the Property will be made without the prior written consent of Seller (which consent shall not be unreasonably withheld, delayed, or conditioned) or as may be recommended by the Phase I or the Phase II. Furthermore, any Phase I shall be limited to observation, interviews, surface and above-surface investigation, interviews and other non-invasive forms of investigation. No test or activity that shall cause pollution or contamination of the Property, including but not limited to, soil and ground water, may be conducted. No test or activity that uses any hazardous or toxic substances of any kind may be conducted on the Property.

J. Upon the conclusion of the Tests, Purchaser shall immediately restore the Property to the same condition in which the Property was found prior to Purchaser's entry thereon and conduct of the Tests, including, but not limited to, filling test holes and wells, repairing and returning earth to its original locations and removal of debris from the Property, caused or left by Purchaser or Purchaser's Agents. Purchaser's obligation to restore hereunder shall survive termination of this Agreement.

K. Each contract or work order with a Purchaser's Agent shall provide that such Purchaser's Agent indemnifies Purchaser and Seller from all liability in connection with its

performance of the Tests but only to the extent such liability is caused by or results from the negligent or intentional acts or omissions of Purchaser's Agent. Purchaser shall provide for Purchaser Agents' delivery to Purchaser and Seller of all required insurance certificates (as set forth below) at least three (3) business day prior to each such Purchaser Agent's accessing the Property or conducting the Tests, so that Seller may (but is not obligated to) request and obtain from Purchaser and Purchaser's Agents any amendment to such certificates in order to assure Seller that Purchaser is in compliance with its obligations hereunder.

L. As a condition to granting the access herein described, and prior to entering the Property, Purchaser and Purchaser's Agents shall, at their own cost and expense, maintain in full force and effect Property Damage and Commercial General Liability insurance with companies authorized to do business in the State of New York naming Seller and Purchaser as insured parties or additional insureds thereunder. The Commercial General Liability insurance shall be in the limits of at least Two Million Dollars (\$2,000,000) aggregate for bodily injury, personal injury, death or property damage, employee exclusion excepted, and contractor's protective liability arising out of any one occurrence. Additionally, each of Purchaser's Agents shall carry Workers' Compensation insurance covering all persons employed by such Purchaser's Agent at the Property, with respect to whom death or bodily injury claims could be asserted against Seller or the Property, with statutory required limits. Prior to entering the Property, Purchaser shall deliver to Seller (i) an ACORD Form 25 (certificate of liability insurance) and complete policies, including as exhibits thereto a listing of all endorsements with respect to the policy so issued, evidencing that the insurance (Workers' Compensation and Commercial General Liability) carried by Purchaser's Agents and Purchaser is, in each case, valid and subsisting and that it names Seller and Purchaser as insureds thereunder; and (ii) evidence that the premium(s) has been paid in full. Such certificates shall further provide that such insurance will not be materially changed or canceled during the term hereof until and unless ten (10) days' written notice thereof shall have been given to Seller.

M. Purchaser hereby releases and indemnifies and holds Seller harmless from and against any and all costs, liabilities, claims, liens, encumbrances, losses, damages or causes of action (including all reasonable legal fees, costs, expenses and disbursements incurred, whether or not an action was commenced or defended, including fees and costs for counseling, general representation and litigation, including legal fees incurred due to court delay or rescheduling or

otherwise) arising out of actions taken on the Property by Purchaser or Purchaser's Agents in conjunction with Purchaser's exercise of its rights under this Section V. Purchaser's indemnification obligation hereunder shall survive termination of this Agreement. Seller shall not be liable for any losses, costs, damages or causes of action which Purchaser or Purchaser's Agents may incur, whether on or off the Property, by virtue of or in conjunction with or which arise out of Purchaser's exercise of its rights under this Section V, unless caused by Seller or Seller's agents or employees.

## VI. TITLE EXCEPTIONS

A. The Property is sold and shall be conveyed subject to the following (the "Permitted Exceptions"):

(1) All presently existing and future liens for unpaid real estate taxes and water and sewer charges, if any, not due and payable as of the date of the closing under this Agreement, subject to adjustment as herein provided;

(2) Except as otherwise provided herein, all present zoning, building, environmental and other laws, ordinances, codes, restrictions and regulations of all governmental authorities having jurisdiction with respect to the Property, including, without limitation, landmark designations and all zoning variances and special exceptions, if any, (collectively, "Laws and Regulations");

(3) All recorded covenants, easements and agreements currently of record;

(4) All covenants, restrictions, and easements that may be imposed by the Town of Riverhead Planning Board, the Town of Riverhead Town Board, the Suffolk County Department of Health Services, the New York State Department of Environmental Conservation (the "DEC"), and any other approving governmental entity as a condition of any approvals required to obtain subdivision approval, the extension of the Calverton Sewer District, and the extension of the Riverhead Water District for the Intended Development Plan, provided any such covenants, restrictions and easements do not prohibit or restrict the use and development of the Property permitted under Article LXIII of the Town's Zoning Code as in effect on the Effective Date (other than any such use and development that is prohibited under Section VI(A)(10) of this Agreement);

(5) The sewer easement in favor of Seller or the Town pursuant to Section XVIII below, to be referenced in the deed to be delivered by Seller to Purchaser at Closing (the "Deed") and contained in a separate document to be executed at Closing;

(6) An easement depicted on Exhibit A across Lot 7 in favor of CDA, the Town and/or the Calverton Sewer District to access Lot 4 on Exhibit A (the "Calverton Sewer District New Discharge Property") from Route 25, to be referenced in the Deed and contained in a separate document to be executed at Closing;

(7) An easement depicted on Exhibit A across Lot 7 in favor of CDA, the Town and/or the Calverton Sewer District to install sewer lines on or under the easement to connect the Calverton Sewer Plant to the Calverton Sewer District New Discharge Property, to be referenced in the Deed and contained in a separate document to be executed at Closing;

(8) The Deed shall reference a reservation in favor of CDA or the Town of the walkway/ bike path as shown on Exhibit A, including the future easement over the Buffer Area along Grumman Boulevard shown on Exhibit A to relocate the walkway/bike path into the Buffer Area in the event Grumman Boulevard is widened and said reservation shall be contained in a separate document to be executed at Closing;

(9) A twenty-five (25) foot non-development buffer along the portion of the Property that fronts on Route 25 and that fronts on Grumman Boulevard, as shown on Exhibit A, to be referenced in the Deed and contained in a separate document to be executed at Closing;

(10) A covenant and restriction to be referenced in the Deed and contained in a separate document to be executed at Closing, providing that there will be no residential uses at the Property;

(11) A covenant and restriction to be referenced in the Deed and contained in a separate document to be executed at Closing, providing that the Property will not be (i) used to operate a commercial passenger airport or (ii) listed on aviation charts or maps as a location at which aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, and flight instruction are provided to the general public;

(12) A further restriction to be referenced in the Deed and contained in a separate document to be executed at Closing, providing that no development shall be permitted within a 1,000 feet radius of the ponds identified on Exhibit A;

(13) Any state of facts which an accurate survey or personal inspection would disclose;

(14) Any variations between the record line with any fence, hedge or retaining wall;

(15) Rights, if any, by any utility company to maintain, operate and repair any utility distribution system over and upon the Property; and

(16) Encroachments of any kind, including, but not limited to, fences, stoops, cellar steps, trims and cornices, if any, upon any street or highway (i) that are in existence as of the end of the Initial Due Diligence Period or (ii) for those that are not in existence as of the end of the Initial Due Diligence Period, as to which the Title Company (as hereinafter defined) does not raise an out-of-possession exception that it will not omit or affirmatively insure over.

B. No later than sixty (60) calendar days from the Effective Date, Purchaser shall deliver or cause to be delivered to Seller, at Purchaser's sole cost and expense, a copy of the title report (hereinafter the "Title Report") prepared by a title insurance company or companies duly licensed by the State of New York (the "Title Company"). In the event any title defects, liens, or encumbrances, other than Permitted Exceptions, are reported that Purchaser believes adversely affects the marketability of the Property, then Purchaser must notify Seller within ten (10) business days of receipt of the Title Report. If Purchaser so notifies Seller of any title defects, liens or encumbrances, other than Permitted Exceptions, Seller shall advise Purchaser within sixty (60) calendar days from receipt of Purchaser's notification if Seller is unable or unwilling to remove any of the identified title defects, liens or encumbrances. If Seller gives notice to the Purchaser that it is unable or unwilling to remove any of the identified title defects, liens or encumbrances, Purchaser, within ten (10) business days of receipt of such notice, may elect, by notice sent to Seller, with a copy sent to the Escrow Agent: (i) to close upon this transaction, accepting title "as is" without abatement of the Purchase Price; or (ii) to terminate this Agreement, whereupon the Escrow Agent shall refund to Purchaser the Initial Deposit (unless already released to Seller, in which case Seller shall refund to Purchaser the Initial Deposit) and the Second Deposit and the parties to this Agreement shall be released from any and all liability and obligation under this Agreement, except as may be expressly stated otherwise in this Agreement. Purchaser's failure to raise an objection to title within the time specified in this

paragraph shall be deemed to be a waiver of that objection. The Title Report shall be deemed the Base-Line Title Report for purposes of this Agreement.

C. If the Agreement is not terminated under subsection B above, Purchaser shall have the right to periodically update the Title Report (hereinafter "Title Continuation"). In the event any title defects, liens, or encumbrances, other than Permitted Exceptions and other than those contained in the Base-Line Title Report, are reported that Purchaser believes adversely affects the marketability of the Property, then Purchaser must notify Seller within ten (10) business days of receipt of the Title Continuation. Seller shall advise Purchaser within thirty [30] calendar days from receipt of Purchaser's notification if Seller is unable or unwilling to remove any of the identified title defects, liens or encumbrances. If Seller gives notice to Purchaser that it is unable or unwilling to remove any of the identified title defects, liens or encumbrances, Purchaser, within ten (10) business days of receipt of such notice, may elect, by notice sent to Seller, with a copy sent to the Escrow Agent: (i) to close upon this transaction, accepting title "as is" without abatement of the Purchase Price; or (ii) to terminate this Agreement, whereupon the Escrow Agent shall refund to Purchaser the Initial Deposit (unless already released to Seller, in which case Seller shall refund to Purchaser the Initial Deposit) and the Second Deposit, and the parties to this Agreement shall be released from any and all liability and obligation under this Agreement, except as may be expressly stated otherwise in this Agreement. Purchaser's failure to raise an objection to title within the time specified in this paragraph shall be deemed to be a waiver of that objection.

D. Purchaser shall be responsible for providing and paying for any surveys, updates, and/or inspections that may be required by the Title Company or any municipal agency and, within five (5) business days of receipt, shall provide Seller with any updates that may be received from the Title Company following the initial report.

## VII. REQUIREMENTS OF THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Purchaser acknowledges that in addition to the regulation and permitting requirements of other governmental agencies, its use and development of the Property shall be subject to the regulations and permitting requirements of the DEC, including, but not limited to, the requirements of the New York State Wild Scenic and Recreational Rivers Act and attendant

regulations and the New York State Endangered Species Act and attendant regulations. Purchaser further acknowledges that under the New York State Endangered Species Act and attendant regulations, it may be required to obtain a Taking Permit, among other things, which could include a Comprehensive Habitat Protection Plan mandating Purchaser to preserve and/or maintain areas of the Property as Habitat Protection Areas where development would be precluded. In addition, the Taking Permit could require that Purchaser post financial security satisfactory to the DEC to ensure compliance with any Taking Permit issued.

### **VIII. ESCROW AGENT**

A. The parties acknowledge that the Escrow Agent is acting solely as a stakeholder at their request and for their convenience and that the Escrow Agent shall not be liable to either party for any act or omission on its part unless taken or suffered in bad faith or in willful disregard of this Agreement or involving gross negligence on the part of the Escrow Agent. Seller and Purchaser jointly and severally (with right of contribution) agree to defend (by attorneys selected by the Escrow Agent), indemnify and hold the Escrow Agent harmless from and against all costs, claims and expenses (including reasonable attorneys' fees) incurred in connection with the performance of the Escrow Agent's duties hereunder, except with respect to actions or omissions taken or suffered by the Escrow Agent in bad faith or in willful disregard of this Agreement or involving gross negligence on the part of the Escrow Agent.

B. The Escrow Agent may act or refrain from acting in respect of any matter referred to herein in full reliance upon and with the advice of counsel, which may be selected by it and shall be fully protected in so acting or refraining from action upon the advice of such counsel.

C. The Escrow Agent acknowledges receipt of the Initial Deposit by check subject to collection and the Escrow Agent's agreement to the provisions of this section by signing in the place indicated on the signature page of this Agreement.

D. The Escrow Agent will deliver the Initial Deposit and Second Deposit to Purchaser or Seller, as the case may be, upon the following terms and conditions:

- (1) The Initial Deposit to Seller as set forth in Section V(B);
- (2) The Initial Deposit to Purchaser as set forth in Section II(D);

(3) The Initial Deposit to Purchaser or Seller or both as set forth in Section II(F);

(4) The Initial Deposit (unless already released to Seller) and Second Deposit to Seller upon the consummation of the Closing contemplated herein;

(5) To Seller, upon receipt of a written notice from Seller, stating that Seller is entitled to the Initial Deposit and/or Second Deposit pursuant to this Agreement and demanding payment of the same; provided, however, that the Escrow Agent will not honor such demand until not less than ten (10) business days after the date the Escrow Agent shall have delivered a copy of such notice and demand to Purchaser, nor thereafter, if during such ten (10) business day period, the Escrow Agent shall have received written notice of objection from Purchaser in accordance with the terms set forth below; or

(6) To Purchaser, upon receipt of a written notice from Purchaser, stating that Purchaser is entitled to the return of the Initial Deposit and/or Second Deposit pursuant to this Agreement and demanding return of the same; provided, however, that the Escrow Agent will not honor such demand until not less than ten (10) business days after the date the Escrow Agent shall have delivered a copy of such notice and demand to Seller, nor thereafter, if during such ten (10) business day period, the Escrow Agent shall have received written notice of objection from Seller in accordance with the terms set forth below.

E. Upon receipt of a written demand for the Initial Deposit and/or Second Deposit pursuant to the provisions of subsections D(5) or D(6) above, the Escrow Agent shall promptly deliver a copy thereof to the other party. The other party shall have the right to object to the delivery of the Deposit by delivery to and receipt by the Escrow Agent of written notice of objection within ten (10) business days after the receipt of the Escrow Agent's mailing of such copy to the other party, but not thereafter. Upon receipt of such notice of objection, the Escrow Agent shall promptly deliver a copy thereof to the party who made the written demand.

F. If the Escrow Agent shall have received a notice of objection as provided above, within the time therein prescribed, or any dispute shall arise between the parties hereto resulting in adverse claims and demands being made for the Initial Deposit and/or Second Deposit whether or not litigation has been instituted, then the Escrow Agent shall continue to hold the Initial Deposit and/or Second Deposit subject to such adverse claims and the Escrow Agent shall not be or become liable in any way or to any person for its refusal to comply with such claims or

demand, and (i) in the event of any joint written direction from Seller and Purchaser, the Escrow Agent shall then disburse the Initial Deposit and/or Second Deposit in accordance with said direction, or (ii) in the event the Escrow Agent shall receive a written notice advising that a litigation over entitlement to the Initial Deposit and/or Second Deposit has been commenced, the Escrow Agent may deposit the Initial Deposit and/or Second Deposit with the clerk of the court in which said litigation is pending, or (iii) the Escrow Agent may (but shall not be required to) take such affirmative steps as it may, at its option, elect in order to substitute another impartial party reasonably acceptable to Seller and Purchaser to hold the Initial Deposit and/or Second Deposit in accordance with this Agreement subject to such adverse claims including the commencement of an action for interpleader in a court of competent jurisdiction, the cost thereof to be borne by whichever of Seller and Purchaser is the losing party, and thereupon the Escrow Agent shall be released of and from all liability hereunder. Seller and Purchaser jointly and severally agree to reimburse the Escrow Agent for any and all reasonable expenses incurred in the discharge of its duties under this Section, including, without limitation, reasonable attorneys' fees. Nothing herein, however, shall affect the liability of a defaulting party to the other party for reimbursement of any amount paid to Escrow Agent under this subsection.

G. It is expressly understood that the Escrow Agent acts hereunder as an accommodation to Seller and Purchaser and as depository only and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of any instrument deposited with it, or for the form or execution of such instruments or for the identity, authority or right of any person executing or depositing the same, or for the terms and conditions of any instrument pursuant to which the Escrow Agent or the parties may act. The Escrow Agent shall have no liability other than for its gross negligence or actual malfeasance and shall, in all instances, act in accordance with the terms and provisions of this Agreement.

H. The Escrow Agent shall not have any duties or responsibilities except those set forth in this Agreement and shall not incur any liability in acting upon any signature, notice, request, waiver, consent, receipt or other paper or document believed by the Escrow Agent to be genuine, and the Escrow Agent may assume that any person purporting to give it any notice on behalf of any party in accordance with the provisions hereof has been duly authorized to do so.

I. In the event of a dispute between the parties regarding the disposition of the Initial Deposit and/or Second Deposit, the Escrow Agent shall take one of the actions described in

subsection F above, and upon delivery of the Initial Deposit and/or Second Deposit in accordance therewith, the Escrow Agent shall be relieved of all liability, responsibility or obligation with respect to or arising out of the Initial Deposit and/or Second Deposit, as applicable, and any and all of its obligations therefrom.

#### **IX. SUBDIVISION APPROVAL CONTINGENCY**

This Agreement is subject to and contingent upon the Town's filing in the Office of the Clerk of the County of Suffolk of the Subdivision Map attached hereto as Exhibit A, or any amendment to the Subdivision Map agreed to in writing by the parties, which in either case contains a condition that provides that the development yield attributed to Lot 8 may be applied to the development yield of Lot 6 (the date of the filing of the Subdivision Map, or any such amendment, which in either case contains such condition, is herein referred to as the "Filing Date"). In the event the Filing Date does not occur within one (1) year from the end of the Due Diligence Period, either party can terminate this Agreement upon written notice to the other party, with a copy sent to the Escrow Agent. If terminated, the Escrow Agent shall refund to Purchaser the Initial Deposit (unless already released to Seller, in which case Seller shall refund to Purchaser the Initial Deposit) and the Second Deposit and the parties to this Agreement shall be released from any and all liability and obligation under this Agreement, except as may be expressly stated otherwise in this Agreement.

#### **X. CLOSING OF TITLE**

A. The transfer of title of the Property shall take place at Seller's Attorneys' office at the office of Smith, Finkelstein, Lundberg, Isler & Yakaboski, LLP, 456 Griffing Avenue, Riverhead, New York 11901 on or about sixty (60) calendar days after the Filing Date at 10:00 o'clock in the morning (the "Closing"; the date of the Closing is referred to herein as the "Closing Date"), or upon reasonable notice (by telephone or otherwise) by Purchaser, at the office of Purchaser's lending institution or Lender's attorneys' offices, provided same is in Suffolk County, Nassau County or New York City.

B. In the event that the Closing takes place outside the borders of Suffolk County, Purchaser shall pay Seller's attorney the sum of Nine Hundred Fifty Dollars (\$950.00) if in

Nassau County, or One Thousand Five Hundred Dollars (\$1,500.00) if in New York City, toward the costs of attorneys' fees associated with the closing of this transaction.

**XI. DELIVERIES AT CLOSING**

A. Seller shall deliver the following at the Closing:

(1) Seller shall execute, acknowledge and deliver to Purchaser a Bargain and Sale Deed Without Covenant Against Grantor's Acts, sufficient to convey fee title to the Property subject to and in accordance with the provisions of this Agreement.

In accordance with Section 507 of the General Municipal Law of the State of New York, the bargain and sale deed delivered upon closing shall contain the following language:

“As set forth in the Agreement of Sale dated \_\_\_\_\_, Purchaser shall complete the Infrastructure Work (as defined in the Agreement of Sale) which is the critical component of the redevelopment and reuse of the Property during the period commencing on the date of this Deed and terminating on the second anniversary of the date of this Deed (the “Completion Period”), provided that if the Infrastructure Work cannot be performed during any portion of the Completion Period due to any Force Majeure Event (as defined in the Agreement of Sale, the Completion Period shall be extended for one day for each day that any such Force Majeure Event exists.”

The Deed and/or a separate document to be executed at Closing, at Seller's option, as applicable, shall also contain the items recited in Section VI (5) through (12) above and any other conditions imposed by Seller, the Town or any other municipal agency in connection with any approval required hereunder or by law. Purchaser shall sign and acknowledge at the foot of the Deed solely to signify its assent to these provisions;

(2) all applicable transfer tax forms;

(3) reasonable title affidavits and all other documents reasonably necessary to effectuate the Closing of this Agreement;

(4) a Certification of Non-Foreign Status in accordance with the provisions of Section 1445 of the Internal Revenue Code of 1986, as amended (“Section 1445”);

(5) a Certification duly executed by Seller and the Town stating that its representations and warranties set forth in this Agreement are true and correct in all material respects on the Closing Date;

(6) such evidence as the Title Company shall reasonably require, to the effect that the execution and performance of this Agreement has been duly authorized by Seller, and evidencing the authority of the signatory acting on behalf of Seller; and

(7) execute and deliver any other documents required by this Agreement to be executed and delivered by Seller.

B. At the Closing, Purchaser shall:

(1) pay the balance of the Purchase Price, as provided in Section II(F) and pay any other costs due hereunder from Purchaser to Seller or the Town but not yet paid;

(2) cause the Deed to be recorded, duly complete all required real property transfer tax returns and cause all such returns and checks in payment of such taxes to be delivered to the appropriate officers promptly after the Closing Date;

(3) deliver or cause to be delivered a Peconic Bay Community Preservation Transfer Tax Return, together with check(s) in payment of the NYS transfer tax as well as the Peconic Bay transfer tax;

(4) provide a Certification duly executed by Purchaser stating that its representations and warranties set forth in this Agreement are true and correct in all material respects on the Closing Date;

(5) provide such evidence as the Title Company shall reasonably require, to the effect that the execution and performance of this Agreement has been duly authorized by Purchaser, and evidencing the authority of the signatory acting on behalf of Purchaser;

(6) provide the Completion Guaranty and the letter of credit or cash deposit required under Section III above; and

(7) execute and deliver any other documents required by this Agreement to be executed and delivered by Purchaser.

C. At or prior to the Closing, Seller and Purchaser shall jointly prepare, subject to all the terms and provisions of this Agreement, (a) a Closing statement setting forth, *inter alia*, the Closing adjustments, if any, and material monetary terms of the transaction contemplated hereby and (b) such other instruments and documents as may be reasonably required to effectuate the consummation of the transactions described in this Agreement.

D. The parties shall apportion, as of 11:59 p.m. of the day preceding the Closing Date, the following with respect to the Property and the net amount thereof shall be added to (if

such net amount is in Seller's favor) or deducted from (if such net amount is in Purchaser's favor) the payment required at Closing:

(1) Water, electricity, and charges and rents and fees and charges, if any, on the basis of the lien period for which assessed, but if any of such charges shall be payable on the basis of meter readings, then such charges shall be apportioned on the basis of meter readings made on a date (prior to Closing) which is as close to the Closing Date as reasonably practicable; and

(2) Any special assessments imposed which are or may be on the Property.

E. All such prorations shall be made on the basis of the actual number of days of the year and month that shall have elapsed from the start of the billing period for which payment was made.

F. Purchaser acknowledges that the Property is currently wholly exempt from real property taxes and that upon transfer of title the taxable status of the property shall be restored in accordance with the New York Real Property Tax Law.

G. The parties further agree to review and confirm the adjustments in writing one business day prior to the Closing to agree upon the apportionments in accordance with the terms hereof.

## XII. SELLER'S REPRESENTATIONS AND COVENANTS

A. CDA and the Town jointly and severally represent and warrant to Purchaser that as of the date hereof the following representations and warranties are true in all material respects and that the same shall be true in all material respects as of the date of Closing:

(1) CDA is an urban renewal agency duly organized, validly existing and in good standing under the laws of the State of New York, and has full power and authority to execute and deliver this Agreement and all other documents now or hereafter to be executed and delivered by it pursuant to this Agreement (the "Seller's Documents") and to perform all obligations arising under this Agreement and the Seller's Documents. The Town is a municipal corporation formed under the laws of the State of New York, and has full power and authority to execute and deliver this Agreement and all Seller's Documents now or hereafter to be executed and delivered by it pursuant to this Agreement and to perform all obligations arising under this Agreement and the Seller's Documents. All necessary proceedings of CDA and the Town have

been duly taken to authorize the execution, delivery, and performance of this Agreement and the Seller's Documents by CDA and the Town. This Agreement has been duly executed and delivered by CDA and the Town and constitutes, and the Seller's Documents will each constitute, the legal, valid and binding obligation of Seller, enforceable in accordance with their respective terms, except as may be limited by general equitable principles;

(2) This Agreement and the Seller's Documents do not and will not contravene any provision of the legislative enactments pertaining to CDA or the Town or any judgment, order, decree, writ or injunction or any provision of any existing law or regulation to which CDA or the Town is a party or is bound, and, except as set forth herein, the execution and delivery of this Agreement by Seller and the consummation by Seller of the transactions contemplated hereby do not and will not require any filing with, or consent or approval of, any third party;

(3) Seller has not granted any person, firm, corporation or entity other than Purchaser any right or option currently in effect to acquire any estate in or title to the Property or any portion thereof and no person, firm, corporation or entity shall obtain such right or option other than Purchaser by the execution of this Agreement; and

(4) Seller is not aware of any misrepresentations or breach of warranty made by Purchaser herein.

B. CDA and the Town jointly and severally covenant and agree that the Property shall be exempt from all changes in zoning laws, ordinances, and other regulations that change the land uses permitted under Article LXIII of the Town's Zoning Code as in effect on the Effective Date (other than any such land uses that are prohibited under Section VI(A)(10) of this Agreement); however, notwithstanding the foregoing, this provision shall not be applicable to any changes in land use or zoning laws, ordinances, and other regulations that are adopted by the Town and/or its various boards, departments, or agencies more than five (5) years after the Closing Date unless, within such five (5)-year period (subject to extension pursuant to Section XXV(M)), Purchaser has (i) completed the Infrastructure Work and (ii) been issued building permits to construct building(s) having a total of One Million (1,000,000) square feet and has completed sufficient construction of said building(s) to vest its rights under general zoning principles.

### XIII. PURCHASER'S REPRESENTATIONS AND COVENANTS

A. Purchaser represents and warrants to CDA and the Town that as of the date hereof the following representations and warranties are true in all material respects and that the same shall be true in all material respects as of the date of Closing:

- (1) Purchaser is a limited liability company formed, organized, validly existing and in good standing under the laws of the State of Delaware and is authorized to do business in the State of New York;
- (2) Purchaser has full power and authority to execute and deliver this Agreement and all other documents now or hereafter to be executed and delivered by it pursuant to this Agreement (the "Purchaser's Documents") and to perform all obligations arising under this Agreement and the Purchaser's Documents. All necessary limited liability company proceedings of Purchaser have been duly taken to authorize the execution, delivery, and performance of this Agreement and the Purchaser's Documents by Purchaser. This Agreement has been duly executed and delivered by Purchaser and constitutes, and the Purchaser's Documents will each constitute, the legal, valid and binding obligation of Purchaser, enforceable in accordance with their respective terms, subject to bankruptcy, reorganization and other similar laws affecting the enforcement of creditor's rights generally, and except as may be limited by general equitable principles. Each person or entity having an ownership interest in Purchaser has duly authorized and approved this Agreement and the transaction contemplated hereby;
- (3) This Agreement and the Purchaser's Documents do not and will not contravene any provision of the organizational documents of Purchaser or any judgment, order, decree, writ or injunction or any provision of any existing law or regulation to which Purchaser is a party or is bound, and, except as set forth herein, the execution and delivery of this Agreement by Purchaser and the consummation by Purchaser of the transactions contemplated hereby do not and will not require any filing with, or consent or approval of, any third party;
- (4) Purchaser has the financial ability and the skills and experience necessary to purchase and complete the development of the Property and to perform all of its obligations under this Agreement; and
- (5) Purchaser is not aware of any misrepresentations or breach of warranty made by Seller herein.

B. Purchaser covenants and agrees as follows:

(1) Purchaser's development team shall be comprised of individuals and/or organizations having adequate experience in developments of the kind contemplated hereunder and comparable to the development to be undertaken by Purchaser at the Property;

(2) Purchaser shall redevelop the Property consistent with the uses permitted in the Planned Development Zoning District and substantially consistent with the Intended Development Plan, except as otherwise approved by the applicable governmental bodies;

(3) Subject to the terms and conditions of this Agreement, Purchaser understands, covenants and agrees that it shall prepare, all at Purchaser's expense, the surveys and maps and shall record the deeds, covenants and restrictions and maps necessary for the application and approval of all Town, County and New York State permits and/or approvals necessary to gain the necessary approvals for the redevelopment of the Property consistent with the Intended Development Plan;

(4) Subject to the terms and conditions of this Agreement, Purchaser understands, covenants and agrees that it shall bear all on-site infrastructure costs. Purchaser shall bear only those off-site infrastructure costs required under this Agreement or under municipal approvals;

(5) Purchaser understands, covenants and agrees that Seller is selling the Property to Purchaser for it to complete the Proposed Urban Renewal Project, a redevelopment of the Property in accordance with the goals and objectives set forth in the Amended Town of Riverhead Reuse & Revitalization Plan Enterprise Park at Calverton, adopted by the Urban Renewal Agency of the Town of Riverhead on August 2, 2016, and for use of the Property as permitted by the Planned Development Zoning District for the Property; and

(6) Purchaser further understands, covenants and agrees that Seller is conveying the Property for a "public purpose" as that term is used under Section 1953 of the New York Real Property Actions & Proceedings Law of the State of New York and further acknowledges that the conveyance is being made by Seller upon reliance on Purchaser's representation that Purchaser will redevelop the property in accordance with the covenant set forth in Section XIII(B)(2).

**XIV. OPERATION OF THE PROPERTY UNTIL CLOSING**

The Property is vacant land (except for two runways). Seller has no obligation to maintain or improve the Property prior to Closing, other than the obligation to maintain the Property in the manner it has been maintained prior to the date hereof.

**XV. [Intentionally deleted]**

**XVI. CONDITION OF THE PROPERTY AND RELEASE OF SELLER'S LIABILITY**

A. Purchaser acknowledges that Seller is transferring, and Purchaser shall accept, the Property in its physical "AS IS" condition as of Closing WITHOUT ANY REPRESENTATION OR WARRANTY, STATED OR IMPLIED, WHATSOEVER BY SELLER OR ANY EMPLOYEES, REPRESENTATIVES OR AGENTS OF SELLER RELATING TO THE PROPERTY.

B. Upon the closing of title, Purchaser, on behalf of itself, its officers, directors, shareholders, partners (limited and general), members, joint ventures and principals and its and their respective successors and assigns, does hereby forever release CDA and the Town, their respective board members, officers, agents, and employees (collectively the "Releasees"), of and from any and all losses, liabilities, damages, claims, demands, causes of action, costs and expenses, whether known or unknown, arising out of or in any way connected with the Property, including, without limitation, the condition of title to the Property and the environmental condition of the Property, other than losses, liabilities, damages, claims, demands, causes of action, costs and expenses arising out of a breach by Seller of any of its representations, warranties, and covenants contained in this Agreement. Purchaser agrees never to commence, aid in any way, or prosecute against the Releasees any action or other proceeding based upon any such losses, liabilities, damages, environmental claims, demands, causes of action, costs and expenses, other than losses, liabilities, damages, claims, demands, causes of action, costs and expenses arising out of a breach by Seller of any of its representations, warranties, and covenants contained in this Agreement.

C. Purchaser expressly waives any rights or benefits available to it with respect to the foregoing release under any provision of applicable law which generally provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time the release is agreed to, which, if known to such creditor, would materially

affect a settlement. Purchaser, by the execution of this Agreement, acknowledges that Purchaser fully understands the foregoing, and with this understanding, nonetheless elects to and does assume all risk for claims known or unknown, described in this Section. Purchaser acknowledges and represents that Purchaser is fully aware of the physical condition and state of repair of the Property based on Purchaser's own inspection and investigation thereof, and that Purchaser is entering into this Agreement based solely upon such inspection and investigation and not upon any information, data, statements or representations, written or oral, as to the physical condition, state of repair, use, cost of operation or any other matter related to the Property or the other property included in the sale, given or made by Seller or its representatives and shall accept the same "AS IS" in their condition and state of repair as of Closing, except as set forth in Seller's representations, warranties, and covenants contained in this Agreement.

## XVII. ENVIRONMENTAL REMEDIATION

A. Indemnification. Purchaser hereby agrees to defend, indemnify and hold the Releasees, harmless from and against any and all losses, liabilities, damages, liens, claims, demands, causes of action, reasonable costs and reasonable expenses arising out of or related to the Release of Hazardous Substances or Hazardous Materials arising out of Purchaser's activities on the Property occurring prior and subsequent to the Closing. This indemnification includes, without limitation, any and all reasonable costs incurred because of any investigation, review or testing of the Property or any cleanup, removal of structures, or restoration required or requested by a federal, state or local agency or political subdivision, including, without limitation, any such costs associated with the contamination of adjacent property or ground water caused by Purchaser. Subject to the qualifications contained in this Section, this indemnification shall include all third-party claims related to, or arising out of a Release of Hazardous Substances or Hazardous Materials on or below the Property. This indemnification shall survive the Closing or termination of this Agreement.

B. Definitions. For the purposes of this Section XVII, the following definitions shall apply:

(1) "Hazardous Substance" or "Hazardous Material" shall mean (i) any solid, liquid, or gaseous chemical, material, or substance that is regulated by any present or future federal, state, regional, or local law, ordinance, rule, regulation, notice, order, or guidance,

including but not limited to any chemical, material, or substance that is designated or regulated as a hazardous or toxic chemical, material or substance, or (ii) any chemical, material or substance the presence of which could be detrimental to the Property or hazardous to human health or safety or the environment, including but not limited to radioactive materials, including radon, natural gas, natural gas liquids (all of the foregoing gas called “Natural Gas Products”), liquefied natural gas, synthetic gas, or mixtures of Natural Gas Products and synthetic gas, lead, asbestos-containing materials, polychlorinated biphenyls, urea formaldehyde, and petroleum products;

(2) “Release” shall mean any release, spill, leak, discharge, disposal, pumping, pouring, emitting, employing, injecting, leaching, dumping, or allowing to escape or migrate into or through the environment;

(3) “Remediation” or “Remediate” means all work performed or to be performed to investigate, characterize and remove, contain, dispose, treat, or otherwise deal with the presence on, in, at or under the Property of Hazardous Materials at levels of contamination that require remediation under Environmental Laws, or any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing (including the abandonment or discarding of barrels, containers or other closed receptacles containing Hazardous Materials) of Hazardous Materials on or into the Property, in order to render the Property in compliance with applicable Environmental Laws; and

(4) “Environmental Laws” means the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”), 42 U.S.C. 9601 et seq., as amended; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. 6901 et seq., as amended; the Clean Air Act (“CAA”), 42 U.S.C. 7401 et seq., as amended; the Clean Water Act (“CWA”), 33 U.S.C. 1251 et seq., as amended; and any other federal, state, local or municipal laws, statutes, regulations, rules or ordinances imposing liability or establishing standards for protection of the environment.

C. Remediation. Purchaser covenants and agrees to Remediate, from and after Closing, at its sole cost and expense, the Property when, if and to the extent Remediation is required by Environmental Laws or governmental authority having jurisdiction over the Property (the “Remediation Obligation”), provided that the Remediation Obligation shall not include any obligation by Purchaser to indemnify or defend or hold harmless Seller against (i) any fine,

penalty or claim by a non-governmental third party, (ii) any fine or penalty by a governmental authority or (iii) any claim by a governmental authority other than a claim to Remediate the Property, provided in each instance, which such non-governmental third party or governmental authority may or could have asserted against Seller on or before the Closing Date.

D. Further Indemnification. Purchaser shall indemnify, defend and hold Releasees harmless from and against: (i) all losses incurred by Seller arising out of Purchaser's breach of its covenants and obligations as provided herein; (ii) Purchaser's breach of the Remediation Obligation; and (iii) any claim by any subsequent owner of the Property for reimbursement for any costs of Remediation of the Property.

E. Purchaser acknowledges that Seller is expressly relying on the provisions contained herein, which are a material inducement for Seller to enter into the transaction contemplated by this Agreement.

## XVIII. SEWER AND WATER

Purchaser acknowledges and agrees that all buildings to be constructed on the Property must be connected to the Calverton Sewer District and the Riverhead Water District.

### A. SEWER

(1) Upon the signing of this Agreement, Seller shall apply for an extension of the boundary of the Calverton Sewer District to cover the Property to be conveyed and lots to be retained by Seller. No physical improvements will be constructed as a result of this boundary extension.

(2) Purchaser shall be responsible for the cost of all sewer improvements to serve structures and uses as established from time to time on the Property, including, but not limited to, piping, force mains, lifts stations and appurtenances and the cost of the operation and maintenance thereof. All such improvements shall be constructed in accordance with the specifications of the Calverton Sewer District and shall be subject to a continuing offer of dedication to the Calverton Sewer District. Purchaser shall also be responsible to pay all hook-up fees and any other costs required by the Calverton Sewer District at the time structures are hooked up to the District.

(3) CDA and the Town shall retain a general easement for sewer purposes over portions of the Property which shall be recited in the Deed, which shall provide that (a)

CDA and the Town shall have the right to connect structures and uses on any contiguous lots owned by CDA or the Town to any sewer improvements constructed by Purchaser without payment, subject to restoration to existing conditions, and (b) CDA and the Town shall engage in prior discussions with Purchaser as to the specific portions of the Property over which such easement is exercised, and if CDA, the Town, and Purchaser are unable to agree on such specific portions, the easement shall be over the portions of the Property that, as reasonably determined by CDA and the Town, are least intrusive, taking into account any existing development by the Purchaser and any development plans of the Purchaser of which CDA or the Town has knowledge.

B. WATER

(1) Seller applied for an extension of the boundary of the Riverhead Water District to cover the Property to be conveyed and lots to be retained by Seller.

(2) Purchaser agrees to pay key money as shall be assessed by the Riverhead Water District at the time required by the District based upon the reasonably anticipated use of potable water to be supplied by the Water District. The facilities on the Property shall be served by master meter and private mains constructed by Purchaser at its sole expense in conformance with District specifications.

XIX. DEFAULTS AND REMEDIES

A. In the event that Purchaser breaches any of its representations contained in this Agreement in any material respect or otherwise defaults in its obligations under this Agreement in any material respect, Seller shall provide Purchaser with written notice of such breach or default promptly after Seller discovers same. If Purchaser fails to cure said breach or default within thirty [30] days after notice from Seller (or after ninety [90] days if Purchaser diligently commences to cure such breach or default, if such breach or default is not curable within thirty [30] days), then Seller's sole remedy shall be to terminate this Agreement and (i) if the termination is after the Initial Due Diligence Period, to receive as liquidated damages (1) the Initial Deposit in accordance with Section II(B) (unless previously released to Seller, in which case Seller shall be entitled to retain the Initial Deposit) and (2) the Second Deposit (if previously paid by Purchaser) in accordance with Section II(C), it being agreed by the parties that (a) it would be impractical and extremely difficult to estimate the damages which Seller and

the Town may suffer if Purchaser breaches any of its representations contained in this Agreement or otherwise defaults in its obligations under this Agreement and that the payments set forth in this Section represent a reasonable estimate of the total net detriment that Seller and the Town would suffer upon Purchaser's breach or default and (b) such liquidated damages are not intended as a forfeiture or a penalty within the meaning of applicable law but are the CDA's and the Town's sole remedy for such damages and constitute a fair and reasonable amount of damages under the circumstances or (ii) if the termination is during the Initial Due Diligence Period, to exercise its rights pursuant to Section II(F).

B. In the event that Purchaser breaches any of its representations contained in this Agreement in any non-material respect or otherwise defaults in its obligations under this Agreement in any non-material respect, Seller shall provide Purchaser with written notice of such breach or default promptly after Seller discovers same. If Purchaser fails to cure said breach or default within thirty [30] days after notice from Seller (or after ninety [90] days if Purchaser diligently commences to cure such breach or default, if such breach or default is not curable within thirty [30] days), then Seller's sole remedy shall be to seek actual damages directly caused by such breach or default in an amount not to exceed the liquidated damages that would be payable pursuant to Section XIX(A) if such breach or default were material.

C. In the event that Seller breaches any of its representations contained in this Agreement in any material respect or otherwise defaults in its obligations under this Agreement in any material respect, Purchaser shall provide Seller with written notice of such breach or default promptly after Purchaser discovers same. If Seller fails to cure said breach or default within thirty [30] days after notice from Purchaser (or after ninety [90] days if Seller diligently commences to cure such breach or default, if such breach or default is not curable within thirty [30] days), then Purchaser shall have such remedies as Purchaser shall be entitled to at law or in equity, including, but not limited to, the right to terminate this Agreement or to seek specific performance. If Purchaser exercises its right to terminate this Agreement, Purchaser will have the right to receive (i) the Initial Deposit in accordance with Section II(B) (unless already released to Seller, in which case Seller shall refund to Purchaser the Initial Deposit) and (ii) the Second Deposit (if previously paid by Purchaser) in accordance with Section II(C).

D. In the event that Seller breaches any of its representations contained in this Agreement in any non-material respect or otherwise defaults in its obligations under this

Agreement in any non-material respect, Purchaser shall provide Seller with written notice of such breach or default promptly after Purchaser discovers same. If Seller fails to cure said breach or default within thirty [30] days after notice from Purchaser (or after ninety [90] days if Seller diligently commences to cure such breach or default, if such breach or default is not curable within thirty [30] days), then Purchaser's sole remedy shall be to seek actual damages directly caused by such breach or default.

E. Notwithstanding anything to the contrary contained in this Agreement, neither the Purchaser nor the Seller shall have any liability under this Agreement for any consequential, indirect, special, or punitive damages.

## XX. NOTICES

All notices and other communications which either party is required or desires to send to the other shall be in writing and shall be personally delivered or delivered by overnight courier, in each case with receipt acknowledged. Notices shall be deemed to have been given on the date of receipt thereof (including all required copies thereof) if delivered personally or one [1] business day after timely deposit with an overnight courier. Notices shall be addressed as follows:

### **If to Seller, to:**

Town of Riverhead Community Development Agency  
c/o Town of Riverhead  
200 Howell Avenue  
Riverhead, New York 11901  
Telephone: (631) 727-3200  
Facsimile Number: (631) 727-5772

Town Supervisor  
c/o Town of Riverhead  
200 Howell Avenue  
Riverhead, New York 11901  
Telephone: (631) 727-3200

Town Attorney  
c/o Town of Riverhead  
200 Howell Avenue  
Riverhead, New York 11901  
Facsimile No.: (631) 727-6152  
Telephone: (631) 727-3200

Smith, Finkelstein, Lundberg, Isler and Yakaboski LLP.  
Attn.: Frank A. Isler, Esq.  
Special Counsel  
456 Griffing Avenue  
Riverhead, New York 11901  
Telephone: (631) 727-4100

**If to Purchaser, to:**

Calverton Aviation & Technology LLC  
Attn.: Daniel Preston  
400 David Court  
Calverton, New York 11933  
Telephone: (631) 574-2616

Duane Morris LLP  
Attn.: Robert J. Hasday, Esq.  
1540 Broadway  
New York, New York 10036-4086  
Telephone: (212) 692-1010

Anthony B. Tohill P.C.  
12 First Street  
Riverhead, New York 11901  
Telephone: (631) 727-8383

Joseph Calascibetta, Esq.  
Triple Five Ventures Co. LLC  
1 Meadowlands Plaza 3rd Floor  
East Rutherford, New Jersey 07073  
Telephone: (201) 340-2900

**If to Escrow Agent, to:**

First American Title Insurance Company

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or to such other person and/or address as shall be specified by any party in a notice given to the other parties pursuant to the provisions of this Agreement.

**XXI. BROKER**

Seller and Purchaser each represents and warrants to the other that it has had no dealings with any real estate broker or agent on its behalf in connection with this Agreement other than Cushman & Wakefield of Long Island, Inc. (the “Broker”). Seller will be responsible for paying any commission owed to the Broker in connection with this Agreement. Seller and Purchaser covenant to pay, hold harmless and indemnify the other from and against any and all cost, expense or liability (including, but not limited to, reasonable attorneys’ fees of counsel selected by the indemnified party) for any compensation, commissions, fees or other charges claimed by any other broker or agent with respect to this Agreement or the negotiation hereof arising out of any acts of Seller or Purchaser, respectively.

## XXII. ASSIGNMENT

Purchaser shall not assign or transfer this Agreement or any of its rights hereunder without Seller’s prior written consent in each instance, which consent may be granted or withheld in Seller’s sole and absolute discretion. Any assignee must first be found to be a qualified and eligible sponsor in accordance with the provisions of the New York General Municipal Law and any such assignment must expressly state that the approved assignee shall be bound by all the terms and conditions of this Agreement. No consent given by Seller to an assignment shall be construed as consent to any other assignment, and any impermissible assignment made by Purchaser shall be void. Seller shall not assign or transfer this Agreement or any of its rights hereunder without Purchaser’s prior written consent in each instance, which consent may be granted or withheld in Purchaser’s sole and absolute discretion. Notwithstanding the foregoing, Seller may assign its right and obligations hereunder to either the Town or the CDA without the need for Purchaser’s consent, provided (i) Seller shall promptly notify Purchaser of such assignment and (ii) no assignment shall relieve the assignor of its obligations hereunder. Any assignment must expressly state that the approved assignee shall be bound by all the terms and conditions of this Agreement. No consent given by Purchaser to an assignment shall be construed as consent to any other assignment and any impermissible assignment made by Seller shall be void.

## XXIII. FURTHER ASSURANCES

The parties agree to do such other and further acts and things, and to execute and deliver such instruments and documents, as either may reasonably request from time to time, whether at or after the Closing, in furtherance of the purposes of this Agreement.

#### XXIV. PROVISIONS THAT SURVIVE CLOSING

The following provisions of this Agreement shall survive Closing, as well as any other provisions that are not recited below but this Agreement expressly so provides:

Section I (B and C)

Section II(F)

Section III

Section V (J and M)

Section VII

Section XII

Section XIII

Section XVI

Section XVII

Section XVIII

Section XX

Section XXI

Section XXIII

Section XXIV

Section XXV

#### XXV. MISCELLANEOUS

A. This Agreement and the Exhibits attached hereto, constitute the entire Agreement between Seller and Purchaser with respect to the Property. All prior understandings, agreements, representations and warranties, oral or written, between the parties are merged in, superseded by and contained in this Agreement, which completely express their full agreement and has been entered into after full independent investigation, neither party relying upon any statement made by anyone else that is not set forth in this Agreement.

B. This Agreement may not be waived, changed, modified or discharged orally, but only by an agreement in writing signed by the parties hereto; and any consent, waiver, approval or authorization shall be effective only if signed by the party granting such consent, waiver, approval or authorization.

C. The captions, Section titles and Exhibit names contained in this Agreement are for convenience and reference only and shall not be used in construing this Agreement.

D. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to the conflict of laws provisions thereof, without the aid of any custom, canon or rule of law requiring construction against the draftsman. The parties consent to exclusive jurisdiction of the courts of the State of New York and place venue in the County of Suffolk.

E. The terms "hereof", "herein", and "hereunder" and words of similar import shall be construed to refer to this Agreement as a whole and not to any particular Section or provision, unless expressly so stated.

F. The word "person" shall mean any natural person, a partnership, a corporation, limited liability company, a business trust and any other form of business or legal entity.

G. Any Exhibits attached hereto are hereby made part of this Agreement.

H. All words or terms used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

I. Subject to the provisions of Section XXII (Assignment) above, this Agreement shall be binding upon permitted assigns. None of the provisions of this Agreement are intended to be, nor shall they be construed to be, for the benefit of any third party.

J. Purchaser's acceptance of the Deed shall be deemed to be an acknowledgment, for all purposes, of the full performance and discharge of every representation, agreement and obligation on the part of Seller to be performed by it pursuant to the provisions of this Agreement. Seller's acceptance of the Purchase Price shall be deemed to be an acknowledgment, for all purposes, of the full performance and discharge of every representation, agreement and obligation on the part of Purchaser to be performed by it pursuant to the provisions of this Agreement. This paragraph shall not apply to any provisions which

specifically states that it shall survive the Closing and shall not apply to any items which are to be recited as easements, covenants or other restrictions in the Deed.

J. The term “business day” shall mean any day other than a Saturday, Sunday, bank holiday in the State of New York, Passover (first two days and the 7th and 8th day), Shavuot (two days), Rosh Hashanah (two days), Yom Kippur, Sukkot (first two days), Shmini Atzeret, and Simchat Torah.

K. This Agreement shall not be recorded by either party without the prior written consent of the other party and any recordation made by a party without the consent of the other party shall, at the other party’s option, automatically void this Agreement. Each party hereby appoints the other party as its attorney-in-fact coupled with an interest to enable the other party to execute and record any document necessary to remove the instrument effecting the recordation of this Agreement or a memorandum thereof of record without the consent of the other party. This provision shall survive the termination of this Agreement.

L. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which the period of time runs shall be excluded, and the last day of such period shall be included, unless it is not a business day, in which case the period shall be deemed to run until the end of the next business day.

M. If performance by Purchaser of its obligations hereunder is not possible due to any Force Majeure Event, the period during which such performance is required shall be extended for one day for each day that any such Force Majeure Event exists, and if such Force Majeure Event is of indefinite existence, such performance shall not be required.

N. The term “marketable title” as used in this Agreement shall mean such title that a title insurance company or companies duly licensed by the State of New York will be willing to approve and insure without additional premium or special charge, in accordance with its standard form of title policy approved by the New York State Insurance Department, subject only to the Permitted Exceptions and such other title exceptions, if any, that have been waived by Purchaser under Section VI(B) or VI(C) hereinabove.

O. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed one and the same instrument. The parties agree that for purposes of negotiating and finalizing this Agreement, any signed documentation, including this Agreement and any subsequent amendments, transmitted by

facsimile machine or by email in a Portable Document Format (PDF) will be treated in all manners and in all respects as an original document and will have the same binding legal effect as an original contract. The signature of any party will be considered for these purposes as an original signature. At the request of either party, any facsimile or PDF document will be re-executed by both parties in an original form.

Dated: Riverhead, New York

\_\_\_\_\_, 2018

**SELLER:**

TOWN OF RIVERHEAD COMMUNITY  
DEVELOPMENT AGENCY

TOWN OF RIVERHEAD

By: \_\_\_\_\_

By: \_\_\_\_\_

**PURCHASER:**

CALVERTON AVIATION & TECHNOLOGY LLC LLC

By: \_\_\_\_\_

**ESCROW AGENT:** signature limited exclusively as to the provisions of this Agreement setting forth the duties of the Escrow Agent

FIRST AMERICAN TITLE INSURANCE COMPANY

By: \_\_\_\_\_

Exhibit A



# Exhibit B

## **Exhibit B**

### **Intended Development Plan**

The development plan for the first phase has a number of steps.

(1) Improving both runways with a lighting system, enhanced security, reactivation of the GPS approach system, and general maintenance. Not less than One Million and 00/100 Dollars (\$1,000,000.00) will be expended on the runways during the initial two (2) years of ownership, subject to Force Majeure Events (as defined in the Agreement of Sale).

(2) Identifying prospective businesses to locate at the property. Prospective businesses are expected to include (i) Luminati Aerospace LLC (“Luminati”), (ii) companies which will support Luminati’s operations, including metal companies, machining companies, composite companies, metal forming companies, assemblers and systems integrator companies, engineering companies, defense companies, and aircraft servicing companies, (iii) businesses that can benefit from use of the runways, (iv) technology businesses that will have a synergistic relationship with the other companies located at or near the property, and (v) the Federal Aviation Authority.

(3) Initiating conversations, which may include the convening of roundtables, with prospective businesses to locate at the property in order to discuss their space requirements and synergies between such potential businesses, determining the optimal mix of businesses, and obtaining commitments from the desired businesses.

(4) Retaining an engineering firm with the necessary expertise to identify the portion of the property to be developed in the first phase and formulate a site plan that accommodates the stated needs of the businesses that have committed to locate at the property.

(5) Obtaining the necessary approvals of the site plan.

(6) Building out at least One Million (1,000,000) square feet of commercial and industrial space. The amount and configuration of the space in the first phase will depend on the site plan and the requirements of the committed businesses. It is contemplated that the build-out will commence within 18-24 months of the receipt of the required approvals and will take approximately five (5) years.

(7) Primary emphasis shall be on the development of aviation, technology and supportive uses, in addition to those uses permitted under Town Code § 301-341. Building out space that is ancillary to the commercial and industrial development shall be as permitted under Town Code § 301-341 and the Agreement of Sale and as reasonably determined to be beneficial to the primary uses.