

Adopted

COMMUNITY DEVELOPMENT

Resolution #8

At a regular meeting of the Members of the Town of Riverhead Community Development Agency, Town of Riverhead, Suffolk County, New York, held at the Town of Riverhead Town Hall, 200 Howell Avenue, in Riverhead, New York, in said Town, on March 30, 1999, at 12:00 o'clock P.M., Prevailing Time.

The meeting was called to order by Supervisor Villella, and upon roll being called, the following were

PRESENT: Supervisor Vincent Villella
Councilman Philip Cardinale
Councilman Christopher Kent
Councilman Mark Kwasna
Councilman James Lull

ABSENT:

The following resolution was offered by Member COUNCILMAN KENT, who moved its adoption, seconded by Member COUNCILMAN KWASNA, to-wit:

THE VOTE
Cardinale Yes ___ No ___ Kent Yes ___ No ___
Kwasna Yes ___ No ___ Lull Yes ___ No ___
Villella Yes ___ No ___
THE RESOLUTION WAS WAS NOT ___
THEREUPON DULY DECLARED ADOPTED

RESOLUTION DATED MARCH 30, 1999.

A RESOLUTION DESIGNATING ATLANTIS HOLDING COMPANY LLC AS A QUALIFIED AND ELIGIBLE SPONSOR FOR REDEVELOPMENT OF APPROXIMATELY THREE AND TWO-TENTHS ACRES OF LAND, TOGETHER WITH THE BUILDINGS LOCATED THEREON, AND AUTHORIZING THE SALE BY THE AGENCY OF SUCH PROPERTY TO ATLANTIS HOLDING COMPANY LLC FOR REDEVELOPMENT.

WHEREAS, the Town of Riverhead Community Development Agency (the "Agency") is the owner of an approximately 3.2 acre parcel of land, together with the buildings located thereon, on East Main Street, Riverhead, New York (SCTM #0600-29-4-18.5419) (the "Property") which Property is located within the East Main Street Urban Renewal Area; and

WHEREAS, there has been submitted to the Agency a proposal for, and the Agency is considering, (i) designating Atlantis Holding Company LLC, a New York limited liability company ("Atlantis"), the "qualified and eligible sponsor" pursuant to Section 507(2) of the General Municipal Law and in accordance with the established rules and procedures provided by the Agency (the "Sponsor") for the redevelopment of the Property, and (ii) selling the Property, pursuant to Sections 507(2)(d) and 556(2) of the General Municipal Law, to Atlantis pursuant to a certain Land Disposition Agreement, dated as of April 1, 1999, by and between the Agency and Atlantis, which Land Disposition Agreement has also been submitted to the Agency and is on file in the Office of the Town Clerk of the Town of Riverhead and is available for public inspection during regular business hours

(the "Land Disposition Agreement") for \$1,750,000 for redevelopment by the Sponsor as an entertainment facility; and

WHEREAS, Sections 507(2)(d) and 556(2) of the General Municipal Law require that a public hearing, following at least ten days public notice, be held by the Agency on the question of designating Atlantis the Sponsor for the redevelopment of the Property and selling the Property to Atlantis, as Sponsor; and

WHEREAS, the Town of Riverhead, Suffolk County, New York (the "Town"), pursuant to a coordinated review pursuant to Article 8 of the Environmental Conservation Law and the regulations promulgated thereunder by the State Department of Environmental Conservation ("SEQRA") declared itself "lead agency" for the sale of the Property, the Town has concluded its SEQRA analysis with respect to the sale of the Property and has determined the sale of the Property to be a Type I Action pursuant to SEQRA, the implementation of which, as proposed, the Town Board of the Town has determined will not result in any significant environmental effects; and

WHEREAS, on February 2, 1999, the Agency duly held said public hearing on the designation of Atlantis as the Sponsor for the redevelopment of the Property and the sale of the Property by the Agency to Atlantis, as Sponsor, after the requisite public notice; and

WHEREAS, a majority of the Town Board of the Town, acting as Members of the Agency, attended such public hearing; NOW, THEREFORE, BE IT

RESOLVED, by the Members of the Agency, as follows:

Section 1. Based upon the public hearing held at the Town Hall, 200 Howell Avenue, in Riverhead, New York, in said Town on February 2, 1999 at 7:10 o'clock P.M., Prevailing Time, on the question of designating Atlantis the Sponsor for the redevelopment of the Property and the sale of the Property by the Agency to Atlantis, it is hereby determined to designate Atlantis the Sponsor pursuant to Section 507(2)(d) of the General Municipal Law for the redevelopment of the Property.

Section 2. The form and substance of the Land Disposition Agreement (in substantially the form presented to this meeting) are hereby approved.

Section 3. Based upon the public hearing held at the Town Hall, 200 Howell Avenue, in Riverhead, New York, in said Town on February 2, 1999 at 7:10 o'clock P.M., Prevailing Time, on the question of designating Atlantis the Sponsor for the redevelopment of the Property and the sale of the Property by the Agency to Atlantis, the sale of the Property by the Agency to Atlantis is hereby authorized in accordance with Sections 507(2)(d) and 556(2) of the General Municipal Law and the terms of the Land Disposition Agreement.

Section 4. The Chairman of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Land Disposition Agreement and the Deed attached thereto and the Secretary of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantiality the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman shall approve. The execution thereof by the Chairman shall constitute conclusive evidence of such approval.

Section 5. The Chairman of the Agency is hereby authorized and directed to distribute copies of this Resolution to Atlantis and to do such further things and perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 6. This Resolution shall take effect immediately.

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

Supervisor Villella VOTING Yes

Councilman Cardinale VOTING Yes

Councilman Kent VOTING Yes

Councilman Kwasna VOTING Yes

Councilman Lull VOTING Yes

The resolution was thereupon declared duly adopted.

* * * *

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

I, the undersigned Secretary of the Town of Riverhead Community Development Agency, Town of Riverhead, Suffolk County, New York, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Members of said Agency, including the resolution contained therein, held on March 30, 1999, with the original thereof on file in my office, and that the same is a true and correct transcript therefrom and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that all Members of said Agency had due notice of said meeting.

I FURTHER CERTIFY that, pursuant to Section 103 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public.

I FURTHER CERTIFY that, PRIOR to the time of said meeting, I duly caused a public notice of the time and place of said meeting to be given to the following newspapers and/or other news media as follows:

Newspaper and/or other news media

Date given

Times Review

April 1, 1999

Publication April 8th, 1999

I FURTHER CERTIFY that PRIOR to the time of said meeting, I duly caused public notice of the time and place of said meeting to be conspicuously posted in the following designated public location(s) on the following dates:

Designated Location(s)

of posted notice

Date of Posting

Town Clerk's Bulletin Board

March 31, 1999

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency on March 31, __, 1999.

Secretary

(CORPORATE SEAL)

Adopted

TOWN OF RIVERHEAD

RESOLUTION # 9

**AUTHORIZES SUPERVISOR TO SIGN DISPOSITION AGREEMENT
WITH ATLANTIS HOLDING COMPANY, LLC**

COUNCILMAN LULL

OFFERED THE FOLLOWING RESOLUTION

COUNCILMAN CARDINALE

WHICH WAS SECONDED BY _____

RESOLVED, that the Riverhead Town Board hereby authorizes Supervisor Vincent G. Villella, on behalf of the Town of Riverhead, to sign a Land Disposition Agreement of Understanding between the Town of Riverhead Community Development Agency and Atlantis Holding Company, LLC, with substantially similar form to the attached document.

BE IT FURTHER, RESOLVED, that the Town Clerk is directed to forward a certified copy of this resolution to Councilman Phil Cardinale, Councilman James B. Lull, Thomas M. Rothman, Esq. and Charles De Martin, Esq.

THE VOTE

Cardinale Yes ___ No ___ Kent Yes ___ No ___

Kwasna Yes ___ No ___ Lull Yes ___ No ___

Villella Yes ___ No ___

THE RESOLUTION WAS WAS NOT ___

THEREUPON DULY DECLARED ADOPTED

LAND DISPOSITION AGREEMENT AND
AGREEMENT OF SALE

between

THE TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY

as Seller

and

ATLANTIS HOLDING COMPANY LLC

as Buyer

Dated: as of March ____, 1999

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Exhibit A	Land
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Exhibit E	Form of Deed

LAND DISPOSITION AGREEMENT AND
AGREEMENT OF SALE

LAND DISPOSITION AGREEMENT AND AGREEMENT OF SALE (the "Agreement") made as of this _____ day of March, 1999, between THE TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY, an urban renewal agency of the State of New York ("Seller"), having an address at 200 Howell Avenue, Riverhead, New York 11901 and ATLANTIS HOLDING COMPANY LLC ("Buyer"), a New York limited liability company having an address at 323 Long Island Avenue, Holtsville, New York 11742.

W I T N E S S E T H:

WHEREAS, Seller is the owner of a certain parcel of land of approximately 3.1 acres located on East Main Street, Riverhead (SCTM #0600-29-4-18.5&19), as more particularly described on Exhibit A attached hereto (the "Land"), including the buildings situated thereon (the "Buildings") (the Land together with the Buildings being the "Property"); and

WHEREAS, on September 10, 1997, Seller prepared and sent to numerous parties, including Buyer, a request for proposals for the acquisition of the Property and the redevelopment thereof (the "Request for Proposals"), the Property to be redeveloped in accordance with certain criteria set forth in the Request for Proposals and in the Town of Riverhead East Main Street Urban Renewal Plan, duly adopted October 19, 1993 (the "Plan"); and

WHEREAS, the Property is specifically referred to in the Plan as being highly under utilized, property for which appropriate water-front related use is recommended and property upon which a tourist destination facility and an economic generator should be constructed; and

WHEREAS, in response to the Request for Proposals Buyer, on December 5, 1997, submitted a proposal for the acquisition and redevelopment of the Property, which response was clarified by letter dated January 28, 1998 and further clarified by Buyer at a meeting held with Seller on April 16, 1998; and

WHEREAS, in August, 1998, Seller, the Town of Riverhead (the "Town") and Buyer executed a Memorandum of Understanding (the "MOU") setting forth the intention of the Seller and Buyer for the sale of the Property by Seller to Buyer and the purchase and redevelopment of the Property by Buyer; and

WHEREAS, Buyer has made application to the Town of Riverhead Industrial Development Agency (the "IDA") for "financial assistance" with respect to the acquisition and redevelopment of the Project in accordance with the Plan; and

WHEREAS, to obtain such "financial assistance" Buyer must cause title to the Property to be conveyed to the IDA, with title to be reconveyed by the IDA to Buyer at a subsequent date in accordance with the provisions of a sale agreement between Buyer and the IDA; and

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, through delivery by Seller of the deed (as described in Section 11(a) hereof (the "Deed")) to the IDA, the Property for redevelopment in accordance with the Plan, subject to the terms and conditions of this Agreement.

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 and Buyer agree as follows:

1. Subject of Sale. Upon and subject to the terms and conditions herein contained, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Property. Except for the environmental contamination in the Property described in Exhibit C hereto, the Property is sold by Seller "as is" on the date of execution of this Agreement and shall be accepted by Buyer in such condition, reasonable wear and tear from the date of execution of this Agreement to the date of Closing (the "Closing" or the "Closing Date") excepted. Buyer acknowledges that it is familiar with the Property, has been permitted access to the Property to perform such due diligence concerning the Property as it deemed necessary or appropriate and that it has performed such due diligence.

The Property shall exclude any and all intangible property, including, without limitation, all books and records, delinquent tenant arrearages as of the Closing Date, Seller's policies of title or other insurance and all insurance proceeds with respect to events existing or occurring prior to, and other claims existing on, the Closing Date including, without limitation, the Seller's right to any rights or claims against any former owner of the Property with respect to or in any way in connection with any environmental contamination and any monetary or other recovery from or with respect to any such rights or claims either from any such owner, successor or assignee thereof, insurance or indemnity company or any department or agency of the State of New York or Federal government.

2. Purchase Price. (a) The purchase price for the Property (the "Purchase Price") is One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000), payable by Buyer as follows:

(i) One Hundred Thousand Dollars (\$100,000) (the "Deposit") upon the execution and delivery of this Agreement by Seller and Buyer, by delivering to Seller Buyer's certified or bank check drawn on a bank which is a member of the New York Clearinghouse Association payable to the order of Seller; and

(ii) One Million Six Hundred Fifty Thousand Dollars (\$1,650,000) on the Closing Date by wire transfer of immediately available funds to an account or accounts to be designated by Seller at or prior to the Closing Date, plus or minus prorations and other adjustments hereunder.

(b) The Deposit shall be held in a separate interest bearing trust account established by the Seller and shall be promptly returned to Buyer in the event the Property is not delivered by the Seller. Seller shall be required to deposit the Deposit in a money market account in the Suffolk County National Bank. Any deposit earnings on the Deposit shall be credited to the purchase price at Closing or returned to Buyer in the event the Property is not delivered by the Seller

3. Title Exceptions.

(a) Buyer shall accept title to the Property subject to the matters set forth on Exhibit B (collectively, the "Permitted Encumbrances"), except that affirmative insurance language will be included in the title policy with respect to exception 12.

(b) Buyer has (x) made application with First American Title Insurance Company (the "Title Company") for a title insurance policy and, in connection therewith, caused title to the Property to be searched and examined by the Title Company and (y) ordered a survey or survey update of the Land and Buildings (the "Survey") from a surveyor licensed to do business in the State of New York (the "Surveyor"), and has caused the Title Company and the Surveyor to deliver directly to Seller copies of the Title Company's report, the results of any searches for Uniform Commercial Code financing statements filed against Seller or the Property, the tax and departmental searches and the survey reading and the Survey. Buyer shall instruct the Title Company to immediately deliver to the Seller any updates or continuations thereof and any supplements thereto. Within ten (10) days after the issuance of each update, continuation or supplement to the title report and Survey, Buyer shall deliver to Seller a written statement setting forth any liens or encumbrances affecting, or other defects in or objections to, title to the Property disclosed by such materials other than Permitted Encumbrances ("Additional Encumbrances"). The failure by Buyer to deliver any statement required by the immediately preceding sentence within the time period specified therefor shall constitute a waiver by Buyer of any and all Additional Encumbrances which may be or would have been disclosed by the materials to be covered by such statement.

(c) If Buyer notifies Seller of any Additional Encumbrances, Seller shall be entitled to reasonable adjournments of the Closing during which Seller may attempt to remove such Additional Encumbrances; provided, however, that Seller shall not be required to bring any action or proceeding, or take any steps,

or otherwise incur any expense to remove any Additional Encumbrances, unless such Additional Encumbrance arose after the date of this Agreement as a result of a willful or intentional act or omission of Seller or its officers, directors or agents (a "Seller's Encumbrance"). In the event that an Additional Encumbrance is a Seller's Encumbrance, Seller shall cure such Seller's Encumbrance. If for any reason Seller is unable or, except to the extent of Seller's obligations pursuant to the immediately preceding sentence, unwilling to remove any Additional Encumbrance other than Sellers' Encumbrances as of the Closing Date, as such date may be adjourned pursuant to this Paragraph (c), Seller shall so notify Buyer. If such notice is given by Seller, Buyer may elect to (i) terminate this Agreement by giving notice to Seller, in which event the Deposit shall be returned to Buyer at which time this Agreement shall be null and void and neither party shall have any rights or obligations under this Agreement, except for those provisions hereof that are specifically stated to survive a termination of this Agreement, or (ii) perform all of Buyer's obligations hereunder and accept title to the Property subject to such uncured Additional Encumbrances without any abatement of the Purchase Price or liability on the part of Seller unless such uncured Additional Encumbrance was a Seller's Encumbrance, in which event Seller shall cure such Seller's Encumbrance; provided, however, that Buyer shall in no event have the option to terminate this Agreement pursuant to the foregoing clause (i) if the Additional Encumbrance giving rise to such right arose as a result of an act or omission of Buyer or its officers, directors or agents. Buyer shall make its election between clauses (i) and (ii) of the immediately preceding sentence by written notice to Seller given not later than 5:00 P.M. on the fifth business day after the giving of the notice by Seller of its inability or unwillingness to remove any Additional Encumbrance (but in no event later than the Closing Date). If Buyer shall fail to give such written notice as aforesaid, it shall be deemed to have elected clause (i) above and this Agreement shall be terminated and Seller shall return the Deposit, together with any earnings on the Deposit, to the Buyer.

4. Expenses.

(a) Each party shall pay its own costs and expenses in connection with the transactions contemplated hereby, including the fees and expenses of its attorneys, accountants, consultants and engineers. All other real property and recording charges required to be paid in connection with the transfer of the Property to Buyer shall be paid by Buyer. Buyer shall pay (a) all expenses of or related to the issuance of Buyer's or Buyer's lender's policies of title insurance (including, without limitation, commitment fees, insurance premiums, endorsement charges, search charges and survey charges) and (b) all charges for a new or updated Survey of the Land and the Buildings. Buyer shall pay, indemnify, defend and hold Seller harmless from any sales taxes or other taxes, if any, (excluding any income taxes

payable by the Seller) relating to the transactions contemplated by this Agreement.

(b) The provisions of this Article 4 shall survive the Closing or termination of this Agreement.

5. Apportionments.

5.1. The parties shall apportion, as of 11:59 P.M. of the day preceding the Closing Date, the following in respect of 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 Buyer's favor) the payment required pursuant to clause (a)(ii) of Article 2 hereof:

(a) Water, electricity, and sewer charges and rents and vault taxes, fees and charges, if any, on the basis of the fiscal 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 the Closing) which is as close to the Closing Date as is reasonably practicable;

(b) Fuel used in heating the Buildings on the basis of the written estimate by Seller's fuel supplier of the quantity on or about the day preceding the Closing and the Seller's cost therefor (including sales tax, if any);

(c) Special assessments and real property taxes which the Agency has paid on the Property, if any; and

(d) Buyer acknowledges that the Property is currently assessed as exempt upon the assessment rolls of the Town. Buyer agrees to pay to the Town at Closing a payment in lieu of taxes (the "PILOT") in an amount equal to that which Buyer would have had to pay in real property taxes and special assessments from the Closing Date to January 1 of the year following the taxable status date next succeeding the Closing Date. Buyer and Seller acknowledge that the acquisition of the Property will be financed, in whole or in part, by the Buyer through obligations to be issued by the Town of Riverhead Industrial Development Agency (the "IDA") and that Buyer and Seller anticipate that the IDA will acquire title to the Property on the Closing Date. In such event, any PILOT payment required hereunder shall be made by Buyer to the IDA in an amount as shall be set forth in a PILOT agreement negotiated by and between Buyer and the IDA.

(e) All other customary items of revenue or expense.

5.2. Any errors in the calculation of apportionments shall be corrected or adjusted as soon as practicable (but not more often than monthly) after the Closing. Seller and Buyer agree to cooperate and use their good faith and diligent efforts

to make such adjustments no later than thirty (30) days after the Closing. If it is impracticable to apportion certain items hereunder (including, without limitation, water and sewer charges) at the Closing, such items shall be apportioned as soon as practicable after the Closing.

5.3. For purposes of calculating prorations, Buyer shall be deemed to be in title to the Property, and therefore entitled to the income therefrom and responsible for the expenses thereof, for the entire day upon which the Closing occurs. All such prorations shall be made on the basis of the actual number of days of the year and month that shall have elapsed as of the Closing Date. Items of income and expense prorated hereunder for the period prior to the Closing Date will be for the account of Seller and items of income and expense prorated hereunder for the period on and after the Closing Date will be for the account of Buyer, all as determined by the accrual method of accounting. The obligations of the parties pursuant to this Paragraph shall survive the Closing.

5.4. The parties further agree to meet, in person or telephonically, two (2) business day prior to the Closing to agree upon the apportionments in accordance with the terms hereof.

6. Sewers. Buyer acknowledges that the Property is within the Riverhead Sewer District and that the Riverhead Sewer District currently owns and maintains a 10" cast iron force main and a 10" cast iron gravity line running through the Property. Buyer acknowledges and represent to Seller that it is fully familiar with such force main and gravity line and the condition thereof, that such force main and gravity line are approximately sixty years old and that any construction that Buyer or its assignees or designees, agents or contractees may undertake on the Property may result in damage to either or both of such force main or gravity line. Buyer agrees that any repair to either of such force main or gravity line that the Town Board of the Town of Riverhead shall reasonably determine is necessary or required as a result of activity on the Property by Buyer or its assignees or designees, agents or contractees shall be promptly paid for by Buyer and that Buyer will be solely liable for any damage to either of such lines and for liability, direct or indirect, resulting from any such damage. Buyer further agrees that neither it nor its assignees or designees, agents or contractees will perform or permit any construction over either said force main or gravity line so as to prohibit or impede continued maintenance by the Town of Riverhead of the same. The Agency, agrees to let construction contracts, at such time as is hereafter provided, for the encasement of that portion of such force main lying between manhole No. 37 and the north end of the Property, a distance of approximately one hundred and five (105) feet, to diligently pursue said encasement to completion and to dedicate such encasement to the Riverhead Sewer District. At or prior to Closing, the Agency shall cause to be prepared an

estimate of the total cost of such encasement, which shall include construction, engineering, construction observation and supervision, dewatering, soil borings and incidental and necessary expenses in connection therewith, each as determined by the Agency to be necessary. The Agency, at or prior to Closing, shall present such estimate of the cost of such encasement to Buyer and Buyer shall, not more than three (3) business days after the Closing, pay the amount of such estimate to Seller. The Seller agrees to let such construction contract for such encasement within three (3) business days of receipt from the Buyer of the amount of such estimate. Seller shall deposit such payment in a separate account and shall expend such payment only for such cost. Upon completion of such encasement to the reasonable satisfaction of the Seller and the Riverhead Sewer District, any portion of such payment not expended by the Seller on such encasement shall be returned by Seller to Buyer. In the event that the cost of such encasement exceeds the estimate, Buyer will pay any amount in excess of the estimate to Seller within three (3) business days of receipt of a statement prepared by Seller and delivered to Buyer detailing the total cost of such encasement. The provisions of this Article 6 shall survive the Closing.

7. Conditions to Closing and the Closing.

(a) The obligations of Seller to consummate the transaction contemplated hereunder to occur on the Closing Date are each conditioned on the fulfillment of each of the following on and as of the Closing Date:

(i) The truth, in all material respects, of each and every representation and warranty (subject to changes in facts permitted hereunder or occurring from events beyond the reasonable control of Buyer) and the due performance of each and every material covenant, undertaking and agreement to be performed by Buyer and Seller under this Agreement;

(ii) Delivery by Buyer to Seller of each item to be delivered by Buyer pursuant to Article 11 hereof;

(iii) Designation by the Seller of the Buyer as a qualified and eligible sponsor as defined in and in accordance with the procedures specified in Sections 507(2)(a) and (d) of the General Municipal Law. Buyer acknowledges that such designation is a discretionary act of Seller and no assurance can be given by Seller that Seller will designate Buyer as a designated and qualified Sponsor for the disposition and redevelopment of the Property. If Seller does not designate Buyer as a qualified and eligible sponsor, Seller shall return the Deposit, together with any earnings on the Deposit, to the Buyer;

(iv) Evidence provided by Buyer, reasonably satisfactory to Seller, of construction and permanent financing for the construction of the Entertainment Facility described in Exhibit E (the "Entertainment Facility");

(v) Evidence provided by Buyer, reasonably satisfactory to Seller, that Buyer has all permits and consents required for construction and operation of the Entertainment Facility;

(vi) An executed copy of an agreement by and between Buyer and the Riverhead Foundation for Marine Research (the "Foundation") providing for the continued presence on the Property of the Foundation; and

(viii) Completion of the Seller Remediation Measures, as defined and provided in Paragraph 16 hereof. Acceptance by Buyer of the Deed on the Closing Date shall constitute Buyer's agreement that all Seller Remediation Measures have been satisfactory completed.

(b) The obligations of Buyer to consummate the transaction contemplated hereunder to occur on the Closing Date are each conditioned on the fulfillment of each of the following on and as of the Closing Date:

(i) The truth, in all material respects, of each and every representation and warranty (subject to changes in facts permitted hereunder or occurring from events beyond the reasonable control of Seller) and the due performance of each and every material covenant, undertaking and agreement to be performed by Seller under this Agreement;

(ii) The physical condition of the Property being the same as on the date hereof, subject to (x) reasonable wear and tear, (y) changes covered by the provisions of Articles 13 and 15 below and (z) work in progress, approved by Buyer in its reasonable discretion or required to be performed by Seller, or permitted to be performed by Seller or by the Foundation;

(iii) Delivery by Seller to Buyer of each item to be delivered by Seller pursuant to Article 11 hereof;

(iv) Delivery by the Title Company to Buyer of a title policy (or a marked-up commitment therefor) insuring marketable fee simple title to the Property, subject only to the Permitted Encumbrances and Additional Encumbrances; provided, however, that Buyer shall use commercially reasonable efforts to satisfy all of its obligations as provided for herein and Buyer's failure to do so shall be deemed to be a waiver of the condition set forth in this subparagraph (iv);

(v) Designation by Seller of Buyer as a qualified and eligible sponsor as defined in and in accordance with the

procedures specified in Section 507(2)(d) of the General Municipal Law; and

(vi) Approval by the IDA of the provision of "financial assistance" to the Buyer as contemplated by the MOU. If the IDA does not approve the provision of such financial assistance to the Buyer, Seller shall return the Deposit, together with any earnings on the Deposit, to the Buyer.

(c) The Closing shall take place at the offices of Willkie Farr & Gallagher, 787 Seventh Avenue, New York, New York at 10:00 A.M. on a date that is not more than thirty (30) days after the conditions to each of Buyer's and Seller's obligations to close the transaction contemplated herein have been satisfied.

(d) The obligations of Buyer to make the payments described herein and the obligations of Buyer and Seller to close the transaction contemplated herein are subject to the express conditions precedent set forth in this Agreement, each of which are either for the mutual benefit of Buyer or Seller, or for the sole benefit of either the Buyer or Seller as the case may be, and may be waived at any time by notice thereof by one party to the other party, which waiver shall become effective only upon the consent of the other party to such waiver; provided, however, that such consent shall not be required where a condition precedent which is the subject of a waiver is for the sole benefit of the party making the waiver. The waiver of any particular condition precedent shall not constitute the waiver of any other.

8. Seller's Representations. Seller represents and warrants to Buyer 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 Closing Date (except for changes in facts permitted hereunder or occurring from events beyond the control of Seller):

(a) Seller is a New York 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. This Agreement constitutes, and the Seller's Documents will each constitute, the legal, valid and binding obligation of Seller, enforceable in accordance with their respective terms, subject to bankruptcy, reorganization and other similar laws affecting the enforcement of creditors' rights generally and except as may be limited by general equitable principles;

(b) This Agreement and the Seller's Documents do not and will not contravene any provision of the organizational

documents of Seller, any judgment, order, decree, writ or injunction, or any provision of any existing law or regulation to which Seller is a party or is bound. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not and will not require any consent by any third party;

(c) There are no mortgage(s) or trust deed(s) to which Seller is a party presently encumbering the Property or any portion thereof;

(d) Seller has not granted any person, firm, corporation or entity other than Buyer any right or option to acquire the Property or any portion thereof and, to the best of Seller's knowledge, no person, firm, corporation or entity will obtain such right or option as a result of the execution of this Agreement;

(e) To the best of Seller's knowledge, there are no pending condemnation or eminent domain proceedings affecting the Property or any part thereof.

(f) Those provisions of this Article 8, and the representations and warranties set forth in such provisions, shall survive the Closing.

(g) No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending, or, to the best of Seller's knowledge, threatened, against Seller, nor are any of such proceedings contemplated by Seller. In the event any proceeding of the character described in this Paragraph (g) is initiated or threatened prior to Closing, Seller shall promptly advise Buyer thereof in writing.

9. Buyer's Representations. Buyer represents and warrants to Seller that as of the date hereof the following representations and warranties are true in all material respects and shall be true in all material respects on the Closing Date:

9.1. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York and is authorized to do business in the State of New York. Buyer 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 "Buyer's Documents") and to perform all obligations arising under this Agreement and the Buyer's Documents. This Agreement constitutes, and the Buyer's Documents will each constitute, the legal, valid and binding obligation of Buyer, enforceable in accordance with their respective terms, covenants and conditions, subject to bankruptcy, reorganization and other similar laws affecting the enforcement of creditors, rights generally, and except as may be limited by general

equitable principles. Each person or entity comprising Buyer has duly authorized and approved this Agreement and the transaction contemplated hereby.

9.2. This Agreement and the Buyer's Documents do not and will not contravene any provision of the organizational documents comprising Buyer, any judgment, order, decree, writ or injunction, or any provision of any existing law or regulation to which Buyer is a party or is bound. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not and will not require any consent by any third party.

9.3. Buyer is not aware of any misrepresentation or breach of warranty made by Seller herein.

9.4. Buyer shall use diligent, good faith efforts to satisfy all of Buyer's obligations which are conditions to the consummation of the transaction contemplated hereunder on the Closing Date.

9.5. Those provisions of this Article 9 and the representations and warranties set forth in such provisions, shall survive the Closing.

9.6. Construction of the Entertainment Facility shall be commenced not later than thirty (30) days after the completion of the sewer encasement project specified in Article 6 hereof, and shall be completed not later than three hundred sixty-five (365) days after such commencement of construction. Buyer covenants to Seller that it will diligently undertake such redevelopment through completion.

10. Violations. To the best of Seller's knowledge, neither the Land nor the Buildings are subject to any Violations (as hereinafter defined) on the date of execution of this Agreement. If Buyer becomes aware that the Land or the Buildings is or becomes subject to any notes or notices of violation of any law, rule, regulation or municipal ordinances, orders or requirements (collectively, "Laws"), that have been noted in or issued by any federal, state or municipal department having jurisdiction, and which have not been fully remedied and discharged of record ("Violations"), Buyer shall provide notice to Seller thereof. Buyer acknowledges that it is fully aware of the status of the Property with respect to Violations and compliance with all Laws on the date of execution of this Agreement and agrees that in no event shall Seller be obligated to cure or discharge any Violations that exist as of the date of execution of this Agreement or take any action to cause the Property to be in compliance with Laws to the extent the Property is not so in compliance as of the date of execution of this Agreement. Seller shall have no obligation to cure or discharge any Violations, or take any action to cause the Property to be in compliance with Laws, except that Seller shall use diligent, good

faith efforts to cure or discharge any Violations that arise after the date of execution of this Agreement and are created by a willful or intentional act or omission of Seller or its officers, directors or agents ("Seller's Violations").

If for any reason Seller is unable or, except to the extent of Seller's obligations pursuant to the last sentence of the immediately preceding paragraph, unwilling to cure or remove any Violation as of the Closing Date, Seller shall so notify Buyer. If such notice is given by Seller, Buyer shall elect to (i) terminate this Agreement by giving notice to Seller, in which event the Deposit shall be returned to Buyer, at which time this Agreement shall be null and void and neither party shall have any rights or obligations under this Agreement, except for those provisions hereof that are specifically stated to survive a termination of this Agreement, or (ii) perform all of Buyer's obligations hereunder and accept title to the Property subject to such Violations without any abatement of the Purchase Price or liability on the part of Seller; provided, however, that Buyer shall in no event have the option to terminate this Agreement pursuant to the foregoing clause (i) if the Violation giving rise to such right arose as a result of an act or omission of Buyer or its officers, directors or agents. Buyer shall make its election between clauses (i) and (ii) of the immediately preceding sentence by written notice to Seller given not later than 5:00 P.M. on the fifth business day after the giving of the notice by Seller of its inability or unwillingness to remove any Violation (but in no event later than the Closing Date). If Buyer shall fail to give such written notice as aforesaid, it shall be deemed to have elected clause (i) above and this Agreement shall be terminated and Seller shall return the Deposit, together with any earnings on the Deposit, to the Buyer.

11. Deliveries at Closing. The following deliveries shall be made at the Closing:

(a) Seller shall execute, acknowledge and deliver to the IDA the Deed, which shall be a bargain and sale deed, with covenant against grantor's acts, in the form of Exhibit F hereto, which shall contain the covenant required under Section 13 of the Lien Law and the "Restrictive Covenants" specified in Section 2 of the MOU, and pursuant to which Seller shall convey to the IDA all of Seller's right, title and interest in and to the Property.

(b) Seller and Buyer shall each deliver to the other such evidence as may be reasonably required by the other of the due authorization, execution and delivery by such party of this Agreement and the Seller's Documents or the Buyer's Documents, as the case may be.

(c) Buyer and Seller shall each deliver to the Title Company certified or official bank checks to the order of the appropriate governmental officials (or shall arrange for a wire transfer of immediately available federal funds to one or more

bank accounts of the Title Company) in payment of all applicable real property documentary or transfer taxes in connection with the execution, delivery, recording and/or filing of the Deed, payment of which Buyer and Seller are respectively responsible for under Article 4, Paragraph (a) hereof, and Buyer shall execute, acknowledge and deliver to the Title Company any tax return(s) required in connection therewith.

(d) Seller shall execute, acknowledge and deliver such affidavits as the Title Company shall reasonably require to cause the Title Company to issue to Buyer and/or its lender title insurance policies with respect to the Property

(e) Buyer shall pay the balance of the Purchase Price to Seller in accordance with the provisions of Articles 2 and 5 hereof.

(f) Seller and Buyer shall execute and deliver to the other a certificate updating the representations and warranties made by each of them in Articles 8 and 9 hereof, respectively.

(g) Seller and Buyer shall each execute and deliver to each other a closing statement reflecting, among other things, the apportionments made pursuant to Article 5 hereof.

(h) Seller and Buyer shall each execute and deliver to the other such other instruments and documents and shall pay such sums of money as may be required pursuant to any of the other provisions of this Agreement. Each instrument and document to be delivered at the Closing, the form of which is not attached to this Agreement as an exhibit, shall be consistent with the applicable provisions of this Agreement and shall be in the form or contain the information or provisions provided for in this Agreement.

12. Default.

(a) In the event that Buyer shall default under this Agreement, Buyer and Seller agree that the damages that Seller shall sustain as a result thereof shall be substantial and shall be difficult to ascertain. Buyer and Seller therefore agree that if Buyer fails to perform any or all of the terms, covenants, conditions and agreements to be performed by Buyer hereunder at or prior to the Closing, Seller's sole remedy shall be to receive as liquidated damages the Deposit, together with any earnings on the Deposit, and thereafter neither Buyer nor Seller shall have any further liability or obligation to the other hereunder, except for such liabilities and obligations as are expressly stated to survive the Closing or any termination of this Agreement. Seller shall be authorized to pursue any remedy at law or in equity if Buyer fails to perform any of the terms, covenants, conditions and agreements to be performed by Buyer hereunder which are stated hereunder to survive the Closing or any termination of this Agreement. Seller shall also be

authorized to institute and pursue any counterclaim to any action brought by Buyer for any cause of action alleged by Buyer against Seller, whether such cause of action relates to facts and circumstances arising prior to, at, or after the Closing.

(b) If Seller breaches any covenant, representation or warranty contained herein or otherwise defaults in its obligations hereunder, Buyer's sole remedy shall be either (a) the right of specific performance or (b) the right to terminate this Agreement by notice to Seller given at any time after Seller shall have failed, for a period of thirty (30) days after notice from Buyer (or after one hundred twenty (120) days if Seller diligently commences to cure such default, but such default is not curable within thirty (30) days), to cure such breach or default; and upon receipt of such notice of termination Seller shall promptly refund the Deposit, together with any earnings on the Deposit, to Buyer, whereupon this Agreement shall be deemed terminated and Seller shall not have any further liability or obligation to Buyer hereunder nor shall Buyer have any further liability or obligation to Seller hereunder, except for such liabilities or obligations as are specifically stated to survive the termination of this Agreement. Solely in the event that Buyer elects the remedy of specific performance pursuant to clause (a) of the immediately preceding sentence, subject to the provisions of Paragraph (c), Buyer shall maintain any right it may have to make a claim for damages against Seller in an amount equal to the actual damages, if any, suffered by Buyer on account of Seller's default hereunder. Notwithstanding the foregoing, in no event shall Buyer have any right to make a claim against Seller for, or recover any amount on account of, special, punitive or consequential damages.

(c) Notwithstanding anything to the contrary contained herein, except for costs relating to environmental contamination and remediation specified in Article 16 hereof, Seller shall not have any liability to Buyer in excess of One Hundred Thousand Dollars (\$100,000.00) in the aggregate with respect to matters which are expressly stated herein to survive the Closing or arising hereunder, including, without limitation, that set forth under clause (b) of Paragraph (b) above, or under any certificates and other documents executed at the Closing. Buyer shall not enter any judgment or collect an amount in excess of said amount. The provisions of this Paragraph (c) shall survive the Closing.

(d) In any litigation described in this Article, the costs and expenses of counsel to the prevailing party to such litigation shall be paid, notwithstanding any cost limitation contained herein, by the other party.

13. Operation of the Property Until Closing.

Between the date hereof and the Closing, Seller hereby covenants with Purchaser as follows:

(a) Seller shall continue to operate and maintain the Property in the ordinary course of business in accordance with present practices. Seller shall reasonably cooperate with Buyer and provide Buyer with reasonable access to the Property at reasonable times and upon reasonable notice so that Buyer may monitor the operation of the Property.

(b) Seller will allow Buyer and its employees, agents, contractors and representatives (collectively, "Buyer's Representatives") to enter upon the Property prior to the Closing at reasonable times and upon reasonable notice, subject to Seller's prior consent, which will not be unreasonably withheld, conditioned or delayed, for the purpose of making surveys, inspections, engineering studies and any other tests, examinations or studies which the Buyer may deem necessary (collectively, "Investigations"). Buyer shall (i) fully comply with all laws, rules and regulations applicable to the Property and/or the Investigations and all other activities undertaken in connection therewith, (ii) not interfere with the use, occupancy or operation of the Property by Seller and (iii) permit Seller to have a representative present during all Investigations undertaken hereunder. Buyer shall promptly provide Seller with copies of all studies, reports and other materials obtained or prepared by Buyer in the course of any and all Investigations. Buyer hereby agrees to indemnify, defend and hold harmless Seller and Seller's officers, directors, employees, agents, contractors and tenants from and against any and all loss, cost, expense, damage, claim and/or liability (including, without limitation, reasonable attorneys' fees and disbursements), suffered or incurred by Seller or any of such other entities or persons and arising out of or in connection with (i) Buyer's and/or Buyer's Representatives' entry upon the Property, (ii) any Investigations and other activities conducted on the Property by Buyer or Buyer's Representatives, and (iii) any liens or encumbrances filed or recorded against the Property as a consequence of any and all Investigations and other activities undertaken by Buyer or Buyer's Representatives. Buyer's indemnification herein provided shall not be applicable to any cost or expense of Seller resulting from Buyer or Buyer's Representative discovery and reporting of any condition and, or, violation reportable and reported by Buyer or Buyer's Representative pursuant to any law, rule or regulation of any governmental authority. The indemnity set forth in this Paragraph (b) shall survive the Closing or any termination of this Agreement.

(c) Notwithstanding any limitation set forth herein, Seller may (i) take such actions, if any, with respect to the Property reasonably necessary to comply with the terms of any insurance requirements or to comply with laws, rules or regulations of any governmental authority and (ii) take such actions with respect to the Property reasonably necessary to prevent loss of life, personal injury or property damage.

(d) If and when Seller obtains knowledge of the same, Seller shall promptly notify Buyer of any change in any condition with respect to the Property or of any event or circumstance which makes any representation or warranty under this Agreement materially untrue or misleading, or any covenant of either party under this Agreement incapable or less likely of being performed.

14. Redevelopment of and Use of the Property.

The Buyer acknowledges that the Seller is selling the Property to the Buyer for redevelopment in accordance with applicable zoning, for uses appertaining to the Property set forth in the Plan and, without limitation, as a "Tourist Destination Facility and Economic Generator". For purposes of the Restrictive Covenants in the Deed and for this Agreement, "Tourist Destination Facility and Economic Generator" shall include the following:

(i) Distribution and showcase of agricultural products grown or manufactured on eastern Long Island; wine tasting and distribution, agro-tourism;

(ii) Aquarium;

(iii) Manufacturer's outlet center;

(iv) Museum;

(v) Convention center (defined as a combination of a hotel, a restaurant, and meeting rooms) so long as such uses are provided by the underlying zoning ordinance; and

(vi) The Entertainment Facility.

Buyer and Seller agree that the Town Board of the Town of Riverhead may amend, from time to time, what constitutes a Tourist Destination Facility and Economic Generator. Buyer and Seller further agree that the Property is currently zoned for and the Plan currently permits the redevelopment of the Property for the Entertainment Facility.

15. Casualty and Condemnation.

(a) If, prior to the Closing Date, all or any significant portion (as defined in this Paragraph (a) of the Property is taken by eminent domain (or is the subject of a pending taking which has not yet been consummated), Seller shall notify Buyer of such fact promptly after obtaining knowledge thereof and either Buyer or Seller shall have the right to terminate this Agreement by giving notice to the other not later than ten (10) days after the giving of Seller's notice. For the purposes hereof, a "significant portion" of the Property shall mean such a portion of the Property as shall have a value, as reasonably determined by Seller and Purchaser's respective

consultants in excess of Two Hundred Fifty Thousand Dollars (\$250,000). If neither Seller nor Buyer elects to terminate this Agreement as aforesaid, or if an "insignificant portion" (i.e., anything other than a significant portion) of the Property is taken by eminent domain (or becomes the subject of a pending taking), there shall be no abatement of the Purchase Price and Seller shall assign to Buyer (without recourse) at the Closing the rights of Seller to the awards, if any, for the taking, and Buyer shall be entitled to receive and keep all awards for the taking of the Property or such portion thereof.

(b) If, prior to the Closing Date, a material part (as defined in this Paragraph (b)) of the Property is destroyed or damaged by fire or other casualty, Seller shall promptly notify Buyer of such fact and either Purchaser or Seller shall have the right to terminate this Agreement by giving notice to the other not later than ten (10) days after the giving of Seller's notice. For the purposes hereof, a "material part" of the Property shall mean a part of the Property as shall have a value, as reasonably determined by Seller and Buyer's respective consultants, in excess of Five Hundred Thousand Dollars (\$500,000). If neither Seller nor Buyer elects to terminate this Agreement as aforesaid, or if there is damage to or destruction of an "immaterial part" (i.e., anything other than a material part) of the Property by fire or other casualty, there shall be no abatement of the Purchase Price and Seller shall assign to Buyer (without recourse) at the Closing the rights of Seller to the proceeds, if any, under Seller's insurance policies covering the Property with respect to such damage or destruction, and Buyer shall be entitled to receive and keep any Moinies received from such insurance policies.

(c) If this Agreement is terminated pursuant to this Article 15, the Deposit shall be returned to Buyer, at which time this Agreement shall be null and void and neither party shall have any rights or obligations under this Agreement, except for those provisions hereof that are specifically stated to survive a termination of this Agreement.

(d) The provisions of this Article 15 shall be construed as express provisions in lieu of the provisions of § 5-1311 of General Obligations Law of the Sate of New York and the Uniform Vendor and Purchaser Risk Act, if adopted in the State of New York, which the parties agree shall be inapplicable to the transactions contemplated hereby.

16. Environmental Contamination and Remediation. Seller acknowledges that certain environmental contamination had occurred on and in the Property and Seller and Buyer agree that such environmental contamination is described in the Groundwater Investigation Report, dated March 22, 1999, prepared by H2M Group with respect to the Property, which Groundwater Investigation Report is attached hereto as Exhibit C, and that remediation measures required by Buyer of Seller to remediate such

environmental contamination prior to the Closing Date are set forth on pages 13 and 14 of Exhibit C (the "Seller Remediation Measures"). Seller agrees, prior to the Closing, to commence and complete all of the Seller Remediation Measures. Seller further acknowledges that the Groundwater Investigation Report attached hereto as Exhibit C describes, at page 11, Potential Groundwater Impacts from the Mobile Station (the "Mobile Spill") which Mobile Spill may require additional investigation or remediation if deemed necessary by the New York State Department of Environmental Conservation ("DEC"). While the Groundwater Investigation Report concludes that any such additional investigation or remediation should be the responsibility of the Mobile Station, Seller agrees that if DEC requires additional investigation or remediation of the Mobile Spill by Buyer, Seller shall perform and pay all costs of any such additional investigation or remediation of the Mobile Spill for Buyer to the same extent as if Seller were the owner of the Property. Buyer and Seller agree that after Seller has completed all of the Seller Remediation Measures, except for the Mobile Spill, Seller shall thereafter have no liability, of any nature, to the Buyer for any environmental contamination, of any nature, existing or claimed to have been existing on or in the Property on or prior to the Closing Date. The provisions of this Article 16 shall survive the Closing.

17. 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, or sent by registered or certified mail, postage prepaid, return receipt requested. Notices shall be deemed to have been given (a) on the date three (3) business days after timely deposit in the US mail return receipt requested or (b) on the date of receipt thereof (including all required copies thereof) if delivered personally or one (1) business day after timely deposit with a by overnight courier. Notices shall be addressed as follows:

(a) if to Seller, to:

Community Development Agency
c/o Town of Riverhead
200 Howell Avenue
Riverhead, New York 11901
Attn.: Ms. Andrea Lohneiss
Telecopy No.: (516) 727-6712

with a copy to:

Willkie Farr & Gallagher
787 Seventh Avenue
New York, New York 10019
Attn.: Thomas M. Rothman, Esq.
Telecopy No.: (212) 728-8111

(b) if to Buyer, to:

Atlantis Holding Company LLC
323 Long Island Avenue
Holtsville, New York 11742
Attention: James Bissett
Telecopy No. (516) 289-3521

with a copy to:

Charles P. DeMartin, Esq.
870 West Jericho Turnpike
Huntington, New York 11743
Telecopy No. (516) 367-6711

or to such other person and/or address as shall be specified by either party in a notice given to the other pursuant to the provisions of this Article 16.

18. Broker. Each of Seller and Buyer represents and warrants to the other that it has had no dealings with any real estate broker or agent in connection with this Agreement, and each of Seller and Buyer covenants to pay, hold harmless and indemnify the other from and against any and all cost, expense or liability (including, but not limited to, 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 Buyer, respectively. The provisions of this Article 17 shall survive the Closing or termination of this Agreement.

19. Assignment. Buyer 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. No consent given by Seller to an assignment shall be construed as a consent to any other assignment, and any unpermitted assignment made by Buyer shall be void. If any rights and obligations of Seller hereunder shall be assigned, Seller shall promptly notify Buyer of such assignment, the assignee will be substituted in place of Seller in the documents executed or delivered pursuant to this Agreement and the assignee shall assume in writing all of Seller's duties and obligations hereunder.

20. 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.

The provisions of this Article 19 shall survive the Closing.

21. Press Release. Seller and Buyer shall each have the right to issue, or cause to be issued, a press release upon the consummation of the transactions described in this Agreement. Buyer shall have the right to advertise the Entertainment Facility at its discretion. The provisions of this Article 20 shall survive the termination of this Agreement.

22. Miscellaneous.

22.1. This Agreement and the Exhibits attached hereto, together with the Seller's Documents, the Buyer's Documents and the MOU constitute the entire agreement between the Seller and the Buyer with respect to the subject matter hereof, and all understandings and agreements heretofore or simultaneously had between the parties are merged in, superseded by and contained in this Agreement and the MOU, which MOU shall survive the execution of this Agreement; provided, however, that any conflict between the provisions of this Agreement and the MOU shall be resolved in favor of the provisions of this Agreement

22.2. 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.

22.3. The table of contents, captions, Paragraph and Article titles and Exhibit names contained in this Agreement are for convenience and reference only and shall not be used in construing this Agreement.

22.4. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without the aid of any custom, canon or rule of law requiring construction against the draftsman. In any such litigation the parties to this Agreement waive personal service of any summons, complaint or other process and agree that service thereof may be made as provided in Article 16 above.

22.5. 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 article or provision, unless expressly so stated.

22.6. 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.

22.7. The Exhibits attached hereto are hereby made part of this Agreement.

22.8. 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.

22.9. Subject to the provisions of Article 18 above, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and 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 except the Town of Riverhead, which is hereby made a third-party beneficiary of this Agreement.

22.10. (a) The acceptance by Buyer 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. This paragraph shall not apply to any provisions which specifically state that they shall survive the Closing.

(b) The provisions of this Paragraph 21.10 shall survive the Closing.

22.11. If any party obtains a judgment against any other party by reason of breach of this Agreement, reasonable attorneys' fees and disbursements as fixed by the court shall be included in such judgment.

22.12. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the person or circumstance other than those in respect of which it is invalid or unenforceable, except those provisions which are made subject to or conditioned upon such invalid or unenforceable provisions, shall not be affected thereby.

22.13. 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.

22.14. For the purposes of this Agreement, "to the best of Seller's knowledge" shall mean matters as to which the Seller shall have actual knowledge without any duty or responsibility to make any inquiry, review or investigation. Actual knowledge shall not be deemed to exist merely by assertion by Buyer of a claim that the Seller should have known of such facts or circumstances, if the Seller did not have actual knowledge thereof.

22.15. Either Seller nor Buyer may record this Agreement or a memorandum of this Agreement.

22.16. The term "business day" shall mean any day other than a Saturday, Sunday or bank holiday in the City of New York, State of New York.

22.17. This Agreement shall be dated as of, and shall not be effective until, the date upon which each of Seller and Buyer shall have executed and delivered this Agreement to the other party.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

SELLER:

TOWN OF RIVERHEAD
COMMUNITY DEVELOPMENT AGENCY

By: _____
Name:
Title:

BUYER:

ATLANTIS HOLDING COMPANY LLC

By: _____
Name:
Title:

Special Town Meeting
March 30, 1999

Adopted

TOWN OF RIVERHEAD

Resolution # 293

ADOPTS AN AMENDMENT TO CHAPTER 14 ENTITLED, "COMMUNITY PRESERVATION" OF THE RIVERHEAD TOWN CODE
COUNCILMAN CARDINALE

~~COUNCILMAN CARDINALE~~ offered the following resolution, was seconded by
~~COUNCILMAN KWASNA~~

WHEREAS, the Town Clerk was authorized to publish and post a public notice to hear all interested persons to consider an amendment to Chapter 14 entitled "Community Preservation" of the Riverhead Town Code; and

WHEREAS, a public hearing was held on the 29th day of March, 1999 at 10:05 o'clock a.m. at Riverhead Town Hall, 200 Howell Avenue, Riverhead, New York, the date, time and place specified in said public notice, and all persons wishing to be heard were heard.

NOW THEREFORE BE IT RESOLVED, that an amendment to Chapter 14 entitled "Community Preservation" of the Riverhead Town Code be and is hereby adopted as specified in the attached notice of adoption; and be it further

RESOLVED, that the Town Clerk be and is hereby authorized to publish the attached notice of adoption once in the **News Review** and to post same on the signboard at Town Hall; and be it further

RESOLVED, that the Town Clerk be and is hereby authorized to forward a certified copy of this resolution to the Riverhead Planning Department; the Town Attorney's Office and Jack Hansen, Financial Administrator.

THE VOTE

Cardinale Yes ___ No ___ Kent ___ Yes ___ No ___
Kwasna Yes ___ No ___ Lull Yes ___ No ___
Vilella Yes ___ No ___

THE RESOLUTION WAS WAS NOT ___
THEREUPON DULY DECLARED ADOPTED

**TOWN OF RIVERHEAD
NOTICE OF ADOPTION**

PLEASE TAKE NOTICE, that the Town Board of the Town of Riverhead adopted an amendment to Chapter 14, entitled "Community Preservation" of the Riverhead Town Code at its regular meeting held on March 29, 1999.

A copy of the entire text of the amendment may be reviewed at the Office of the Town Clerk, 200 Howell Avenue, Riverhead, New York, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

Dated: Riverhead, New York
March 29, 1999

**BY ORDER OF THE TOWN BOARD
OF THE TOWN OF RIVERHEAD**

BARBARA GRATTAN, Town Clerk

PECONIC BAY REGION
COMMUNITY PRESERVATION FUND

REAL ESTATE TRANSFER TAX

RULES AND REGULATIONS

EFFECTIVE: APRIL 1, 1999
BY
THE TOWN BOARD OF THE TOWN OF RIVERHEAD
PURSUANT TO
CHAPTER 114 OF THE LAWS OF 1998
AND
THE MUNICIPAL HOME RULE LAW

CHAPTER 14
ARTICLE II
REAL ESTATE TRANSFER TAX

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CHAPTER 14 - REAL ESTATE TRANSFER TAX

SECTION 14-11.1-1 DEFINITIONS

As used in this chapter, unless otherwise expressly stated, the terms set forth in this section are defined as follows:

(a) CONSIDERATION - shall mean the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

(1) In the case of the creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew, and the value of rental or other payments attributable to the exercise of any option to renew.

(2) In the case of the creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew, and the value of rental or other payments attributable to the exercise of any option to renew, less the value of the remaining prime lease rental payments required to be made.

(3) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

Example: An individual purchased fifty percent of the stock of the ABC corporation which owned real property with a fair market value of \$300,000. The transfer tax on this conveyance of an interest in real property would be computed based upon consideration of \$150,000 (\$300,000 x 50 percent).

(4) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property,

consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

Example: A leases real property to B for a term of 20 years. The lease does not contain any option to purchase the real property. In year five of the lease, B assigns its leasehold interest to C for \$100,000. C owes transfer tax on the assignment. The tax is computed on consideration of \$100,000.

(5) In the case of (I.) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (ii.) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

(6) When a grantor agrees to extend the closing date of the contract in return for an additional sum of money, the additional sum of money is included as consideration unless the following criteria are met:

(I.) The agreement between the grantor and grantee must state that the payment is for the time delay.

(ii) The amount of money must be reasonable for the length of delay.

(b) CONTROLLING INTEREST - shall mean (I.) in the case of a corporation, either fifty percent (50%) or more of the

total combined voting power of all classes of stock of such corporation, or fifty percent (50%) or more of the capital, profits, or beneficial interest in such voting stock of such corporation, and (ii.) in the case of a partnership, association, trust, or other entity, fifty percent (50%) or more of the capital, profits, or beneficial interest in such partnership, association, trust or other entity.

- (c) CONVEYANCE - shall mean the transfer or transfers of any interest in real property by any method including but not limited to sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (i.) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine (49) years, (ii.) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (iii.) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, or an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the Internal Revenue Code. Notwithstanding the foregoing, conveyance of real property does not include a conveyance pursuant to devise, bequest or inheritance.
- (d) FUND - shall mean the Riverhead Community Preservation Fund created and established pursuant to § 64-e of the New York Town Law and Chapter 139 of the Town Code.
- (e) GRANTEE - shall mean the person who obtains real property or an interest therein as a result of a conveyance.
- (f) GRANTOR - shall mean the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" shall mean the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest.
- (g) INTEREST IN REAL PROPERTY - shall include title in fee, a leasehold interest, a beneficial interest, an encumbrance,

development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

- (h) PERSON - shall mean an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two (2) or more persons.
- (I) REAL PROPERTY - shall mean every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the Town. It shall not include rights to sepulture.
- (j) RECORDING OFFICER - shall mean the County Clerk of the County of Suffolk.
- (k) TOWN - shall mean the Town of Riverhead.
- (l) TOWN SUPERVISOR - shall mean the Town Supervisor of the Town of Riverhead.
- (m) TREASURER (COUNTY TREASURER) - shall mean the Treasurer of the County of Suffolk.
- (n) IMPROVED REAL PROPERTY - shall mean a lot improved with a principal building or a principal use. Pursuant to the Property Type Classification Code, promulgated by the New York State Office of Real Property Services, all lots included within the 100, 200, 400, 500, 600, 700, 800, and 900 categories within said classification system shall be defined as ¶ improved¶ for the purposes of this Chapter. To be considered ¶ improved¶ pursuant to this Chapter, a principal building shall be habitable. It shall be presumed that the category for a particular lot shall be as shown on the most recent tax roll approved by the town.
- (o) UNIMPROVED REAL PROPERTY - shall mean a lot with no principal building or use. Pursuant to the Property Type classification Code, promulgated by the New York State Office of Real property Services, all lots included within the 300 category within said classification system shall

be defined as ¶¶ unimproved¶¶ for the purposes of this chapter. It shall be presumed that the category for a particular lot shall be as shown on the most recent tax roll approved by the town.

- (p) FAIR MARKET VALUE - shall mean the amount that a willing buyer would pay a willing seller for real property. It is generally determined by an appraisal based upon the value of the real property at the time of conveyance. It is not net fair market value, which is fair market value less the amount of any mortgages on the property.

SECTION 14-11.1-2 IMPOSITION OF TAX.

The real estate transfer tax is imposed on each conveyance of real property or interest therein, including the conveyance of shares in a cooperative housing corporation, when the consideration exceeds \$500.00. The rate of tax is two (2) percent of such consideration or value.

SECTION 14-11.1-3 LIABILITY FOR TAX.

- (a) The real estate transfer tax shall be paid by the grantee. If the grantee has failed to pay the tax imposed pursuant to Article 31-D of the tax law of the state of New York and Local Law No. of 1998, or if the grantee is exempt from such tax, the grantor will have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay, the tax is the joint and several liability of the grantee and grantor.
- (b) For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

SECTION 14-11.1-4 GRANDFATHERED CONVEYANCES.

- (a) A conveyance of real property occurring on or after April 1, 1999 is subject to the tax imposed pursuant to Article 31-D of the Tax Law and Local Law No. of 1998, and described in section 100.2 of this Chapter unless the conveyance was made

pursuant to a binding written contract entered into before April 1, 1999. The date of execution of the contract must be confirmed by independent evidence such as the recording of the contract, payment of a deposit, a notarized contract, or the taxpayer has engaged in other actions such as seeking a zoning approval or obtaining an environmental impact statement, or such other facts and circumstances as may be determined by the Treasurer.

- (b) Where a contract for the conveyance of real property was entered into before April 1, 1999, and is later amended, the conveyance is still considered to be made pursuant to a contract entered into before April 1, 1999, so long as the amendment to the contract is of a nonsubstantial nature. The determination of what constitutes a nonsubstantial change will be made on a case by case basis. However, any change in the amount of consideration for the real property will be considered a substantial change to the contract and, thus, such conveyance is taxable.
- (c) Where the closing date provided for in a grandfathered contract is postponed, with additional payments by the grantee, the conveyance will be considered to be made pursuant to a contract entered into before April 1, 1999 if it is shown that the additional payments do not constitute additional consideration. (See section 100.1[a][6] of this chapter.

Example 1: A, the owner of real property, executed a binding written contract on February 1, 1999 to lease the property with an option to purchase to B for \$1,000 a month for ten years. B paid \$1,000 as a deposit on the lease on that date. The final closing of the transaction occurred on July 10, 1999. The creation of the lease with the option to purchase is a grandfathered conveyance which is not subject to tax since it was made pursuant to a binding written contract entered into before April 1, 1999, and the date of the execution of the contract was confirmed by independent evidence (payment of the deposit by B).

Example 2: Same facts as in example 1 except that on May 1, 1999 the contract was amended to provide that B would pay \$500 semi-monthly instead of \$1,000 monthly. This amendment is considered to be of a nonsubstantial nature and, therefore, the conveyance is still considered to be a grandfathered conveyance not subject to tax.

Example 3: Same facts as in example 1 except that on June 11, 1999, the contract was amended to provide

that B would pay \$1,200 each month instead of \$1,000. This is a change in the amount of consideration for an interest in the real property. Therefore, the conveyance is subject to tax since it no longer qualifies as a grandfathered conveyance.

SECTION 14-11.1-5 CONTROLLING INTEREST

(a) In the case of a corporation which has an interest in real property, the transfer or acquisition of a controlling interest in the corporation, as defined in section 100.1(b) of this chapter, occurs when a person, or group of persons acting in concert, transfers or acquires a total of 50 percent or more of the voting stock in such corporation. In the case of a partnership, association, trust or other entity having an interest in real property, the transfer or acquisition occurs when a person, or group of persons acting in concert, transfers or acquires a total of 50 percent or more of the capital, profits or beneficial interest in such entity.

(b) Acting in concert.

(1) Persons are acting in concert when they have a relationship such that one person influences or controls the actions of another. For example, if a parent corporation and a wholly-owned subsidiary each sell or purchase a 25 percent interest in an entity, the two corporations will be considered to have acted in concert to transfer or acquire a controlling interest (i.e., 50 percent) in the entity.

(2) Where the individuals or entities are not commonly controlled or owned, persons will be treated as acting in concert when the unity with which the sellers or purchasers have negotiated and will consummate the transfer of ownership interests indicates they are acting as a single entity. If the transfers or acquisitions are completely independent, each grantor selling or grantee buying without regard to the identity of the other grantors or grantees, then the transfers or acquisitions will be treated as separate transfers or acquisitions. The grantors or grantees may be required to provide a sworn statement that their transfers or acquisitions are independent of each other. Factors that will indicate whether persons are acting in concert include the following:

(I) The transfers or acquisitions are closely

related in time.

- (ii) There are few grantors or grantees.
- (iii) The contracts of sale contain mutual terms.
- (iv) The grantors or grantees have entered into an agreement in addition to the sales contract binding themselves to a course of action with respect to the transfer or acquisition.

Example 1: A owns 100 percent of X corporation, the only asset of which is real property. B, C, D, and E as a group, negotiate to buy all of A's interest with B, C, D, and E each buying 25 percent of A's interest. The contracts of B, C, D and E are identical and the purchases are to occur simultaneously. B, C, D and E have also negotiated an agreement binding themselves to a course of action with respect to the acquisition of X corporation and the terms of a shareholders agreement which would govern their relationship as owners of X corporation. The acquisitions by B, C, D and E would be treated as a single acquisition which is subject to the real estate transfer tax.

Example 2: Corporation X has 2 stockholders. Individual A owns 90 shares of stock (90 percent) and individual B owns 10 shares of stock (10 percent). Corporation X owns 60 percent of the stock of corporation Y, which owns real property. Individual A, by virtue of owning 90 percent of the stock of corporation X, has a 54 percent interest in corporation Y (90 percent interest in corporation X multiplied by the 60 percent interest corporation X has in corporation Y equals the 54 percent interest individual A has in corporation Y.) Individual A sells his 90 shares of stock in corporation X to individual G. Individual A, by selling his 90 shares of corporation X stock, has transferred a controlling interest (54 percent) in an entity that owns real property (corporation Y) which transfer is subject to the real estate transfer tax. The consideration used to determine the transfer tax due would be equal to 54 percent of fair market value of the real property owned by corporation Y.

Example 3: Assume the same facts as in example 2 except that corporation X owns 50 percent of the stock of corporation Y. Since A has not transferred nor has G acquired a controlling interest in corporation Y (90 percent x 50 percent = 45 percent), the tax would not

apply. If, however, corporation X had transferred its 50 percent interest in corporation Y, the transfer would be subject to tax.

Example 4: Corporation X is a publicly held corporation, the stock of which is owned by many unrelated shareholders. X owns an interest in real property. D, E, F and G pursuant to a plan to gain control of X, make a tender offer of \$100 per share to the public shareholders to acquire such control. As a result of the tender offer, D, E, F and G acquire, in total, 80 percent of the stock of X with each getting 20 percent. D, E, F and G would be treated as acting in concert to acquire a controlling interest, and the tax would apply to this transaction as an acquisition of a controlling interest.

- (c) For purposes of determining whether a controlling interest is transferred or acquired, only transfers or acquisitions of interest occurring on or after April 1, 1999 are added together. A transfer or acquisition made on or after April 1, 1999 does not have to be included, for purposes of determining whether a controlling interest is transferred or acquired, if the transfer or acquisition is made pursuant to a binding written contract which was entered into before April 1, 1999, the date of which is confirmed by independent evidence such as the recording of a contract; payment of a deposit or other facts and circumstances as determined by the treasurer. (See section 100.4 of this Chapter.)
- (d) Where there is a transfer or acquisition of an interest in an entity that has an interest in real property, on or after April 1, 1999, and subsequently there is a transfer or acquisition of an additional interest or interests in the same entity, the transfers or acquisitions will be added together to determine if a transfer or acquisition of a controlling interest has occurred. Where there is a transfer or acquisition of a controlling interest in an entity on or after April 1, 1999 and the real estate transfer tax is paid on that transfer or acquisition and there is a subsequent transfer or acquisition of an additional interest in the same entity, it is considered that a second transfer or acquisition of a controlling interest has occurred which is subject to the real estate transfer tax. No transfer or acquisition of an interest in an entity that has an interest in real property will be added to another transfer or acquisition of an interest in the same entity if they occur more than three years apart, unless the transfers or acquisitions were so timed as part of a plan to avoid the real estate transfer tax. An

example of this would be if a shareholder acquired 40 percent of the stock in a corporation and simultaneously contracted for the purchase of 20 percent in three years and one day.

- (e) The tax is only imposed once when there is both a transfer and an acquisition of a controlling interest in the same conveyance.

SECTION 14-11.1-6 LEASES AND SUBLEASES.

(a) Creation of a taxable lease or sublease not coupled with an option to purchase. The creation of a lease or sublease is a conveyance subject to tax only where:

(1) the sum of the term of the lease or sublease and any options for renewal exceeds 49 years; and

(2) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee; and

(3) the lease or sublease is for substantially all of the premises constituting the real property. Substantially all means ninety percent or more of the total rentable space of the premises, exclusive of common areas. For the purpose of determining whether a lease or sublease is for substantially all of the premises constituting the real property, premises shall include, but not be limited to the following:

(I) an individual building, except for space which constitutes an individual condominium or cooperative unit;

(ii) an individual condominium or cooperative unit; or

(iii) where a lease or sublease is of vacant land only, any portion of such vacant land.

(b) Consideration in the case of the creation of a taxable lease or sublease.

(1) In the case of the creation of a lease which constitutes a conveyance subject to tax, the consideration used to compute the tax is the present value of the right to receive rental payments or other payments attributable to the use and occupancy of the real property. Such consideration also includes the present value of rental or other payments attributable to any renewal term. In the

case of the creation of a taxable sublease, the consideration is computed in the same manner as in the creation of a taxable lease except that the value of the remaining prime lease rental payments must be subtracted.

(2) A discount rate equal to 110 percent of the federal long-term rate compounded semiannually, which is determined pursuant to section 1274(d) of the United States Internal Revenue code, is required to be used in determining the present value of such payments which constitute consideration in the case of the creation of a taxable lease or sublease. Such federal long-term rate in effect 30 days prior to the date of transfer shall be used when computing such discount rate. If the taxpayer establishes:

(I) that a discount rate which is greater than 110 percent of the federal long-term rate is appropriate in his or her particular circumstances; and

(ii) that using a discount rate equal to 110 percent of the federal long-term rate results in the computation of consideration which exceeds the fair market value of the real property subject to the lease or sublease, the department will allow the use of a discount rate that results in a computation of consideration that is equal to the fair market value of such real property. The discount rate is applied to net rents. Net rents means the amount by which gross rents exceed the lessor's or sublessor's operating costs. Such operating costs include amounts paid for heat and gas, electricity, furnishings, insurance, maintenance, management and real estate taxes.

(3) When net rents are tied to unknown factors, a reasonable estimate thereof must be made by the taxpayer. Such estimate shall reflect the probability that an amount of income will be received or expense incurred, as well as the factors affecting the range on contingent amounts.

(4) Operating expenses paid directly to third parties by the lessee or sublessee, for example, under a net lease, are not included in gross rents, nor are they deductible as operating costs.

(5) If the lease specifies that the lessor will pay a fixed amount of operating expenses, the lessor may deduct such amount from gross rents in computing net rents. If there is no itemization of the operating costs paid by the lessor and, according to the terms of the lease, the lessor must pay such costs, the lessor may make a reasonable estimate of such costs in accordance with subdivision (b)(3) of this section. If the lessor pays one or more of

the following operating costs and (I) there is no itemization in the lease for such costs and (ii) no reasonable estimate is made, then the following percentages of gross rentals will be presumed attributable to the following costs:

Heat and gas	15 percent
Electricity	5 percent
Furnishings	5 percent
All of the above	25 percent

Example 1: A, as lessor, creates a lease with B as lessee. The lease is for a term of 60 years and covers an entire office building owned by A. The terms of the lease allow B to make substantial capital improvements to the building. The gross rents to be received by A over the term of the lease total \$5 million. Operating costs are estimated to be \$2 million. Net rents total \$3 million (gross rents of \$5 million less operating costs of \$2 million paid by A). The present value of net rents is \$550,000.

Since all three conditions set forth in subdivision (a) of this section are met, the creation of the lease constitutes a conveyance subject to tax. The taxable consideration is \$550,000, the present value of the net rents. The total tax due, at the rate of \$2 for each \$500 of consideration, is \$2,200.

Example 2: Same facts as in example 1, except that this lease is for a term of 30 years with no option to renew included. Since the lease is for a term of less than 49 years, the creation of the lease is not a conveyance subject to the transfer tax.

Example 3: Same facts as in example 1, except that the lease created between A and B has a fixed term of 30 years and B is granted an option to renew the lease at the end of the fixed term for another 30 years. This would be treated as the creation of a 60 year lease and, therefore, would be a taxable conveyance. The consideration used to compute the tax includes the present value of the net rental payments to be received during the fixed term and the renewal term.

Example 4: Corporation Z owns a ten story building. Corporation Z creates a 60 year lease with corporation Y as tenant, such lease covering five floors of the building (50 percent of the premises). Since the lease covers less than 90 percent of the rentable space of the premises, the creation of the lease is not a conveyance subject to the transfer tax.

(c) Creation of a lease for less than 49 years coupled with the granting of an option to purchase.

(1) An option to purchase real property is an interest in real property. Where an option to purchase real property is coupled with the granting of the right to use and occupancy of the real property, a conveyance subject to the transfer tax has occurred. Therefore, the creation of a lease coupled with the granting of an option to purchase the real property, regardless of the term of the lease, is a conveyance subject to the transfer tax.

(2) In the case of the creation of a lease for less than 49 years, coupled with the granting of an option to purchase, the consideration is the present value of the net rental payments under the lease plus the consideration paid for the granting of the option to purchase. Rental payments for periods that occur after the last date that the property may be purchased, if the option is exercised, are not included in the calculation of the present value of the rental payments.

Example: A, as lessor, creates a lease of a building with B as lessee. The term of the lease is 20 years. The lease contains an option to purchase the building which is exercisable through the tenth year of the lease. If the option is exercised, the lease provides that the property will be transferred to B not later than 6 months after the option is exercised. B paid \$10,000 specifically for the granting of the option. Since this is the granting of an option with use and occupancy, the transaction is subject to the transfer tax. The consideration used to compute the tax would be the present value of the net rental payments to be received from the effective date of the lease through the expiration of the first ten years and six months of the lease, which is the period during which the property may be purchased pursuant to the option to purchase, plus the \$10,000 paid for the granting of the option.

(d) Assignments and surrenders of leases, options and contracts.

(1) An interest in real property includes a leasehold interest or an option or contract to purchase real property. Therefore, the transfer of a leasehold interest, regardless of the term, or the transfer of an option or contract to purchase real property, by assignment or surrender, is a conveyance subject to tax.

(2) The consideration in the case of an assignment of a leasehold interest or an option or contract to purchase

real property is the amount paid for the assignment by the assignee to the assignor, i.e., the lessee under the lease or the person who is assigning his rights to purchase the property under the option or contract. The consideration in the case of a surrender of a leasehold interest or option or contract to purchase real property is the amount paid for the surrender by the lessor to the lessee or by the owner of the real property to the person who is surrendering his rights to purchase the property under the option or contract. However, no tax will be imposed in the case of an assignment of a leasehold interest or an option or contract to purchase real property if the assignor pays consideration to the assignee to accept the assignment. Further, no tax will be imposed in the case of a surrender of a leasehold interest or an option or contract to purchase real property if the lessee or the person who is surrendering his rights to purchase the property under the option or contract pays consideration to the lessor or owner of the real property to accept the surrender.

Example 1: A, a lessee under a 30 year lease, enters into an agreement to assign the leasehold interest to B, who will replace A as tenant under the lease. B agrees to pay A \$500,000 for the leasehold interest. The assignment of A's leasehold interest to B is subject to tax.

Example 2: X is the owner of a building which is leased to Z under a 20 year lease which has 10 years remaining under the terms of the lease. X wishes to cancel the lease before it expires and, therefore, enters into an agreement with Z whereby X will pay Z \$400,000 to surrender the lease. The surrender of the leasehold interest by Z is subject to tax.

Example 3: Same facts as in example 2 except that Z is the party motivating the cancellation of the lease and, therefore, Z agrees to pay X to accept the surrender of the lease. No tax would be due since Z, the grantor, is not receiving consideration for the conveyance.

Example 4: A is the purchaser/contract vendee under a contract to purchase real property. A agrees to assign all rights under the contract, including the right to use and occupancy of the property, to B for \$100,000. The assignment of the contract is subject to tax.

SECTION 14-11.1-7 COOPERATIVE HOUSING CORPORATION TRANSFERS.

(a) Notwithstanding the definition of a controlling interest contained in section 100.1(b) of this chapter or anything to the

contrary contained in section 100.1 of this Part, the real estate transfer tax applies to:

(1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative housing corporation or cooperative plan sponsor; and

(2) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof.

(b) Transfers of shares in a cooperative housing corporation pursuant to contracts dated before April 1, 1999. Transfers of cooperative shares pursuant to a binding written contract (e.g. a written agreement to purchase shares) entered into before April 1, 1999 are not subject to tax. The fact that the real property (the building containing the cooperative units) was transferred before April 1, 1999 or that the contract to transfer such property was entered into prior to such date is irrelevant for purposes of determining if the transfer of shares in a cooperative corporation are subject to tax. Also, the transfer of the real property to the cooperative housing corporation is subject to tax whether or not the transfer occurred pursuant to a binding written contract entered into on or before April 1, 1999.

Example: The sponsor of a cooperative housing corporation transferred a building containing ten apartments to the cooperative corporation on January 30, 1999, and took back 100 shares of cooperative stock (the unsold shares as of the date of transfer to the cooperative housing corporation). As of February 1, 1999, the sponsor had entered into subscription agreements for 50 shares in connection with the granting of proprietary leases to five apartments. On May 1, 1999 the sponsor entered into subscription agreements for the remaining 50 shares. However, the 100 shares were not transferred until July 3, 1999. The 50 shares transferred pursuant to the subscription agreements entered into as of February 1, 1999 would not be subject to tax. The 50 shares transferred pursuant to subscription agreements entered into on May 1, 1999 are subject to tax.

(c) Credit for tax previously paid.

(1) In the case of conveyances described in paragraph (a)(1) of this section, a credit shall be allowed for a

proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity of form of ownership of such property and not change in the beneficial ownership of such property.

(2) The amount of the credit is determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the result by a fraction, the numerator of which is the number of shares of stock conveyed in a transaction described in paragraph (a)(1) of this section and the denominator of which is the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation).

(3) The credit will not reduce the tax below zero. The credit will not be allowed for a tax paid more than 24 months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares as described in paragraph (a)(1) of this section.

Example: The A B partnership, as sponsor, conveyed a building containing 10 apartments to cooperative housing corporation C in exchange for the unsold shares of stock of C and paid real estate transfer tax of \$5,000. Each of the 10 apartments in the building are allocated 5 shares of C's stock and, on the date of the conveyance of the building to C, the partnership sold shares of stock relative to two of the apartments (10 shares) which were transferred directly from C to the unit purchasers, and the partnership took back the remaining 40 unsold shares. The transfer of the building to C is considered to constitute a 100 percent mere change of identity with no change in beneficial interest, since the 10 shares sold are considered to be first taken back by the partnership and then sold to the unit purchasers. Therefore, the credit available when the partnership sells share of C is \$5,000. (100 percent x \$5,000.)

(d) Information return. Every cooperative housing corporation must file an information return with the Treasurer by July 15th of each year covering the preceding period of January 1st through June 30th and by January 15th of each year covering the preceding period of July 1st through December 31st. The first

information return is due by January 15, 2000 for the period of April 1, 1999 to December 31, 1999. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including but not limited to, the names, addresses and employer identification numbers or social security numbers of the grantor and grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

SECTION 14-11.1-8 EXEMPTIONS AND NON-TAXABLE TRANSACTIONS.

(a) The following shall be exempt from the payment of the real estate transfer tax:

(1) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to an agreement or compact with another state or Dominion of Canada); and

(2) The United Nations, the United States of America or any of its agencies or instrumentalities.

(b) The tax shall not apply to any of the following conveyances:

(1) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

(2) Conveyances which are or were used to secure a debt or other obligation;

(3) Conveyances which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded;

(4) Conveyances of real property without consideration and otherwise than in connection with a sale, including deeds conveying realty as bona fide gifts;

(5) Conveyances given in connection with a tax sale;

(6) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a

cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

(7) Conveyances which consist of a deed of partition;

(8) Conveyances given pursuant to the federal bankruptcy act;

(9) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property;

(10) Conveyances of real property, where the entire parcel of real property to be conveyed is the subject of one or more of the following development restrictions conveyed to the State of New York, a town, village, county, or a not-for-profit tax exempt organization operated for conservation, environmental or historic preservation purposes, and where the Town Attorney or other official designated by the Town Board has determined that the restrictions imposed prohibit the use of the property for any purpose except agriculture, recreation, or conservation in order to comply with this paragraph:

(I) agricultural, conservation, scenic or an open space easement,

(ii) covenants or restrictions prohibiting development,

(iii) a purchase of development rights agreement,

(iv) a transfer of development rights agreement, where the property being conveyed has had its development rights removed,

(v) said real property is subject to the development restriction of an agricultural district or individual commitment, pursuant to article twenty-five AA of the agriculture and markets law,

(vi) real property subject to any town adopted land preservation agreement;

(11) Conveyances of real property, where the property is viable agricultural land as defined in subdivision seven of section three hundred one of the agricultural and markets law and the entire property to be conveyed is to be made subject to one of the development restrictions provided for

in subparagraph two of paragraph (10) of this subdivision provided that said development restriction precludes the conversion of the property to a non-agricultural use for a least three years from the date of transfer, and said development restriction is evidenced by an easement, agreement, or other suitable instrument which is to be conveyed to the town simultaneously with the conveyance of the real property; or

(12) Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax exempt corporation operated for conservation, environmental or historic preservation purposes.

(c) An exemption of two hundred fifty thousand dollars shall be allowed on the consideration for the conveyance of improved real property or an interest therein and an exemption of one hundred thousand dollars shall be allowed on the consideration for the conveyance of unimproved real property.

(d) Examples.

Example 1. A sells 100 acres of farmland to B. Said farmland is subject to a perpetual agricultural easement. This transaction is not taxable under Section 100.8(b)(10)(I).

Example 2. A sells his house and a two (2) acre lot to B. The lot had a one hundred (100) foot buffer scenic easement along the street frontage. The transaction is taxable since the easement covers only a portion of and not the entire property.

Example 3. A conveys a fifty (50) acre parcel located in an agricultural district under Article 25-AA of the Agriculture and Markets Law. The transaction is not subject to tax, under Section 100.8(b)(10)(v).

Example 4. A conveys viable agricultural land to B. Said land is fully developable. However, B files a term conservation easement of five (5) years precluding development at the same time as he files the deed for the agricultural land. The transaction is not taxable under Section 100.8(b)(11) since a development restriction has been filed which is three (3) years or greater.

Example 5. A conveys a thousand (1,000) acres of land to the Nature Conservancy for open space purposes. The transaction is not taxable under Section 100.8(b)(12).

Example 6. A sells his home to B for \$500,000. Under Section 100.8(c) the first \$250,000 is exempt from consideration. Thus, the tax paid at a rate of 2% of the remaining \$250,000 of consideration is \$5,000.

Example 7. Same as Example 6, except the consideration is \$150,000. No tax is due, since the exemption exceeds the consideration.

Example 8. A sells his vacant lot to B for \$125,000. The first \$100,000 of consideration is exempt under Section 100.8(c). Thus, the tax paid at a rate of 2% on the remaining \$25,000 of consideration is \$500.

Example 9. Same as Example 8, except the consideration is \$75,000. No tax is due since the exemption exceeds the consideration.

Example 10. Same as Example 8 with consideration of \$125,000, except the land is improved with a shed and a fence. The transaction is taxable, since neither a shed or a fence is a principal building or use.

SECTION 14-11.1-9 MERE CHANGE OF IDENTITY.

To the extent that a conveyance effectuates a mere change of identity or form of ownership or organization and there is no change in beneficial ownership, the real estate transfer tax does not apply. Examples of transactions where the issue of change in beneficial ownership would arise include the following:

(a) the conveyance by tenants-in-common of their interest in real property to a partnership or a corporation, the partnership or corporation interests being in the same pro rata shares as the tenants-in-common held prior to conveyance. Such conveyance is not taxable as there is no change in beneficial ownership;

(b) the conveyance by a corporation to its shareholders who will hold the real property as tenants-in-common in the same pro rata share as they own the corporation. Such conveyance is not taxable as there is no change in beneficial ownership;

(c) the conveyance by a corporation to its wholly-owned subsidiary, from a wholly-owned subsidiary to its parent, or from one wholly-owned subsidiary to another. Such conveyance is not taxable to the extent that there is no change in beneficial ownership;

(d) the conveyance by a person to a partnership in exchange for

an interest in the partnership. Such conveyance is not taxable to the extent of the grantor's interest in the partnership.

SECTION 14-11.1-10 EXAMPLES OF TAXABLE AND NONTAXABLE
CONVEYANCES.

(a) The following are examples of conveyances which are subject to the real estate transfer tax:

(1) A conveyance in exchange for other property is taxable. If the other property is real property or an interest therein, the tax will apply to both conveyances.

(2) A conveyance by a defaulting mortgagor or debtor to the mortgagee or lienor, or its agent, nominee or an entity owned in whole by such mortgagee or lienor, in lieu of an action to foreclose a mortgage or lien, is subject to tax.

(I) In the case of nonrecourse debt, where the grantee is the mortgagee or lienor, or its agent, nominee or an entity wholly owned by such mortgagee or lienor and the amount of any other liens or encumbrances as described in clause (b) of this subparagraph secures nonrecourse debt only, consideration includes, but is not limited to, the sum of the following:

(a) the unpaid balance of the debt secured by the mortgage;

(b) the total amount of any other liens or encumbrances remaining on the real property after the conveyance, whether the underlying indebtedness is assumed or taken subject to; and

(c) the sum of any other amount paid by the grantee for the real property. This shall not include any state or local transfer taxes paid by the grantee in connection with the conveyance, provided that the grantee has not contractually assumed the liability for the payment of such taxes or has not released its right to seek recovery of the payment from the grantor.

(ii) In the case of recourse debt, where the grantee is the mortgagee or lienor, or its agent, nominee or an entity wholly owned by such mortgagee or lienor and the amount of any other liens or encumbrances as described in clause (I)(b) of this paragraph secures recourse debt only, consideration includes, but is not

limited to, the sum of the amounts described in clauses (I)(a)-(c) of this paragraph. Provided, however, where the sum of the amounts described in such clauses (a) and (b) of such subparagraph exceeds the fair market value of the real property as of the date of conveyance, such consideration shall be the fair market value of the real property plus the amount described in such clause (c) of such subparagraph as the aggregate amount of debt canceled, assumed or taken subject to in connection with the conveyance is limited to the fair market value of the real property.

For purposes of this subdivision, a debt is recourse debt to the extent that, as of the date of conveyance, the grantor or a person related to the grantor including any guarantor, bears the economic risk of loss for the debt beyond any loss attributable to the value of the property securing the debt.

Example 1. Bank A made a nonrecourse loan of \$10 million to individual X secured by a mortgage on New York State real property owned by X. X also provided a personal recourse guarantee of the last \$1 million of the debt, that is, if the value of the mortgaged real property decreased to less than \$10 million X would be obligated to pay the difference between \$10 million and the value of the mortgaged real property to Bank A up to a maximum amount of \$1 million. X defaulted on the loan. The real property was conveyed to Bank A in lieu of foreclosure and, at the time of the conveyance, the real property had a fair market value of \$8 million. As a result of the conveyance the \$9 million nonrecourse component of the loan is discharged.

Simultaneously, Bank A discharged X from any obligation under the personal guarantee. The consideration for the conveyance consists only of the \$9 million nonrecourse component of the loan that was discharged, as no part of the excess \$1 million personal obligation can be satisfied by the conveyance of the real property.

Example 2. Same facts as Example 1, except that instead of the personal guarantee being on the last \$1 million, X guaranteed the first \$1 million i.e., X would be liable for any deficiency only if the mortgaged real property was worth less than \$1 million. Since the fair market value of the real property at the time of the conveyance was \$8 million, there was no continuing recourse exposure to X, and therefore, the consideration for the conveyance is equal to \$10 million, which was the full amount of the nonrecourse indebtedness discharged as a result of the conveyance of the real property. Debt that was originally nonrecourse and which was converted to recourse debt will be so treated as recourse debt provided that the conversion

to recourse debt and the conveyance of the real property are not, in substance, integrated steps or part of a plan to decrease the consideration for the conveyance so as to decrease the tax for the conveyance.

(3) A conveyance pursuant to a mortgage foreclosure or any other action governed by the provisions of the Real Property Actions and Proceedings Law, such as the enforcement of a mechanic's lien pursuant to article 3 of the Lien Law, is subject to tax. The consideration is determined as follows:

(I) In the case of a nonrecourse debt, where the grantee is the mortgagee or lienor or its agent, nominee or an entity wholly owned by such mortgagee or lienor, and the amount of any other continuing liens or encumbrances secure nonrecourse debt only, consideration includes, but is not limited to, the higher of the following:

(a) the sum of:

(1)(1) the price paid by the grantee (the bid price); and

(2)(2) the total amount of any other liens or encumbrances remaining on the real property after the conveyance, whether the underlying indebtedness is assumed or taken subject to; or

(b) the sum of:

(1) the amount of the judgment of foreclosure; and

(2) the total amount of any other liens or encumbrances remaining on the real property after the conveyance, whether the underlying indebtedness is assumed or taken subject to. Provided however, in the case where the amounts described in clauses (a) and (b) of this subparagraph involve recourse debt only and the higher of such amounts exceeds the fair market value of the real property at the time of the conveyance, then the consideration is equal to the fair market value of the real property as of the date of conveyance, since the aggregate amount of the debt canceled, assumed or taken subject to in connection with the conveyance is limited to the fair market value of the real property.

(ii) Where a person unrelated to the mortgagee or the lienor is the grantee and regardless of whether the debt is recourse or nonrecourse, consideration includes, but is not limited to the sum of:

(a) the amount of the bid price; and

(b) the total amount of any other liens or encumbrances remaining on the real property after the conveyance, whether the underlying indebtedness is assumed or taken subject to. For the purposes of this paragraph and paragraphs (2), (15) and (16) of this subdivision a grantee is related to the mortgagee or lienor to the extent that the mere change of identity or form of ownership exemption would apply to a conveyance by the mortgagee or lienor to the grantee.

(iii) Where the grantee is an entity beneficially owned in part by the mortgagee or lienor and a person unrelated to the mortgagee or lienor and the debt held by such mortgagee or lienor is nonrecourse debt and any continuing liens or encumbrances secure nonrecourse debt only, consideration includes, but is not limited to, the sum of clauses (a) and (b) of this subparagraph:

(a) the higher of the sum of the following multiplied by the percentage which represents the mortgagee's or lienor's beneficial ownership interest in the grantee:

(1)

(I) the bid price; and

(ii) the total amount of any other liens or encumbrances remaining on the real property after the conveyance, whether the underlying indebtedness is assumed or taken subject to; or

(2)

(I) the amount of the judgment of foreclosure; and

(ii) the total amount of any other liens or encumbrances remaining on the real property after the conveyance, whether the underlying indebtedness is assumed or taken subject to; and

(b) the sum of the bid price, and the total amount of

any other liens or encumbrances remaining on the real property after the conveyance, whether the underlying indebtedness is assumed or taken subject to, multiplied by the percentage which represents such unrelated person's beneficial ownership interest in the grantee.

(iv) Where the grantee is an entity beneficially owned in part by the mortgagee or lienor and in part by a person unrelated to the mortgagee or lienor and the debt held by such mortgagee or lienor is recourse debt and any continuing liens or encumbrances secure recourse debt only, consideration includes, but is not limited to, the sum of clauses (iii)(a) and (b) of this subparagraph. Provided, however, where the higher of the amounts described in subclauses (iii)(a)(1) and (2) of this paragraph exceeds the fair market value of the real property multiplied by the percentage which represents the mortgagee's or lienor's beneficial ownership interest in the grantee, then such portion of consideration as described in such clause (a) is equal to the fair market value of the real property multiplied by such percentage since the aggregate amount of the debt canceled, assumed or taken subject to in connection with the conveyance is limited to the fair market value of the real property multiplied by such percentage. (See subparagraph [2][ii] of this subdivision for further information on recourse debt.)

(4) A conveyance to a corporation in exchange for shares of its capital stock is subject to tax to the extent that there is a change in beneficial ownership.

(5) A conveyance by a corporation in liquidation or in dissolution to its shareholders is subject to tax to the extent that there is a change in beneficial ownership.

(6) A conveyance of standing timber and mines is subject to tax.

(7) A conveyance by the United Nations, the United States of America, the State of New York, or any of their agencies, instrumentalities or political subdivisions is subject to tax unless the grantee is another of such governmental organizations or entities.

(8) A conveyance by a partner to the partnership as a contribution of partnership assets is subject to tax to the extent that there is a change in beneficial ownership.

(9) A conveyance of a perpetual easement, or an easement for a term of years or part of a year except for conservation easements exempt under Section 100.8(b)(10), is subject to tax.

(10) A conveyance from one spouse to the other pursuant to the terms of a divorce or separation agreement is subject to tax. (there is a rebuttable presumption in such case that the consideration for the conveyance, which includes the relinquishment of marital rights, is equal to the fair market value of the interest in the real property conveyed.)

(11) A conveyance to partners upon the termination and liquidation of a partnership is subject to tax to the extent that there is a change in beneficial ownership.

(12) A conveyance by a sponsor to a cooperative housing corporation is subject to tax. (Consideration in such case includes the amount of cash received by the sponsor, the amount of any mortgages, liens or encumbrances on the real property and the fair market value of the shares in the cooperative housing corporation which are transferred to the sponsor.)

(13) A conveyance of real property to an industrial development agency (IDA) by a person who is not the beneficiary of the IDA financing, at the direction of such beneficiary, with such beneficiary subsequently leasing the property from the IDA, is subject to tax. In such a conveyance, the beneficiary of the IDA financing and not the IDA is deemed to be the grantee, and therefore the exemption does not apply.

(14) A conveyance of real property by an IDA to a person who is not the beneficiary of the IDA financing where such conveyance is made at the direction of such beneficiary is subject to tax.

(15)

(I) A conveyance of real property pursuant to a secured party's enforcement of a lien, security interest or other rights on or in shares of stock in a cooperative housing corporation and/or associated proprietary lease, upon default by a debtor is subject to tax. In such a conveyance, the grantor is the defaulted debtor and the grantee is the secured party or its agent, nominee or an entity wholly owned by such secured party who enforces such lien, security interest or other rights on or in such shares and/or

associated proprietary lease(s). Consideration, in the case of nonrecourse debt, where the grantee is the secured party, or its agent, nominee or an entity wholly owned by such secured party, includes but is not limited to, the sum of the following:

(a) the unpaid balance of the debt secured by the shares of stock in the cooperative housing corporation and/or associated proprietary lease(s);

(b) the total amount of any other liens, security interests or other obligations remaining on the shares of stock in the cooperative housing corporation and/or associated proprietary lease(s) after the conveyance, whether the underlying indebtedness is assumed or taken subject to ;

(c) a pro rata portion of the total amount of any other liens or encumbrances that remain on the real property of the cooperative housing corporation after the conveyance. However, see section 100.1(a)(5) of this Part for information on the treatment of liens or encumbrances on the real property of the cooperative housing corporation; and

(d) any other amount paid by the grantee for the real property. This amount shall not include any state or local transfer taxes paid by the grantee in connection with the conveyance, provided that the grantee has not contractually assumed the liability for the payment of such taxes or has not released its right to seek recovery of the payment from the grantor.

(ii) Consideration in the case of recourse debt, where the grantee is the secured party, or its agent, nominee or an entity wholly owned by such secured party, includes but is not limited to the sum of the amounts described in clauses (I) (a)-(d) of this paragraph. Provided however, where the sum of the amount described in clauses (a) and (b) of such subparagraph exceeds the fair market value of the shares of stock in the cooperative housing corporation and/or associated proprietary lease(s) as of the date of the conveyance, consideration shall be the fair market value of the shares of stock in the cooperative housing corporation and/or associated proprietary lease(s) being conveyed, plus the amounts described in such clauses (c) and (d) of such subparagraph. (See subparagraph [2][ii] of this subdivision for further information on recourse debt.)

Example 1. A is the owner of 30 shares of stock in a cooperative housing corporation related to a proprietary lease of a commercial unit. The 30 shares represent five percent of the total number of shares in the cooperative housing corporation. The building of the cooperative housing corporation is encumbered by the lien of a mortgage having a current unpaid balance of \$2,500,000. A's 30 shares have a fair market value of \$1,200,000. A pledged its 30 shares to C as security for a loan of \$1,600,000. The debt owed by A to C is nonrecourse indebtedness. The current unpaid balance of the debt is \$1,740,000 including accrued interest. C is presently enforcing its security interest against A's shares of stock in the cooperative housing corporation. The consideration for the resulting conveyance is computed as follows:

Unpaid balance of debt	\$1,740,000
Pro-rata portion of mortgage indebtedness (\$2,500,000 x 5%)	+ 125,000
Consideration for conveyance	\$1,865,000

Example 2. Same facts as in example 1, except that the debt owed from A to C is recourse indebtedness. The fair market value of A's shares of stock in the cooperative housing corporation is less than the sum of the unpaid balance of the debt (\$1,740,000). The consideration for the resulting conveyance is computed as follows:

Fair market value of the cooperative shares	\$1,200,000
Pro rata portion of mortgage indebtedness (\$2,500,000 x 5%)	+ 125,000
Consideration for conveyance	\$1,325,000

(16) A conveyance of real property pursuant to a secured party's enforcement of a lien, security interest or other rights on or in shares of stock, partnership interests or other instruments, upon default by a debtor (i.e., the transfer or acquisition of a controlling interest in an entity with an interest in real property), is subject to tax. In such a conveyance, the grantor is the defaulted debtor and the grantee is the secured party or its agent, nominee or an entity wholly owned by such secured party who enforces such lien, security interest or other rights on or in such shares, partnership interests or other instruments. The consideration for such conveyances, where the grantee is the secured party, or its agent, nominee or an entity wholly owned by such secured party, regardless of whether the debt is recourse or nonrecourse, is the lesser of the following:

(I) the fair market value of the real property as of the date of conveyance multiplied by the percentage in the entity being transferred or acquired; or

(ii) the sum which includes, but is not limited to, the following:

(a) a reasonable apportionment to the interests in real property owned by the entity of the unpaid balance of the debt secured by the ownership interest in the entity;

(b) a reasonable apportionment to the interests in real property owned by the entity of the amount of any liens, security interests or other obligations remaining on the ownership interest in the entity after the conveyance, whether the underlying indebtedness is assumed or taken subject to;

(c) a reasonable apportionment to the interests in real property owned by the entity of the amount of any liens or encumbrances remaining on the real property of the entity multiplied by the percentage in the entity being transferred or acquired;

(d) a reasonable apportionment to the interests in real property owned by the entity of the amount of any other debt or obligation of the entity multiplied by the percentage in the entity being transferred or acquired; and

(e) a reasonable apportionment to the interests in real property owned by the entity of any other amount paid by the grantee for the conveyance. Such amount shall not include any state or local transfer taxes paid by the grantee in connection with the conveyance, provided that the grantee has not contractually assumed the liability for the payment of such taxes or has not released its right to seek recovery of the payment from the grantor.

Example 3: X is the owner of 100 percent of the voting stock in Y Corporation. Y Corporation's only asset is a parcel of real property located in Riverhead. The fair market value of the real property is \$2,000,000. The real property is encumbered by the lien of a mortgage having a current unpaid balance of \$1,500,000, held by B Bank. X pledged 60 percent of its Y voting stock to Z as security for a debt of \$400,000. The current unpaid balance of the debt is \$450,000, including accrued interest. Z is presently

enforcing its security interest in the voting stock of X. Z's enforcement of its security interest in the voting stock of X results in both a transfer and acquisition of a controlling interest. The consideration for the conveyance is computed as follows:

(a) Unpaid balance of debt	\$ 450,000
Pro rata portion of mortgage indebtedness (\$1,500,000 x 60)	+-900,000
Total,	\$1,350,000

(b) FMV of real property -
 $\$2,000,000 \times 60\% = \$1,200,000$

_____ the amount computed in (b) (\$1,200,000) is the consideration for the conveyance as it is less than the amount computed in (a) (\$1,350,000).

Example 4: S is the owner of 100 percent of the voting stock of K Corporation. K's assets consist of a parcel of real property located in New York State and other tangible assets. The fair market value of the parcel of real property is \$2,100,000 and the fair market value of the other assets is \$300,000. The real property is encumbered by the lien of a mortgage having a current unpaid balance of \$700,000. Also, K Corporation has other debts totaling \$300,000. S pledged 60 percent of its voting stock to J as security for a debt of \$500,000. The current unpaid balance of the debt owed to J is \$550,000, including accrued interest. J is presently enforcing its security interest in the voting stock owned by S. J's enforcement of its security interest in the voting stock of S results in both a transfer and an acquisition of a controlling interest. The consideration for the conveyance is computed as follows:

(a) Unpaid balance of debt	\$550,000
Part of mortgage indebtedness includable in amount to be apportioned (\$700,000 x 60%)	420,000
Part of other debt of entity includable in amount to be apportioned (300,000 x 60%)	+180,000
Amount to be apportioned	
\$1,150,000	

Reasonable apportionment based on fair market value of assets owned by K Corporation:

$$\$1,150,000 \times (\$2,100,000/\$2,400,000) = \$1,006,250$$

$$\text{b) FMV of real property -- } \$2,100,000 \times 60\% = \$1,260,000$$

The amount computed in (a) (\$1,006,250) is the consideration for the conveyance as it is less than the amount computed in (b) (\$1,260,000).

(b) The following are examples of conveyances which are not subject to the real estate transfer tax.

(1) A conveyance of real property by the beneficiary of the industrial development agency (IDA) financing to the IDA, in connection with the receipt of such financing is not subject to tax.

(2) A conveyance of real property by the IDA, as grantor, to the beneficiary of the IDA financing, as grantee is subject to tax.

SECTION 14-11.1-11 REAL PROPERTY SITUATED PARTLY WITHIN AND PARTLY WITHOUT THE TOWN.

(a) Where real property is situated partly within and partly without the boundaries of the town, the consideration subject to tax is such part of the total consideration as is attributable to the portion of such real property situated within the town or to the interest in such portion. If the consideration attributable to the property located in the town is set forth in the contract, such amount may be used to compute the tax due.

(b) If the contract does not set forth the amount of consideration attributable to the portion of real property or interest therein situated within the town, the consideration must be reasonably allocated between the portion of such property or interest therein situated within the town and the portion of such property or interest therein situated without the town.

(1) If the grantor and the grantee enter into a written agreement, signed by both the grantor and the grantee, which sets forth a reasonable allocation of consideration, that allocation of consideration may be used to compute the tax due.

(2) If the grantor and the grantee do not enter into such an agreement, or if the allocation of consideration set forth in such agreement is deemed unreasonable by the Treasurer, the allocation of consideration must be computed by multiplying the amount of consideration by a fraction, the numerator of which is the fair market value of the real property or interest therein situated within the town and the denominator of which is the total fair market value of all the real property or interest therein being conveyed.

Except in the case of a transfer or acquisition of a controlling interest where consideration means fair market value of the real property or interest therein, the tax is computed on the allocated portion of the actual consideration paid even if that amount is greater or less than the fair market value as determined by appraisal.

Example 1: A conveys to B real property which is situated partly within Riverhead and partly within Southampton. The consideration attributable to the portion of the property situated within Riverhead was not specified in the contract of sale or in a written agreement signed by both A and B. B pays A \$500,000 consideration for the property. An appraisal of the property, made just prior to the sale, indicates that the total fair market value of the property is \$500,000 and that the fair market value of the portion

of the property situated within Riverhead is \$250,000. The amount of the consideration used to compute the tax is \$250,000.

Example 2: Assume the same facts as example 1 except that the appraisal indicates that the total fair market value of the property is \$750,000 and the fair market value of the portion of the property situated within Riverhead is \$375,000. The amount of consideration used to compute the tax is determined by multiplying the amount of consideration paid by B (\$500,000) by 50 percent. Fifty (50) percent equals the fair market value of the property situated within Riverhead (\$375,000) divided by the total fair market value of the property (\$750,000). The amount of consideration used to compute the tax is \$250,000.

Example 3: Corporation A owns property which is situated partly within Riverhead and partly within Southampton. This is the only asset of corporation A.

One hundred percent of the stock of corporation A is sold to corporation B for \$300,000. Since a controlling interest in corporation A was transferred to corporation B, there was a taxable conveyance of the real property owned by corporation A to corporation B. An appraisal of the real property indicates that the total fair market value of the property is \$250,000 and that the fair market value of the property situated within Riverhead is \$200,000.

The amount of consideration used to compute the tax is \$200,000. The appraised fair market value is used rather than an allocated portion of the amount paid for the stock.

(c) Where the methods provided under this section do not allocated the consideration in a fair and equitable manner, the Treasurer may require a grantor and grantee to allocate the consideration under such method as he prescribes, as long as the prescribed method results in a fair and equitable allocation.

SECTION 14-11.1-12 CREDIT FOR PRIOR TRANSFER TAX PAID.

(a) A grantee is allowed a credit against the tax due on a conveyance of real property to the extent that tax was paid by the grantee on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same property.

(b) The credit is computed by multiplying the tax paid on the

creation of the leasehold or on the granting of an option or contract by a fraction, the numerator of which is the value of the consideration used to compute the tax paid which is not yet due to the grantee on the date of the subsequent conveyance (and which the grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute the tax paid.

Example: A, the owner of real improved property, leased the property to B for \$400,000 consideration, which was to be paid to A over the term of the lease.

Under the terms of the lease, B was provided an option to purchase the property. B paid a real estate transfer tax of \$3000 based upon the \$400,000 consideration. Several years later, before the expiration of the lease, B exercised the option and purchased the property from A. Up to the date of the sale, A had received \$300,000 of the total \$400,000 consideration. As a result of the sale, A was not entitled to receive the remaining \$100,000 of consideration. B is entitled to a credit against the transfer tax due on the sale of the property computed as follows: $\$100,000 / \$400,000 \times \$3000 = \750 credit.

SECTION 14-11.1-13 RETURNS.

(a)

(1) Except as provided in paragraph (2) of this subdivision, the grantor and grantee must file a joint return for each conveyance whether or not tax is due.

The return must be made on a form prescribed by the Treasurer.

(2) The filing of a joint return by the grantor and grantee as described in paragraph (1) of this subdivision is not required for a conveyance of an easement, or license to a public utility as defined in subdivision 2 of section 186-a of the Tax Law, if each of the following conditions are met:

(I) the consideration for the easement or license is \$2 or less; and

(ii) such consideration is clearly stated in the instrument of conveyance.

(b) Except as provided in paragraph (a)(2) of this section, if a conveyance is to be recorded, the return must be filed with the recording officer. The recording officer cannot record a

conveyance unless the transfer tax return has been filed and any tax due has been paid. The recording officer is authorized to collect the tax and accept returns only in those cases where an instrument effecting a conveyance of real property is presented for recording. The recording officer must indicate the amount of tax paid on the return and on the instrument presented for recording. If a conveyance is not recorded, or if the conveyance will be recorded after the time has expired for paying the tax, the tax return, together with any tax due, must be filed with the Treasurer at the time indicated in subdivision (c) of this section. Upon receiving the return and any tax due, the Treasurer will issue upon request, a receipt to the person filing the return evidencing the filing of the return and the payment of tax. For purposes of recording the instrument effecting the conveyance the recording officer shall handle such receipt in the same manner as a return filed with the recording officer.

(c) The return is due and the tax must be paid not later than the 15th day after the date on which the instrument effecting the conveyance is delivered by the grantor to the grantee. For purposes of this Part, the date of the instrument is presumed to be the date of the delivery of the instrument. This presumption may be rebutted by the person liable for payment of the tax.

(d) Both the grantor and the grantee are required to sign the return. If the conveyance has more than one grantor or grantee, all grantors and grantees shall sign the return. Nonetheless, if any one of the grantors or grantees sign the return, it will be accepted as a valid return by the recording officer and by the Treasurer. However, those grantors and grantees not signing the return are not relieved of any liability for the tax due and the period of limitations for determination of tax due provided for by law does not apply to anyone who does not sign the return.

(e) For good cause shown, the Treasurer may grant an extension of time not exceeding three months within which to file a return. An application for such extension must be made in writing prior to the due date of the return. Where an extension of time is granted, the taxpayer is nevertheless required to file a tentative return on or before the due date of the return.

A final return must be filed on or before the expiration date of the additional period of time granted. The balance of the tax due plus interest thereon at the underpayment rate of interest prescribed by this Chapter must be paid at the time of the filing of the final return.

(f) Any tax return filed with the Treasurer pursuant to subdivision (b) of this section should be mailed to the Town Supervisor.

(g) Where a taxpayer is claiming an exemption from the tax pursuant to Section 100.8 (b) (10) of this Chapter, the tax return shall be signed by the Town Attorney, or other town official designated by the Town Board approving said exemption.

SECTION 14-11.1-14 DETERMINATION OF TAX

(a) If the required return is not filed, or if a filed return is incorrect or incomplete, the Treasurer will determine the tax due from whatever records and information are available, including the assessed valuation of the real property or interest therein and other appropriate factors. Notice of such determination will be given to the person liable for the payment of the tax.

(b) The provisions of the Civil Practice Law and Rules, or any other law relative to limitations of time for the enforcement of a civil remedy, do not apply to any proceeding or action taken by the Town to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by Article 31-D of the Tax Law and Local law No. of 1998. No determination of tax due shall be made after the expiration of more than three years from the date of the filing of a return; provided however, that where no return has been filed as provided by law or in the case of a willfully false or fraudulent return, the tax may be assessed at any time.

(c) Where, before the expiration of the period prescribed for the determination of tax due, a taxpayer has consented in writing that such period be extended, the amount of any tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

(d) The notice of determination finally and irrevocably fixes the tax unless:

(1) The person assessed petitions the Town Supervisor for a hearing within 90 days from the date of the notice; or

(2) The Treasurer redetermines the amount of tax due. In any case before the Town Supervisor, the burden of proof is on the petitioner. After a hearing has been held, the Town Supervisor shall provide copies of the determination to the petitioner and to the Treasurer.

(e) Before the petitioner can initiate a proceeding for

judicial review, the petitioner must first deposit the tax, penalties and interest due with the department and also file with the Treasurer an undertaking in such amount and with such sureties as a justice of the Supreme Court shall approve, to the effect that if such proceeding is dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding. At the option of the petitioner, such undertaking filed with the Treasurer may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such determination plus the costs and charges which may accrue in the prosecution of the proceeding, in which event the petitioner shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

(f) A person liable for the tax may consent to have the tax due finally and irrevocably fixed, prior to the ninety-day period referred to in subdivision (d) of this section, by filing with the Treasurer a signed consent statement on such form as the Treasurer prescribes. The signed consent statement may be filed whether or not a determination of tax pursuant to subdivision (a) of this section has been issued by the Treasurer.

SECTION 14-11.1-15 REFUNDS.

(a) A grantor or grantee claiming to have erroneously paid the tax imposed pursuant to Article 31-D of the Tax Law, and Local Law No. of 1998, or some other person designated by such grantor or grantee may file an application for refund within two years from the date of payment. If a taxpayer has consented in writing to the extension of the period for determination of tax due, as provided in this chapter, the period for filing an application for a refund will not expire prior to six months after the extended period in which a determination of tax due may be made. The application for refund must be filed on a form prescribed by the Treasurer.

(b) The application for refund may be granted or denied in whole or in part by the Town Supervisor. The Town Supervisor shall notify the applicant of the determination by mail. Within 90 days after the mailing of the determination of tax, the taxpayer must petition the Town Supervisor for a hearing. After a hearing, the Town Supervisor shall mail a notice of the determination to the applicant and to the Treasurer. The applicant may petition for judicial review of the decision of the Town Supervisor provided that the applicant files an undertaking with the Treasurer for such amount and with such sureties as a justice of the Supreme Court shall approve, to the effect that if such proceeding is dismissed or the tax confirmed, the applicant will pay all costs and charges which

may accrue in the prosecution of the proceeding.

(c) A person shall not be entitled to a refund of tax, interest or penalty determined to be due where the person has had a hearing or an opportunity for a hearing or has failed to take advantage of the remedies provided. However, a person filing a signed statement with the Treasurer consenting to the tax due, before a determination assessing tax is issued to that person, may apply for a refund within the time provided in subdivision (a) of this section. Tax, interest or penalty determined to be due by the Treasurer may be refunded only if the determination is found to be erroneous, illegal, unconstitutional or otherwise improper after review by the Town Supervisor or in a proceeding under Article 78 of the Civil Practice Law and Rules.

(d) Interest amounting to one dollar or more shall be allowed upon any refund. Interest at the overpayment rate shall be paid from the date when the tax, penalty or interest refunded was paid to a date preceding the date of the refund check by not more than thirty days. For purposes of this subdivision, any tax paid before the last day prescribed for its payment shall be deemed to have been paid on such last day.

(e) All claims for refund must be filed with the County Treasurer.

SECTION 14-11.1-16 REMEDIES EXCLUSIVE.

The remedies provided by sections of this chapter are the exclusive remedies available to any person for the review of tax liability imposed by Article 31-D of the Tax Law. No determination or proposed determination of tax or determination on any application for refund may be enjoined or reviewed by any action for declaratory judgment, an action for money had and received, or by any action or proceeding other than a proceeding under Article 78 of the Civil Practice Law and Rules.

SECTION 14-11.1-17 LIABILITY OF RECORDING OFFICER.

A recording officer, or any other person designated to act as an agent, is not liable for any inaccuracy in the amount of tax collected so long as the tax is computed and collected on the amount of consideration, or the value of the interest conveyed, as stated on the return required to be filed pursuant to this Chapter.

SECTION 14-11.1-18 INTEREST AND CIVIL PENALTIES

(a) If it is determined that there has been an underpayment of

tax, interest is due at the underpayment rate on the amount of tax not paid. If any amount of tax is not paid on or before the last date prescribed for payment, such interest on the tax not paid is due for the period from such last date to the date paid.

(b) Any grantor or grantee who fails to file a return or pay any tax due within the time required by this Chapter is subject to a penalty of 10 percent of the amount of tax due. In addition, there is imposed an interest penalty of 2 percent of the amount of tax due per month of delay or fraction thereof after the expiration of the first month after such return was required to be filed or such tax became due. Such interest penalty may not exceed 25 percent. If the Treasurer determines that the failure to timely file a return or pay any tax was due to reasonable cause and not due to willful neglect, the Treasurer shall remit, abate or waive all of such penalty and interest penalty.

SECTION 14-11.1-19 REASONABLE CAUSE

(a) Where a person:

(1) fails to file any return on or before the last day prescribed for filing; or

(2) fails to pay the taxes imposed pursuant to Article 31-D of the Tax Law on or before the last day prescribed for paying;

the penalty and where applicable, the interest penalty must be imposed unless it is shown that such failure was due to reasonable cause and not due to willful neglect. In the event that such penalty and interest penalty have been imposed and it is later determined that failure to timely file the return or timely pay the tax was due to reasonable cause and not due to willful neglect, all of the penalty and interest penalty will be canceled. The absence of willful neglect alone is not sufficient grounds for not imposing the penalty and interest penalty or for canceling such penalty and interest penalty.

(b) All of the facts alleged as a basis for reasonable cause for failure to timely file a return or for failure to timely pay any tax due may be required to be affirmatively shown in a written statement made by the person liable for the penalty and interest penalty. Where such person is unable to provide the statement described in this subdivision or does not have a personal knowledge of the facts, a showing of reasonable cause may be made on behalf of the person by an individual with a

personal knowledge of the facts, a showing of reasonable cause may be made on behalf of the person by an individual with a personal knowledge of the facts. In determining whether reasonable cause exists, in addition to an evaluation of the facts, such person's previous compliance record with respect to all of the taxes imposed pursuant to the Tax Law may be taken into account.

(c) The following exemplify grounds for reasonable cause, where clearly established by the person liable for the penalty and interest penalty or established on such person's behalf;

(1) The death or serious illness of such person or any other person acting in a fiduciary or representative capacity for such person, or such person's unavoidable absence from the usual place of business, which precluded timely compliance, may constitute reasonable cause provided that:

(I) in the case of the failure to file any return, the applicable return is filed; or

(ii) in the case of the failure to pay any tax, such amount is paid;

within a justifiable period of time after death, illness or absence. A justifiable period of time is that period which is substantiated by such person or such person acting in a fiduciary or representative capacity as a reasonable period of time for filing the return and/or paying any tax based on the facts and circumstances in each case.

(2) The destruction of such person's place of business or business records or the destruction of the place of business or business records of any other person acting in a fiduciary or representative capacity for such person with respect to the conveyance by a fire or other documented casualty, which precluded timely compliance to file a return or to pay the tax due, may constitute reasonable cause provided that:

(I) in the case of the failure to file any return, the applicable return is filed; or

(ii) in the case of the failure to pay any tax, such amount is paid;

within a justifiable period of time after the casualty has taken place. A justifiable period of time is that

capacity, as a reasonable period of time for filing the return and/or for paying any tax, based on the facts and circumstances in each case.

(3) The inability for reasons beyond such person's control to timely obtain and assemble essential information recruited for the preparation of a complete return, despite the exercise of reasonable efforts, may constitute reasonable cause, provided a return is timely filed and the tax due, if any, is paid with the return based on the information that is known. A statement of facts shall accompany the return setting forth the reasons why all the essential information cannot be presently obtained. When such essential information is ascertained, an additional return must be filed immediately and any, further tax due must accompany such return.

Example 1: X contracts to sell Y 5 acres of land. The contract stipulates that the consideration for the conveyance of the real property is \$1,200,000, plus 10% of the net profit realized on any subsequent sale of the real property by Y. X timely filed a return and paid the tax due based on the information that was known along with a statement of facts attached setting forth the reason why all the essential information cannot be presently obtained. As soon as X was cognizant that Y had sold the land and building and determined the net profit realized, X immediately filed an additional return together with the payment of any further tax due. This constitutes reasonable cause for failure to pay the entire tax due on or before the 15th day following the date of conveyance.

(5) Any other cause for delinquency which would appear to a person of ordinary prudence and intelligence as a reasonable cause for delay and which clearly indicates an absence of willful neglect may be determined to be reasonable cause. Ignorance of the law, however, will not be considered as a basis for reasonable cause.

SECTION 14-11.1-20 SATURDAYS, SUNDAYS AND LEGAL HOLIDAYS.

When the last day prescribed (including the last day covered by an extension of time) for filing a document, making a payment or performing any acts falls on a Saturday, Sunday or a day which is a legal holiday in the State of New York, the performance of such acts will be considered timely if performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

Adopted

TOWN OF RIVERHEAD

Resolution # 294

APPOINTS THE TOWN ATTORNEY AS THE DESIGNATED OFFICIAL IN CONNECTION WITH THE COMMUNITY PRESERVATION FUND TRANSFER TAX

COUNCILMAN KWASNA

_____ offered the following resolution, was seconded by

COUNCILMAN LULL
_____ :

WHEREAS, in connection with the Community Preservation Fund Transfer Tax, to take effect for the Town of Riverhead on April 1, 1999, there is a section on the Community Preservation Fund form regarding exemptions. The Community Preservation Transfer Tax, under Section 1449-ee of Article 31-D of the Tax law requires the execution on said form of a designated official prior to the recording of same in the Office of the Suffolk County Clerk.

NOW THEREFORE BE IT HEREBY RESOLVED, that the Town Board of the Town of Riverhead hereby appoints the Town Attorney as the designated official for the Town of Riverhead in connection with the Community Preservation Fund Transfer Tax; and be it further

RESOLVED, that the Town Clerk is hereby directed to forward a certified copy of this resolution to the Office of the Supervisor and the Town Attorney's Office.

THE VOTE

Cardinale	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Kent	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Kwasna	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Lull	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Villella	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No			

THE RESOLUTION WAS WAS NOT

THEREUPON DULY DECLARED ADOPTED

Adopted

Town of Riverhead

Resolution # 295
Adopted March 29, 1999

Amends Resolution # 263 of 1999

COUNCILMAN LULL

_____ offered the following resolution
which was seconded by COUNCILMAN KENT.

WHEREAS, Resolution #263 adopted on March 16, 1999,
authorizing the Town Clerk to advertise for bids on 100% Acrylic
Traffic Paint - Cold Application was to be opened and read aloud on
March 30, 1999 at 11:00 AM and sufficient time for advertising was
not allowed

NOW THEREFORE BE IT RESOLVED, that the Town Board of
the Town of Riverhead be and hereby authorizes the Town Clerk to
advertise the opening of bids, bearing the designation "100% Acrylic
Traffic Paint - Cold Application", on April 13, 1999 at 11:00 AM at the
Town Clerk's Office, Town Hall, 200 Howell Avenue, Riverhead, New
York.

THE VOTE
Cardinale Yes ___ No ___ Kent Yes ___ No ___
Kwasna Yes ___ No ___ Lull Yes ___ No ___
 Villella Yes ___ No ___
THE RESOLUTION WAS WAS NOT ___
THEREUPON DULY DECLARED ADOPTED

NOTICE TO BIDDERS

Sealed bids for the purchase of **"100% ACRYLIC TRAFFIC PAINT - COLD APPLICATION"** for the use of the Riverhead Highway Department will be received by the Town Clerk of the Town of Riverhead at the Town Hall, 200 Howell Avenue, Riverhead, New York 11901 until **11:00 A.M. on April 13, 1999.**

Instructions for bidders, specifications and forms may be obtained at the office of the Town Clerk at the Town Hall Monday through Friday between the hours of 8:30 A.M. and 4:30 P.M..

All bids will be submitted on the bid form provided. Any and all exceptions to the specifications will be listed on a separate sheet of paper bearing the designation **"Exceptions to the Specifications"**, and attached to the bid form.

The Town Board reserves the right and responsibility to reject any or all bids or waive any formalities if it believes such action to be in the best interest of the town.

All bids will be submitted in a sealed envelope bearing the designation **"BID on 100% ACRYLIC TRAFFIC PAINT - COLD APPLICATION"**.

**BY ORDER OF THE TOWN BOARD
OF THE TOWN OF RIVERHEAD
BARBARA A. GRATTAN, TOWN CLERK**

Adopted

TOWN OF RIVERHEAD

Resolution # 296

RECREATION PROGRAM FUND

BUDGET ADJUSTMENT

COUNCILMAN CARDINALE

_____ offered the following resolution ,

which was seconded by COUNCILMAN KWASNA

BE IT RESOLVED, that the Supervisor be and is hereby authorized to establish the following budget adjustment:

006.000000.390599	APPROPRIATED FUND BALANCE	FROM:	
		\$20,700.	
006.076250.549500	CAPITAL IMPROVEMENTS	TO:	
		\$20,700.	

THE VOTE

Cardinale Yes ___ No ___ Kent Yes ___ No ___
 Kwasna Yes ___ No ___ Lull Yes ___ No ___
 Vilella Yes ___ No ___

THE RESOLUTION WAS WAS NOT ___
THEREUPON DULY DECLARED ADOPTED

Adopted

TOWN OF RIVERHEAD

Resolution # 297

CORWIN BENJAMIN INTERIOR RENOVATIONS

CAPITAL PROJECT

BUDGET ADJUSTMENT

COUNCILMAN KWASNA

_____ offered the following resolution ,

which was seconded by _____ COUNCILMAN LULL

BE IT RESOLVED, that the Supervisor be and is hereby authorized to establish the following budget adjustment:

406.075200.523024.40036 HVAC IMPROVEMENTS

FROM:
\$2,000.

406.075200.523011.40036 INTERIOR RENOVATIONS

TO:
\$2,000.

THE VOTE

Cardinale Yes ___ No ___ Kent Yes ___ No ___

Kwasna Yes ___ No ___ Lull Yes ___ No ___

Villella Yes ___ No ___

THE RESOLUTION WAS WAS NOT ___

THEREUPON DULY DECLARED ADOPTED

ADOPTED

TOWN OF RIVERHEAD

Resolution # 298

LITTLE LEAGUE BALL FIELD IMPROVEMENT

CAPITAL PROJECT

BUDGET ADJUSTMENT

COUNCILMAN CARDINALE

_____ offered the following resolution ,

which was seconded by COUNCILMAN KENT

BE IT RESOLVED, that the Supervisor be and is hereby authorized to establish the following budget:

FROM:

406.095031.481900.40093 TRANSFER OF SPECIAL FUNDS \$38,100.

TO:

406.071100.524910.40093 BALL FIELD FENCING IMPROVEMENT \$ 38,100.

THE VOTE

Cardinale Yes ___ No ___ Kent Yes ___ No ___

Kwasna Yes ___ No ___ Lull Yes ___ No ___

Villella Yes ___ No ___

THE RESOLUTION WAS WAS NOT ___

THEREUPON DULY DECLARED ADOPTED

SPECIAL TOWN BOARD MEETING
MARCH 30, 1999

TOWN OF RIVERHEAD

Adopted

Resolution # 299

SCHEDULING A PUBLIC HEARING PURSUANT TO ARTICLE 2 OF THE NEW YORK STATE EMINENT DOMAIN PROCEDURE LAW IN CONNECTION WITH THE CONDEMNATION OF 254 RAILROAD STREET, SCTM 0600-128-03-001 RIVERHEAD, NEW YORK

COUNCILMAN LULL

_____ offered the following resolution, was seconded by COUNCILMAN KWASNA :

BE IT RESOLVED, that the Town Board of the Town of Riverhead, hereby determines to hold a public hearing on APRIL 20, 1999 at 7:05 o'clock in the evening of that day pursuant to Article 2 of the New York State Eminent Domain Procedure Law with respect to the proposed condemnation of 254 Railroad Street, reputed owner, John & Joanne Calabrese, Suffolk County Tax Map 0600-128-03-001, in connection with the Town of Riverhead Urban Renewal Plan Railroad Street Corridor, adopted April 1, 1997.

This acquisition pursuant to the above mentioned urban renewal plan has been determined by the Town Board of the Town of Riverhead, as lead agency, to be an unlisted action without a significant impact on the environment, as more fully set forth in the resolution of the Town Board adopted December 29, 1998; and be it further

RESOLVED, that the Town Clerk is hereby directed to publish the attached notice of public hearing as follows:

- a. in two (2) successive issues of the News Review, the official newspaper of the Town of Riverhead commencing in the issued dated Thursday, April 8, 1999, and then in the issued dated Thursday, April 16, 1999, and
- b. in five (5) successive issues of Newsday, a newspaper of general circulation within the Town of Riverhead, commencing on April 5, 1999; and be it further

RESOLVED, that the Town Clerk is hereby directed to forward a certified copy of this resolution and the attached notice to Smith, Finkelstein, Lundberg, Isler & Yakaboski, LLP., P.O. Box 389, 456 Griffing Avenue, Riverhead, New York, 11901; the Town Attorney, and Andrea Lohneiss, Director of the Community Development Agency.

THE VOTE

Cardinale Yes ___ No ___ Kent Yes ___ No ___
 Kwasna Yes ___ No ___ Lull Yes ___ No ___
 Villella Yes ___ No ___

THE RESOLUTION WAS WAS NOT

THE RESOLUTION WAS DULY DECLARED ADOPTED

TOWN OF RIVERHEAD
PUBLIC NOTICE

PLEASE TAKE NOTICE, that a public hearing will be held before the Town Board of the Town of Riverhead on the 20th day of April, 1999 at 7:05 o'clock in the evening of that day pursuant to Article 2 of the New York State Eminent Domain Procedure Law with respect to the proposed condemnation of 254 Railroad Street, reputed owner, John & Joanne Calabrese, Suffolk County Tax Map 0600-128-03-001.

The proposed acquisition will be for urban renewal purposes pursuant to the Town of Riverhead, Railroad Street Corridor, adopted April 1, 1997.

This urban renewal project has been determined by the Town Board of the Town of Riverhead, as lead agency, to be an unlisted action without a significant impact on the environment, as more fully set forth in the resolution of the Town Board adopted December 29, 1998.

Dated: Riverhead, New York
March 29, 1999

BY ORDER OF THE TOWN BOARD OF
THE TOWN OF RIVERHEAD
BARBARA GRATTAN, TOWN CLERK

SPECIAL TOWN BOARD MEETING
MARCH 30, 1999

Adopted

TOWN OF RIVERHEAD

Resolution # ~~300~~

SCHEDULING A PUBLIC HEARING PURSUANT TO ARTICLE 2 OF THE NEW YORK STATE EMINENT DOMAIN PROCEDURE LAW IN CONNECTION WITH THE CONDEMNATION OF 243 RAILROAD STREET, SCTM 0600-128-03-002 RIVERHEAD, NEW YORK

COUNCILMAN KWASNA

_____ offered the following resolution, was seconded by COUNCILMAN CARDINALE :

BE IT RESOLVED, that the Town Board of the Town of Riverhead hereby determines to hold a public hearing on APRIL 20, 1999 at 7:10 o'clock in the evening of that day pursuant to Article 2 of the New York State Eminent Domain Procedure Law with respect to the proposed condemnation of 243 Railroad Street, reputed owner, Edith B. Lowell, Suffolk County Tax Map 0600-128-03-002, in connection with the Town of Riverhead Urban Renewal Plan Railroad Street Corridor, adopted April 1, 1997.

This acquisition pursuant to the above mentioned urban renewal plan has been determined by the Town Board of the Town of Riverhead, as lead agency, to be an unlisted action without a significant impact on the environment, as more fully set forth in the resolution of the Town Board adopted December 29, 1998; and be it further

RESOLVED, that the Town Clerk is hereby directed to publish the attached notice of public hearing as follows:

- a. in two (2) successive issues of the News Review, the official newspaper of the Town of Riverhead commencing in the issued dated Thursday, April 8, 1999, and then in the issued dated Thursday, April 16, 1999, and
- b. in five (5) successive issues of Newsday, a newspaper of general circulation within the Town of Riverhead, commencing on April 5, 1999; and be it further

RESOLVED, that the Town Clerk is hereby directed to forward a certified copy of this resolution and the attached notice to Smith, Finkelstein, Lundberg, Isler & Yakoboski, LLP., P.O. Box 389, 456 Griffing Avenue, Riverhead, New York, 11901; the Town Attorney, and Andrea Bonheiss, Director of the Community Development Agency.

THE VOTE

Cardinale Yes No
 Kwasna Yes No Lull Yes No
 Villella Yes No

THE RESOLUTION WAS WAS NOT _____
THEREUPON DULY DECLARED ADOPTED

TOWN OF RIVERHEAD
PUBLIC NOTICE

PLEASE TAKE NOTICE, that a public hearing will be held before the Town Board of the Town of Riverhead on the 20th day of April, 1999 at 7:10 o'clock in the evening of that day, to hear all interested persons with regard to the condemnation of property located at 243 Railroad Street, Riverhead, reputed owner, Edith B. Lowell, Suffolk County Tax Map 0600-128-03-002.

The proposed acquisition will be for urban renewal purposes pursuant to the Town of Riverhead, Railroad Street Corridor, adopted April 1, 1997.

This urban renewal project has been determined by the Town Board of the Town of Riverhead, as lead agency, to be an unlisted action without a significant impact on the environment, as more fully set forth in the resolution of the Town Board adopted December 29, 1998.

Dated: Riverhead, New York
March 29, 1999

BY ORDER OF THE TOWN BOARD OF
THE TOWN OF RIVERHEAD
BARBARA GRATTAN, TOWN CLERK

SPECIAL TOWN BOARD MEETING
MARCH 30, 1999

Adopted

TOWN OF RIVERHEAD

Resolution # 301

SCHEDULING A PUBLIC HEARING PURSUANT TO ARTICLE 2 OF THE NEW YORK STATE EMINENT DOMAIN PROCEDURE LAW IN CONNECTION WITH THE CONDEMNATION OF 227 RAILROAD STREET, SCTM 0600-128-03-003 RIVERHEAD, NEW YORK

COUNCILMAN KENT

_____ offered the following resolution, was seconded by COUNCILMAN LULL :

BE IT RESOLVED, that the Town Board of the Town of Riverhead hereby determines to hold a public hearing on APRIL 20, 1999 at 7:15 o'clock in the evening of that day pursuant to Article 2 of the New York State Eminent Domain Procedure Law with respect to the proposed condemnation of 227 Railroad Street, reputed owner, Sajida Haider, Suffolk County Tax Map 0600-128-03-003, in connection with the Town of Riverhead Urban Renewal Plan Railroad Street Corridor, adopted April 1, 1997.

This acquisition pursuant to the above mentioned urban renewal plan has been determined by the Town Board of the Town of Riverhead, as lead agency, to be an unlisted action without a significant impact on the environment, as more fully set forth in the resolution of the Town Board adopted December 29, 1998; and be it further

RESOLVED, that the Town Clerk is hereby directed to publish the attached notice of public hearing as follows:

a. in two (2) successive issues of the News Review, the official newspaper of the Town of Riverhead commencing in the issued dated Thursday, April 8, 1999, and then in the issued dated Thursday, April 16, 1999, and

b. in five (5) successive issues of Newsday, a newspaper of general circulation within the Town of Riverhead, commencing on April 5, 1999; and be it further

RESOLVED, that the Town Clerk is hereby directed to forward a certified copy of this resolution and the attached notice to Smith, Finkelstein, Lundberg, Isler & Yakaboski, LLP., P.O. Box 389, 456 Griffing Avenue, Riverhead, New York, 11901; the Town Attorney, and Andrea Lohneiss, Director of the Community Development Agency.

TOWN OF RIVERHEAD
PUBLIC NOTICE

PLEASE TAKE NOTICE, that a public hearing will be held before the Town Board of the Town of Riverhead on the 20th day of April, 1999 at 7:15 o'clock in the evening of that day, to hear all interested persons with regard to the condemnation of property located at 227 Railroad Street, Riverhead, reputed owner, Sajida Haider, Suffolk County Tax Map 0600-128-03-003.

The proposed acquisition will be for urban renewal purposes pursuant to the Town of Riverhead, Railroad Street Corridor, adopted April 1, 1997.

This urban renewal project has been determined by the Town Board of the Town of Riverhead, as lead agency, to be an unlisted action without a significant impact on the environment, as more fully set forth in the resolution of the Town Board adopted December 29, 1998.

Dated: Riverhead, New York
March 29, 1999

BY ORDER OF THE TOWN BOARD OF
THE TOWN OF RIVERHEAD
BARBARA GRATTAN, TOWN CLERK

THE VOTE

Cardinale Yes ___ No ___ Kent Yes ___ No ___

Kwasna Yes ___ No ___ Lull Yes ___ No ___

Villola Yes ___ No ___

THE RESOLUTION WAS WAS NOT

THEREUPON DULY DECLARED ADOPTED